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9
10 **BEFORE THE DEPARTMENT OF CORPORATIONS**
11 **OF THE STATE OF CALIFORNIA**

11 In the Matter of

Case No.:

12 THE CALIFORNIA CORPORATIONS
13 COMMISSIONER,

**STATEMENT IN SUPPORT OF ORDER
LEVYING ADMINISTRATIVE
PENALTIES PURSUANT TO
CORPORATIONS CODE SECTION 25252;**

14 Complainant,

15 vs.

16 APPLIED DIGITAL TECHNOLOGIES, INC.,
a Delaware corporation;
17 CHRIS PONISH, an individual;
18 ROBERT REED, an individual; and
LAUREN SCOTT, an individual,

**CLAIM FOR ANCILLARY RELIEF
PURSUANT TO CORPORATIONS CODE
SECTION 25254; AND**

DESIST AND REFRAIN ORDER

19 Respondents.
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21 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the
22 Department of Corporations ("Department") (collectively "Complainant"), brings this action in
23 the public interest and alleges and charges as follows:

24 **I. STATEMENT OF FACTS**

25 1. At all relevant times, Respondent Applied Digital Technologies, Inc. ("Applied
26 Digital Technologies") is and was a Delaware corporation, which purportedly maintained an address
27 at 2150 South 1300 East, Suite 500, Salt Lake City, Utah. Applied Digital Technologies utilized an
28 address at 15934 Wood Valley Trail, Jamul, California.

1 13. On or about September 25, 2008, Respondents filed a Form D, Rule 506, exemption
2 notice with the Securities and Exchange Commission on behalf of Applied Digital Technologies.

3 14. On or about September 21, 2010, the Complainant issued an administrative desist and
4 refrain order to Applied Digital Technologies and Chris Ponish for offering or selling securities in
5 the State of California without first filing a Form D exemption notice, consent to service of process,
6 and filing fee with the Commissioner, in violation of CSL section 25102.1.

7 15. Corporations Code section 25110 prohibits the offer or sale of unqualified, non-
8 exempt securities in issuer transactions in the State of California. The securities offered and sold by
9 Respondents are subject to qualification under the Corporate Securities Law of 1968 (California
10 Corporations Code section 25000 et seq.) (“CSL”). These securities were offered or sold in this state
11 in issuer transactions. The Department of Corporations has not issued a permit or other form of
12 qualification authorizing any person to offer or sell these securities in this state. The offer or sale of
13 these securities is not exempt.

14 **VIOLATION OF CORPORATIONS CODE SECTION 25401**

15 **(Misrepresentations and Omissions of Material Facts)**

16 16. Respondents provided potential investors with written materials, including, but not
17 limited to, a private placement document and an executive summary.

18 17. In connection with the offers and sales of securities, Respondents made, or caused to
19 be made, representations to investors and potential investors that:

20 a. Applied Digital Technologies designs, manufactures and develops
21 applications for personal security, location and rescue products and that investor funds would be
22 used to provide working capital for Applied Digital Technologies’ growth and expansion. However,
23 Respondents failed to disclose, or caused the failure of disclosure, to investors and potential
24 investors that investor funds would in fact be used for Respondents’ personal expenses and not for
25 Applied Digital Technologies’ growth and expansion. Respondents used investor funds for such
26 purposes as car payments, mortgages, utility bills, mobile homes, the purchase of real estate and in
27 vitro fertilization services.

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1 b. Chris Ponish was the president and control person of Applied Digital
2 Technologies. However, Respondents failed to disclose, or caused the failure of disclosure, to
3 investors and potential investors that:

4 i. Chris Ponish was the subject of an administrative desist and refrain
5 order, issued on April 13, 2009, by Complainant for securities fraud and other violations of the CSL;

6 ii. Robert Reed was also a control person of Applied Digital
7 Technologies. Further, that Robert Reed was the subject of an administrative desist and refrain order,
8 issued on March 26, 2008, by Complainant for violations of the CSL;

9 iii. Robert Reed, also a control person of Applied Digital Technologies,
10 was a defendant in a civil enforcement action filed by Complainant on September 9, 2008, alleging
11 securities fraud and other violations of the CSL;

12 iv. Robert Reed, also a control person of Applied Digital Technologies,
13 was preliminary enjoined on March 16, 2009, from offering and selling securities in violation of
14 CSL section 25110 and 25401.

15 v. Lauren Scott was also a control person of Applied Digital
16 Technologies. Further, that Lauren Scott was the subject of an administrative cease and desist order,
17 issued on July 27, 1999, by the Pennsylvania Securities Commission for securities fraud and other
18 violations of state securities laws.

19 18. CSL section 25401 prohibits the offer or sale of securities in this state by means
20 of written or oral communications that include untrue statements of material fact or omits
21 material facts necessary in order to make the statements made, in the light of the circumstances
22 under which they were made, not misleading. The omissions and misrepresentations of
23 Respondents, as outlined above, are material facts necessary in order to make the statements
24 made, in the light of the circumstances under which they were made, not misleading.

25 **II. ORDER LEVYING ADMINISTRATIVE PENALTIES**
26 **(For Violations of Corporations Code Sections 25110 and 25401)**

27 19. Complainant re-alleges and incorporates by reference paragraphs 1-18 of this
28 Statement in Support as though fully set forth herein.

1 20. CSL section 25252 authorizes the Commissioner to issue an order levying
2 administrative penalties against any person for willful violations of any provision of the CSL.
3 Specifically, CSL section 25252 provides, in relevant part:

4 The commissioner may, after appropriate notice and opportunity for hearing, by
5 orders, levy administrative penalties as follows:

6 (a) Any person subject to this division, other than a broker-dealer or investment
7 adviser, who willfully violates any provision of this division . . . is liable for
8 administrative penalties of not more than one thousand dollars (\$1,000) for the first
9 violation, and not more than two thousand five hundred dollars (\$2,500) for each
10 subsequent violation.

11 21. CSL section 25017, subdivision (e), provides, in relevant part, that:

12 Every sale or offer of a warrant or right to purchase or subscribe to another security
13 of the same or another issuer, as well as every sale or offer of a security which gives
14 the holder a present or future right or privilege to convert the security into another
15 security of the same or another issuer, includes an offer and sale of the other
16 security only at the time of the offer or sale of the warrant or right or convertible
17 security.

18 22. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1-
19 18, Respondents willfully violated the following provisions:

20 a. CSL section 25110, by offering and selling securities to at least ninety-five
21 (95) investors residing in California and elsewhere, in at least one hundred sixty-nine (169)
22 transactions.

23 b. CSL section 25401 by making untrue statements or omissions in the offer
24 and sale of securities to at least ninety-five (95) investors residing in California and elsewhere, in
25 at least one hundred sixty-nine (169) transactions.

26 **WHEREFORE**, good cause showing, and pursuant to Corporations Code section 25252,
27 the Commissioner prays for an order levying administrative penalties, individually, jointly and
28 severally, against Respondents, as follows:

 a. That pursuant to Corporations Code section 25252, the Commissioner levy
administrative penalties of one thousand dollars (\$1,000) for the first violation of Corporations
Code section 25110 and two thousand, five hundred dollars (\$2,500) for each subsequent

1 violation, as listed below, for a total amount of one million, six hundred eighty-eight thousand
2 five hundred dollars (\$1,688,500.00):

- 3 i. First violation: \$1,000 for the first offer or sale of a debenture;
- 4 ii. Additional violations:
 - 5 A. \$2,500 for the offers or sales of the debentures in the 168
 - 6 subsequent transactions;
 - 7 B. \$2,500 for the rights to convert the debentures into shares of
 - 8 stock given in the 169 transactions; and
 - 9 C. \$2,500 for the offers or sales of the warrants for shares of stock
 - 10 in the 169 transactions.
 - 11 D. \$2,500 for the exercise of the warrants for shares of stock in the
 - 12 169 transactions.

13 b. That pursuant to Corporations Code section 25252, the Commissioner levy
14 administrative penalties of one thousand dollars (\$1,000) for the first violation of Corporations
15 Code section 25401 and two thousand five hundred dollars (\$2,500) for each subsequent
16 violation, as listed below, for a total amount of one million, seven hundred ninety-eight
17 thousand, five hundred dollars (\$1,798,500.00):

- 18 i. First violation: \$1,000 for the misrepresentation in paragraph 17(a)
- 19 ii. Additional violations:
 - 20 A. \$2,500 for the misrepresentation in paragraph 17(a) made in the
 - 21 168 applicable transactions;
 - 22 B. \$2,500 for the misrepresentation in paragraph 17(b)(i) made in
 - 23 the single applicable transaction;
 - 24 C. \$2,500 for the misrepresentation in paragraph 17(b)(ii) made in
 - 25 the 169 applicable transactions;
 - 26 D. \$2,500 for the misrepresentation in paragraph 17(b)(iii) made in
 - 27 the 137 applicable transactions;
 - 28 E. \$2,500 for the misrepresentation in paragraph 17(b)(iv) made in
 - the 75 applicable transactions; and

1 F. \$2,500 for the misrepresentation in paragraph 17(b)(v) made in
2 the 169 applicable transactions.

3 The total amount of administrative penalties for Respondents' violations of Corporations Code
4 sections 25110 and 25401 is three million, four hundred and eighty-seven thousand dollars
5 (\$3,487,000.00).

6 **III. CLAIM FOR ANCILLARY RELIEF**

7 **(For Violations of Corporations Code Sections 25110 and 25401)**

8 23. Complainant re-alleges and incorporates by reference paragraphs 1-18 of this
9 Statement in Support as though fully set forth herein.

10 24. Corporations Code section 25254 authorizes the Commissioner to seek ancillary
11 relief for violations of any provision of the CSL. Corporations Code section 25254 states:

12 (a) If the commissioner determines it is in the public interest, the commissioner may
13 include in any administrative action brought under this part a claim for ancillary
14 relief, including, but not limited to, a claim for restitution or disgorgement or
15 damages on behalf of the persons injured by the act or practice constituting the
subject matter of the action, and the administrative law judge shall have jurisdiction
to award additional relief.

16 (b) In an administrative action brought under this part, the commissioner is entitled to
17 recover costs, which in the discretion of the administrative law judge may include an
18 amount representing reasonable attorney's fees and investigative expenses for the
19 services rendered, for deposit into the State Corporations Fund for the use of the
Department of Corporations.

20 25. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1-
21 18, Respondents sold unqualified, non-exempt securities in an amount of at least three million,
22 eight hundred sixty-one thousand, nine hundred fifty dollars (\$3,861,950.00), to at least ninety-
23 five (95) investors, in violation of Corporations Code sections 25110 and 25401. Investment
24 funds have not been returned to investors.

25 **WHEREFORE**, good cause showing, and the Commissioner having determined that this
26 action is in the public interest, for the protection of investors and consistent with the purposes,
27 policies, and provisions of the CSL, based on Respondents' violations, the Commissioner hereby
28 prays for an order of ancillary relief pursuant to Corporation Code section 25254, individually,

1 jointly and severally against Respondents as follows:

2 a. Restitution and/or disgorgement, consisting of the investors' investment
3 principal in an amount of at least \$3,861,950.00 and legal interest accumulated on the investment
4 principal or according to proof; and

5 b. Recovery of attorney's fees, investigative expenses, and costs in an
6 amount of at least one hundred thousand dollars (\$100,000.00), or according to proof.

7 **IV. DESIST AND REFRAIN ORDER**

8 26. Complainant re-alleges and incorporates by reference paragraphs 1-18 of this
9 Statement in Support as though fully set forth herein.

10 27. Corporations Code section 25532, in pertinent part, states:

11 (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to
12 qualification under this law and it is being or has been offered or sold without first
13 being qualified, the commissioner may order the issuer or offeror of the security to
14 desist and refrain from the further offer or sale of the security
15 until qualification has been made under this law

16 (c) If, in the opinion of the commissioner, a person has violated or is violating
17 Section 25401, the commissioner may order that person to desist and refrain from
18 the violation.

19 28. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1-
20 18, the Commissioner is of the opinion that the securities, in the form of debentures convertible
21 to shares of stock and warrants to purchase shares of stock in Applied Digital Technologies, Inc.,
22 that were offered or sold are securities subject to qualification under the California Corporate
23 Securities Law of 1968 and are being or have been offered or sold without being qualified in
24 violation of Corporations Code section 25110.

25 29. Further, the Commissioner is of the opinion that the securities, in the form of
26 limited liability company units, were offered or sold in this state by means of written or oral
27 communications which included an untrue statement of a material fact or omitted to state a
28 material fact necessary in order to make the statements made, in the light of the circumstances
under which they were made, not misleading, in violation of section 25401 of the Corporate
Securities Law of 1968.

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IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:

a. Pursuant to section 25532 of the Corporate Securities Law of 1968, Applied Digital Technologies, Inc., Chris Ponish, Robert Reed and Lauren Scott are hereby ordered to desist and refrain from the further offer or sale, in the State of California, of securities, including, but not limited to, debentures, warrants or stock, unless and until qualification has been made under the law or unless exempt; and

b. Pursuant to section 25532 of the Corporate Securities Law of 1968, Applied Digital Technologies, Inc., Chris Ponish, Robert Reed and Lauren Scott are hereby ordered to desist and refrain from offering or selling or buying or offering to buy any security in the State of California, including but not limited to debentures, warrants or stock, by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies and provisions of the Corporate Securities Law of 1968.

Dated: March 30, 2011

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
ALAN S. WEINGER
Deputy Commissioner