

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Acting Deputy Commissioner
3 ALEX CALERO (SBN 238389)
Corporations Counsel
4 CALIFORNIA DEPARTMENT OF CORPORATIONS
5 1350 Front Street, Room 2034
San Diego, California 92101
6 Telephone: (619) 525-4044
7 Attorneys for the People of the State of California

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
12 CALIFORNIA CORPORATIONS
COMMISSIONER,
13 Plaintiff,
14 vs.
15 SMARTWEAR TECHNOLOGIES, a San
Diego County fictitious business name;
16 SMARTWEAR TECHNOLOGIES, INC., a
Delaware corporation;
17 NORMAN FRANK REED, an individual;
ROBERT REED, an individual;
18 SEAN BORZAGE BOYD, an individual; and
DOES 1 through 10, inclusive,
19 Defendants.
20

Case No.:

COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTION, ANCILLARY
RELIEF AND CIVIL PENALTIES

VIOLATIONS OF CORPORATIONS CODE
SECTION 25110 (UNQUALIFIED, NON-
EXEMPT OFFER AND SALE OF
SECURITIES)

VIOLATIONS OF CORPORATIONS CODE
SECTION 25401 (MISREPRESENTATIONS
AND OMISSIONS IN THE OFFER AND
SALE OF SECURITIES)

Judge:
Dept:

Date Action Filed:

23 Preston DuFauchard, California Corporations Commissioner, acting to protect the public
24 from the unlawful and fraudulent offer or sale of securities, brings this action in the public interest,
25 in the name of the People of the State of California. The People of the State of California allege:

26 ///
27 ///
28 ///

VENUE AND JURISDICTION

1
2 1. The California Corporations Commissioner (“Commissioner” or “Plaintiff”) in his
3 capacity as head of the California Department of Corporations (“Department”) brings this action
4 to enjoin the defendants from violating the Corporate Securities Law of 1968 (California
5 Corporations Code section 25000 et seq.) and to request necessary equitable and ancillary relief.
6 The Commissioner is authorized to administer and enforce the provisions of the Corporate
7 Securities Law of 1968 and the regulations promulgated there under (California Code of
8 Regulations, title 10, section 250.9 et seq.).

9 2. The Commissioner brings this action pursuant to Corporations Code sections 25530
10 and 25535 and Government Code section 11180 et seq. in his capacity as head of the Department.

11 3. The defendants have transacted and continue to transact business within San Diego
12 County and other counties in the State of California. The violations of law described herein have
13 occurred and will continue to occur within San Diego County and throughout the State of
14 California unless enjoined.

DEFENDANTS

15
16 4. Defendant SMARTWEAR TECHNOLOGIES is a San Diego fictitious business
17 name, filed on August 18, 2005, with a listed owner of Norman Reed and a listed address at 2650
18 Jamacha Road, El Cajon, CA 92019.

19 5. Defendant SMARTWEAR TECHNOLOGIES, INC. is a Delaware corporation,
20 incorporated on August 8, 2005, maintaining last known business addresses at 10120 S. Eastern
21 Ave., Suite 200, Henderson, NV 89052, P.O. Box 152112, San Diego, CA 92195 and 15934
22 Wood Valley Trail, Units B and C, Jamul, CA 91935.

23 6. Defendant Norman Frank Reed (“NORMAN REED”), a.k.a. Norman Anthony
24 Reed and N.A. Reed, is an individual whose last known residence is 2650 Jamacha Road, El
25 Cajon, CA 92019 and whose last known business address is 15934 Wood Valley Trail, Units B
26 and C, Jamul, CA 91935. At all relevant times, NORMAN REED is and was President, a control
27 person and a consultant for SMARTWEAR TECHNOLOGIES and SMARTWEAR
28 TECHNOLOGIES, INC.

1 total of \$432,000.00.

2 13. The DEFENDANTS offered or sold securities for the purported purpose of
3 operating and expanding SMARTWEAR TECHNOLOGIES, a protection and information system
4 which employs radio frequency identification (“RFID”) technology in the form of tags, integrated
5 within clothing and other products.

6 14. On or about August 28, 2007, the Department issued a Subpoena Duces Tecum on
7 SMARTWEAR TECHNOLOGIES. The subpoena was served on September 21, 2007.

8 15. The following people are affiliated with SMARTWEAR TECHNOLOGIES:
9 NORMAN REED, ROBERT REED, SEAN BORZAGE, Lauren Scott, Jordan Spencer Scott,
10 Walter Reed a.k.a., Walt Reed and W.R. Reed, and Gene Spatocco.

11 16. As a result of its investigation, the Department has learned that Walter Reed is the
12 father of both NORMAN REED and ROBERT REED.

13 17. On or about July 11, 2005, US Market Development Corp. (“US Market
14 Development”) entered into a contract with SMARTWEAR TECHNOLOGIES, whereby US
15 Market Development agreed to assist in the development, structure and maintenance of the
16 marketing strategy to raise funds for SMARTWEAR TECHNOLOGIES.

17 18. The securities offered or sold by DEFENDANTS were not qualified pursuant to the
18 Corporations Code.

19 19. The securities offered or sold by DEFENDANTS were not exempt from the
20 qualification requirements of the Corporations Code.

21 20. DEFENDANTS offered or sold securities to residents of California and other states
22 by means of general solicitation in the form of telephone cold-calls and an investor recruitment
23 network.

24 21. On November 13, 2007, after the Department had begun its investigation of
25 DEFENDANTS, the Department received a Form D, Rule 506, private placement exemption
26 notice filing, submitted under a cover letter signed by ROBERT REED as President of
27 SMARTWEAR TECHNOLOGIES, INC. However, the Form D, Rule 506, private placement
28 exemption notice filing is signed by NORMAN REED as President of SMARTWEAR

1 TECHNOLOGIES, INC. Pursuant to the Form D, Rule 506, private placement exemption notice
2 filing, SMARTWEAR TECHNOLOGIES claims an exemption from qualification for the sale of
3 \$5,000,000.00 worth of securities in the form of “limited liability interests.” This exemption is not
4 available to DEFENDANTS as a result of DEFENDANTS’ use of general solicitation, in the form
5 of telephone cold-calls and an investor recruitment network, to offer or sell securities to residents
6 of California and other states.

7 22. On or about July 27, 1999, the Pennsylvania Securities Commission issued a
8 Summary Desist and Refrain Order against N.A. Reed, Walter Reed, Lauren Scott, Toyopia.com,
9 L.L.C., Toyopia.com and US Market Development for offering to sell unregistered, non-exempt
10 securities of Toyopia.com, L.L.C. to Pennsylvania residents.

11 23. On or about March 17, 2003, the Texas State Securities Board issued a Cease and
12 Desist Order against Sean Boyd and ESS Environmental, Inc. for offering to sell unregistered
13 securities of ESS Environmental, Inc., to Texas residents, by means of telephone solicitations.

14 24. In relation to the offer or sale of securities, DEFENDANTS represented that the
15 SMARTWEAR TECHNOLOGIES debentures had a 15% annual interest rate and could be
16 converted to SMARTWEAR TECHNOLOGIES stock, entitling investors to a “guaranteed”
17 dividend of 30%. In fact, investors have not received profits or dividends as a result of their
18 investments.

19 25. DEFENDANTS also represented to investors and potential investors that
20 SMARTWEAR TECHNOLOGIES was endorsed by the U.S. Department of Homeland Security.
21 In fact, SMARTWEAR TECHNOLOGIES holds no such endorsement.

22 26. Further, DEFENDANTS represented to investors and potential investors that
23 SMARTWEAR TECHNOLOGIES obtained revenue from manufacturing RFID tags and
24 distributing said tags to businesses with whom SMARTWEAR TECHNOLOGIES contracted,
25 such as the Port of Los Angeles and Disney. In fact, SMARTWEAR TECHNOLOGIES has never
26 had a contract for distribution with such businesses as the Port of Los Angeles or Disney.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION

**OFFER AND SALE OF UNQUALIFIED, NON-EXEMPT SECURITIES
IN VIOLATION OF CORPORATIONS CODE SECTION 25110
(AGAINST ALL DEFENDANTS)**

27. Plaintiff incorporates by reference paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Corporations Code section 25110, in pertinent part, provides:

It is unlawful for any person to offer or sell in this state any security in an issuer transaction...unless such sale has been qualified...or unless such security or transaction is exempted or not subject to qualification under Chapter 1 [commencing with CSL section 25100] of this part.

29. Beginning in August 2005 and continuing thereafter, DEFENDANTS, and each of them, offered and sold securities to at least one hundred and thirty (130) investors, raising a total of \$5,045,639.73. Of those investors, twenty-five (25) were California residents. From the offer and sale of securities to California residents DEFENDANTS raised a total of \$432,000.00.

30. The investments offered or sold by DEFENDANTS are “securities” within the meaning of Corporations Code section 25019. The securities include, but are not necessarily limited to, debentures, warrants, stock, limited liability interests, and/or investment contracts.

31. DEFENDANTS “offered and sold” the securities “within the state” of California within the meaning of Corporations Code sections 25008 and 25017.

32. The offer or sales of these securities were “issuer transactions” within the meaning of Corporations Code sections 25010 and 25011.

33. The Commissioner has not issued a permit or other form of qualification authorizing the DEFENDANTS to offer or sale the securities referred to herein.

34. The offer or sale of the securities referred to herein were not exempt from the qualification requirements of Corporations Code section 25110.

35. On November 13, 2007, DEFENDANTS submitted a Form D, Rule 506, private placement exemption notice filing to the Department. DEFENDANTS have used

1 general solicitation to offer or sell securities and have therefore violated the requirements of
2 the Regulations D, Rule 506, private placement exemption.

3 36. Unless enjoined by this Court, DEFENDANTS will continue to violate
4 Corporations Code section 25110.

5 **SECOND CAUSE OF ACTION**

6 **MISREPRESENTATION OR OMISSION OF MATERIAL FACTS**

7 **IN VIOLATION OF CORPORATIONS CODE SECTION 25401**

8 **(AGAINST ALL DEFENDANTS)**

9 37. Plaintiff incorporates by reference paragraphs 1 through 36 of this Complaint as
10 though fully set forth herein.

11 38. Corporations Code section 25401 states:

12 It is unlawful for any person to offer or sell a security in this state or buy or offer to
13 buy a security in this state by means of any written or oral communication which
14 includes an untrue statement of a material fact or omits to state a material fact
15 necessary in order to make the statements made, in the light of the circumstances
16 under which they were made, not misleading.

17 39. In connection with the offer or sale of the securities referred to herein,
18 DEFENDANTS made misrepresentations of material facts and/or omitted to state material facts to
19 some or all of the investors. The misrepresentations and/or omissions include, but are not
20 necessarily limited to, the following:

21 A. DEFENDANTS omitted to disclose that on July 27, 1999, the Pennsylvania
22 Securities Commission issued a Summary Desist and Refrain Order against N.A. Reed, Walter
23 Reed, Lauren Scott, Toyopia.com, L.L.C., Toyopia.com and US Market Development for offering
24 to sell unregistered, non-exempt securities of Toyopia.com, L.L.C. to Pennsylvania residents;

25 B. DEFENDANTS omitted to disclose that on March 17, 2003, the Texas State
26 Securities Board issued a Cease and Desist Order against Sean Boyd and ESS Environmental, Inc.
27 for offering to sell unregistered securities of ESS Environmental, Inc., to Texas residents, by
28 means of telephone solicitations;

///

1 C. DEFENDANTS misrepresented that the SMARTWEAR TECHNOLOGIES
2 debentures had a 15% annual interest rate and could be converted to SMARTWEAR
3 TECHNOLOGIES stock, entitling investors to a “guaranteed” dividend of 30%. In fact, investors
4 have not received profits or dividends as a result of their investments;

5 D. DEFENDANTS misrepresented that SMARTWEAR TECHNOLOGIES was
6 endorsed by the U.S. Department of Homeland Security. In fact, SMARTWEAR
7 TECHNOLOGIES holds no such endorsement; and

8 E. DEFENDANTS misrepresented that SMARTWEAR TECHNOLOGIES obtained
9 revenue from manufacturing RFID tags and distributing said tags to businesses with whom
10 SMARTWEAR TECHNOLOGIES contracted, such as the Port of Los Angeles and Disney. In
11 fact, SMARTWEAR TECHNOLOGIES has never had a contract for distribution with such
12 businesses as the Port of Los Angeles or Disney.

13 40. The misrepresentations and/or omissions referred to herein were “material facts”
14 within the meaning of Corporations Code section 25401, because they concerned matters that a
15 “reasonable investor” would consider important in deciding whether to invest.

16 41. DEFENDANTS’ misrepresentations and omissions of material facts took place
17 “within the state” of California within the meaning of Corporations Code section 25008.

18 42. Unless enjoined by this Court, DEFENDANTS will continue to violate
19 Corporations Code section 25401.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against defendants SmartWear Technologies,
22 SmartWear Technologies, Inc., Norman Frank Reed a.k.a. Norman Anthony Reed and N.A. Reed,
23 Robert Reed, and Sean Borzage Boyd a.k.a. Sean Boyd as follows:

24 **I. INJUNCTIVE RELIEF FOR THE VIOLATIONS**

25 For an Order of Preliminary Injunction and a Permanent Injunction, pursuant to California
26 Corporations Code section 25530, subdivision (a), restraining and enjoining SmartWear
27 Technologies, SmartWear Technologies, Inc., Norman Frank Reed a.k.a. Norman Anthony Reed
28 and N.A. Reed, Robert Reed and Sean Borzage Boyd a.k.a. Sean Boyd from, directly or indirectly:

1 1. Violating California Corporations Code section 25110 by offering to sell, selling,
2 arranging for the sale of, issuing, engaging in the business of selling, or negotiating for the sale of
3 any security of any kind unless such security or transaction is qualified;

4 2. Violating California Corporations Code section 25401 by offering to sell or selling
5 any security of any kind by means of any written or oral communication which includes any
6 untrue statement of material fact or omits to state any material fact necessary in order to make the
7 statements made, in the light of the circumstances under which they are made, not misleading;

8 3. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
9 disposing of, in any manner, any books, records, computer programs, computer files, computer
10 printouts, correspondence, brochures, manuals, or any other “writing” or “document” of any kind
11 as defined under California Evidence Code section 250, relating to the transactions and course of
12 conduct as alleged in this Complaint, unless authorized by this Court; and

13 4. Withdrawing from any bank account or disposing of any real or personal property,
14 derived or purchased from investor funds, in their possession, custody, or control, without leave of
15 the Court.

16 **II. RESCISSION AND RESTITUTION**

17 For a Final Judgment requiring SmartWear Technologies, SmartWear Technologies, Inc.,
18 Norman Frank Reed a.k.a. Norman Anthony Reed and N.A. Reed, Robert Reed, and Sean Borzage
19 Boyd a.k.a. Sean Boyd to rescind each and all of the unlawful transactions alleged in this
20 Complaint, pursuant to California Corporations Code section 25530, subdivision (b), as shall be
21 determined by this Court to have occurred, and further requiring SmartWear Technologies,
22 SmartWear Technologies, Inc., Norman Frank Reed a.k.a. Norman Anthony Reed and N.A. Reed,
23 Robert Reed, and Sean Borzage Boyd a.k.a. Sean Boyd to pay full restitution to each person
24 determined to have been subject to acts, practices, or transactions which constitute violations of
25 the Corporate Securities Law of 1968, in an amount of at least \$5,045,639.73, or according to
26 proof, to the at least one hundred and thirty (130) investors. In addition, that SmartWear
27 Technologies, SmartWear Technologies, Inc., Norman Frank Reed a.k.a. Norman Anthony Reed
28 and N.A. Reed, Robert Reed, and Sean Borzage Boyd a.k.a. Sean Boyd pay the legal rate of

1 interest on the principal amount invested by each and every investor from the date of his or her
2 investment to the date of judgment herein.

3 **III. CIVIL PENALTIES**

4 For a Final Judgment requiring SmartWear Technologies, SmartWear Technologies, Inc.,
5 Norman Frank Reed a.k.a. Norman Anthony Reed and N.A. Reed, Robert Reed, and Sean Borzage
6 Boyd a.k.a. Sean Boyd to pay the Department \$25,000.00 as a civil penalty for each act in
7 violation of the Corporate Securities Law of 1968, pursuant to California Corporations Code
8 section 25535, in an amount of at least \$16,350,000.00, or according to proof.

9 **IV. OTHER RELIEF**

10 For such other and further relief as this Court may deem necessary and proper.

11 Dated: September 9, 2008

12
13 PRESTON DuFAUCHARD
California Corporations Commissioner

14
15 By: _____
16 ALEX CALERO
17 Corporations Counsel
18 Attorney for the People of California
19
20
21
22
23
24
25
26
27
28