06 CV 14338

JUDGE STEIN

COPY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

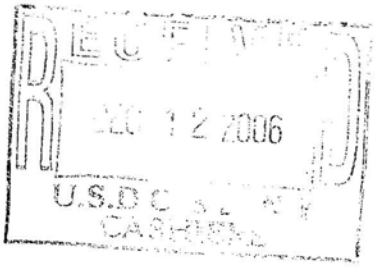
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EDWIN BUCHANAN LYON, IV,
GRYPHON MASTER FUND, L.P.,
GRYPHON PARTNERS, L.P.,
GRYPHON PARTNERS (QP), L.P.,
GRYPHON OFFSHORE FUND, LTD.,
GRYPHON MANAGEMENT PARTNERS, L.P.,
GRYPHON MANAGEMENT PARTNERS III, L.P., and
GRYPHON ADVISORS, L.L.C.

Defendants.



Civil Action No.

COMPLAINT

Plaintiff, the Securities and Exchange Commission ("Commission"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. Defendants perpetrated an illegal trading scheme to evade the registration requirements of the federal securities laws in connection with at least thirty-five unregistered securities offerings, which are commonly referred to as "PIPEs" (Private Investments in Public Equities). Defendant Edwin Buchanan Lyon, IV ("Lyon") serves as managing partner and chief investment officer of defendant entities Gryphon Master

Fund, L.P., Gryphon Partners, L.P., Gryphon Partners (QP), L.P., Gryphon Offshore Fund, Ltd., Gryphon Management Partners, L.P., Gryphon Management Partners III, L.P., and Gryphon Advisors, L.L.C. (collectively, "Gryphon Partners") (Lyon and Gryphon Partners collectively, "Defendants"). From 2001 to 2004, Gryphon Partners realized more than $6.5 million in ill-gotten gains as a result of the unlawful trading scheme, which violated the antifraud and registration provisions of the federal securities laws.

2. Typically, after agreeing to invest in a PIPE transaction, Defendants sold short the issuer's stock, frequently through "naked" short sales in Canada. Later, once the Commission declared the resale registration statement effective, Defendants used the PIPE shares to cover the short positions — a practice prohibited by the registration provisions of the federal securities laws. To avoid detection and regulatory scrutiny, Defendants employed a variety of deceptive trading techniques, including wash sales, matched orders, and pre-arranged trades, to make it appear that they were covering their short sales with open market shares, when, in fact, Defendants were on both sides of the transactions and were covering with their PIPE shares.

3. "Selling short" is a technique used by investors to, among other things, take advantage of an anticipated decline in the price of a stock. In general, a "short seller" sells shares of stock that he or she does not own, ultimately "covering" the sale with shares that the seller purchases at a later date. The hope is that the stock price will fall so the short seller can purchase the stock to cover the short sale at a lower price.

4. Defendants' unlawful PIPE investment strategy and deceptive trading scheme involved at least thirty-five issuers that sought PIPE financing (collectively, "the PIPE Issuers"). During the relevant period, the common stock of each PIPE Issuer was registered with the Commission pursuant to either Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and was quoted on the NASDAQ National Market, or traded on the New York Stock Exchange or the Over-The-Counter Bulletin Board.

5. In each of the transactions, Defendants also made materially false representations to the PIPE Issuers to induce them to sell securities to Gryphon Partners. As a precondition of participation in a PIPE, Defendants had to represent that they would not sell, transfer or dispose of the PIPE shares other than in compliance with the registration provisions of the Securities Act of 1933 ("Securities Act"). At the time Defendants signed the securities purchase agreements, however, they intended to distribute the restricted PIPE securities in violation of the registration provisions of the Securities Act.

6. On at least four occasions, Defendants also engaged in illegal insider trading by using material nonpublic information and selling short the securities of certain PIPE Issuers. Defendants engaged in this conduct notwithstanding their agreement to keep information about the PIPE confidential and/or to refrain from trading prior to the public announcement of the PIPE.

7. The Commission requests that: (a) each defendant be enjoined from engaging in future violations of the antifraud and other provisions of the federal securities laws as

alleged herein; (b) Gryphon Partners, disgorge, with prejudgment interest, the illegal profits and proceeds obtained as a result of the actions described herein; (c) Gryphon Partners pay a civil monetary penalty 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)]; (d) Lyon disgorge, with prejudgment interest, the illegal profits and proceeds he obtained as a result of the actions described herein; and (e) Lyon pay a civil monetary penalty 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)].

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

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

10. The Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged herein.

11. Venue is proper because certain of the transactions, acts, practices, and courses of business occurred within the Southern District of New York. Among other things, Defendants placed numerous securities transactions that were either executed or

cleared through broker-dealers located in New York. Defendants transacted business with, and paid compensation to, an entity located in New York for being the source of various PIPE offerings. Certain PIPE Issuers are headquartered in New York. In addition, there is a material witness who resides, and has his place of business, in New York.

12. The Defendants, directly or indirectly, have engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business that violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Sections 5(a), 5(b), and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(b), and 77e(c)].

DEFENDANTS

13. **Edwin "Bucky" Buchanan Lyon, IV**, age 40, resides in Dallas, Texas. During the relevant period, Lyon was, and continues to be, the managing partner and chief investment officer of Gryphon Management Partners, L.P.

14. **Gryphon Master Fund, L.P.**, a Bermuda limited partnership, is the master hedge fund for the Gryphon-related entities. All investments are held and made in Gryphon Master Fund, L.P. and three separate funds feed into this master fund.

15. **Gryphon Partners, L.P.**, a Texas limited partnership, is an onshore hedge fund that feeds into Gryphon Master Fund, L.P. Gryphon Partners, L.P. is a general partner of Gryphon Master Fund, L.P.

16. **Gryphon Partners (QP), L.P.**, a Texas limited partnership, is an onshore hedge fund that feeds into Gryphon Master Fund, L.P. Gryphon Partners (QP), L.P. is a general partner of Gryphon Master Fund, L.P.

17. **Gryphon Offshore Fund, Ltd.**, a Bermuda exempted mutual fund company, is an offshore hedge fund that feeds into Gryphon Master Fund, L.P. Gryphon Offshore Fund, Ltd. is a general partner of Gryphon Master Fund, L.P.

18. **Gryphon Management Partners, L.P.**, a Texas limited partnership, is the general partner and investment manager of Gryphon Partners, L.P., Gryphon Partners (QP), L.P., and Gryphon Offshore Fund, Ltd. All employees are employed by Gryphon Management Partners, L.P. The general partners of Gryphon Management Partners, L.P. are Lyon, Edwin Buchanan Lyon, III (Lyon's father), and Lee Lyon (sister of Lyon and daughter of Lyon, III). Gryphon Management Partners, L.P. is registered with Commission as an investment advisor with approximately $200 million in assets under management.

19. **Gryphon Management Partners III, L.P.**, a Texas limited partnership, is the investment manager of Gryphon Offshore Fund, Ltd. Gryphon Management Partners III, L.P., however, assigned its management responsibilities to Gryphon Management Partners, L.P. The general partners of Gryphon Management Partners III, L.P. are Lyon, Edwin Buchanan Lyon, III, and Lee Lyon.

20. **Gryphon Advisors, L.L.C.**, a Texas limited liability company, is the general partner of Gryphon Management Partners, L.P. and Gryphon Management Partners III, L.P. Gryphon Advisors is owned 100% by Lyon.

STATEMENT OF FACTS

I. PIPEs Background

21. Issuers utilize the PIPEs market when more traditional means of financing, such as a registered repeat offering, are for various reasons impractical. PIPE securities are generally issued pursuant to Section 4(2) of the Securities Act or Regulation D under the Securities Act, which provide an exemption from registration for a nonpublic offering by an issuer. Because PIPEs are unregistered offerings, PIPE investors receive restricted securities when a transaction closes. Before investors can publicly trade those restricted securities, the issuer must file, and the Commission must declare effective, a resale registration statement, a process that may take 60 to 120 days to complete. PIPE investors therefore must wait a certain period of time before they can publicly trade the securities that they received in the PIPE. To compensate investors for this temporary illiquidity, PIPE issuers customarily offer the restricted securities at a discount to market price.

22. Many PIPE investors "hedge" their investment by selling short the PIPE issuer's securities before the resale registration statement is declared effective. The size of the "hedge" is limited by the investor's ability to locate shares of the PIPE issuer's securities to borrow in order to sell short. A PIPE investor that wishes to fully "hedge" its investment therefore typically wants to purchase in the offering only as many shares as it knows it can locate to borrow. In thinly-traded securities, where locating shares can be difficult, investors wishing to "hedge" must limit their investment, which correspondingly limits their ability to profit from the PIPE transaction.

23. Defendants violated Sections 5(a), 5(b), and 5(c) of the Securities Act by covering their pre-effective date short positions with the actual shares received in the PIPE. This is because shares used to cover a short sale are deemed to have been sold when the short sale was made.

24. Lyon knew the lawful way to cover those short positions that were established to "hedge" PIPE investments, but he chose instead to cover his pre-effective date short positions with PIPE shares in order to avoid exposing the trades to market risk. This unlawful trading scheme permitted Defendants to profit from PIPE offerings without incurring corresponding market risk.

II. The Unlawful Trading Scheme and Unregistered Sale of Shares

25. During the period 2001 through 2004, Lyon implemented the unlawful trading scheme that enabled Gryphon Partners to invest in PIPE offerings without incurring market risk. His strategy was simple: to sell short as much as possible (up to the amount of Gryphon Partners' restricted PIPE allocation) prior to the Commission declaring the resale registration statement effective and then to cover those short positions using the PIPE shares.

26. In each of the thirty-six transactions listed below (except Manufacturers' Services Limited, in which Defendants engaged only in illegal insider trading), Defendants employed an unlawful trading strategy in violation of the antifraud and registration provisions of the federal securities laws:

	PIPE Issuer	Closing Date
1	**PhotoMedex, Inc.**	3/27/2001
2	**Guilford Pharmaceuticals, Inc.**	6/8/2001
3	**Generex Biotechnology Corp.**	7/30/2001
4	**HealthExtras, Inc.**	9/25/2001
5	**MGI Pharma, Inc.**	10/31/2001
6	**Alloy, Inc.**	11/1/2001
7	**Gentner Communications Corp.**	11/15/2001
8	**IntelliData Technologies Corp.**	11/28/2001
9	**Viisage Technology, Inc.**	12/14/2001
10	**RailAmerica, Inc.**	12/18/2001
11	**Impco Technologies, Inc.**	1/11/2002
12	**Siga Technologies, Inc.**	12/31/2002
13	**Stonepath Group, Inc.**	2/26/2003
14	**Datatec Systems, Inc.**	4/22/2003
15	**Generex Biotechnology Corp.**	5/29/2003
16	**CytRx Corp.**	5/29/2003
17	**Vion Pharmaceuticals, Inc.**	6/19/2003
18	**Hollis-Eden Pharmaceuticals, Inc.**	6/19/2003
19	**Aastrom Biosciences, Inc.**	7/10/2003
20	**Insmed, Inc.**	7/11/2003
21	**Celsion Corp.**	7/23/2003
22	**GTC Biotherapeutics, Inc.**	7/30/2003
23	**Socket Communications, Inc.**	8/5/2003
24	**Cardima, Inc.**	8/13/2003
25	**Heartland Oil & Gas Corp.**	8/20/2003
26	**Lifestream Technologies, Inc.**	9/10/2003
27	**Genome Therapeutics Corp.**	9/29/2003
28	**Verticalnet, Inc.**	10/9/2003
29	**Immune Response Corp.**	10/10/2003
30	**Keryx Biopharmaceuticals, Inc.**	11/12/2003
31	**Sorrento Networks Corp.**	12/23/2003
32	**V.I. Technologies, Inc.**	1/13/2004
33	**Medis Technologies Ltd.**	1/13/2004
34	**Verticalnet, Inc.**	1/22/2004
35	**AuthentiDate Holding Corp.**	1/28/2004
36	**Manufacturers' Services Limited (Insider Trading Only)**	3/13/2002

27. Defendants engaged in the illegal trading scheme in connection with each of the PIPE offerings (except for Manufacturers' Services Limited), garnering a total of approximately $6.5 million in ill-gotten gains for Gryphon Partners. These ill-gotten gains inflated Gryphon Partners' assets under management and performance, which consequently led Lyon to receive improper performance fees and compensation.

28. Defendants employed several different methods — often used in combination for the same PIPE — to establish their short positions. Because Defendants were sometimes unable to borrow the number of shares necessary to hedge their entire PIPE allocation, they often executed pre-effective date short sales through a Canadian broker-dealer.

29. Using their Canadian broker-dealer, Defendants executed "naked" short sales by selling short without borrowing unrestricted shares to deliver. Because "naked" short selling was permissible in Canada during the relevant period, Defendants had no borrowing limitations, and because they knew that they would be using their PIPE shares illegally to cover their pre-effective date short positions, Defendants were able to make larger PIPE investments than other investors and, as a result, were able to earn larger profits. In addition to their "naked" Canadian short selling, Defendants also engaged in short selling in the United States through domestic broker-dealers or by executing short sales through electronic communications networks ("ECNs").

30. When Defendants sold short the PIPE Issuers' securities, there was not a resale registration statement in effect for the PIPE shares and no exemption from registration applied to the sales of those shares.

31. Once Defendants had established their short positions, they waited until the Commission declared effective the resale registration statement and then began to use their PIPE shares to cover the short positions in violation of Sections 5(a), 5(b), and 5(c) of the Securities Act.

32. To cover Canadian short positions, Defendants either directly delivered their PIPE shares to their Canadian account or engaged in deceptive trading techniques – wash sales and matched orders – through their Canadian broker-dealer. Specifically, Lyon would enter a limit order on an ECN to sell a specific number of Gryphon Partners' PIPE shares from its domestic prime brokerage account. He would also place a limit order with the Canadian broker to buy the same number of shares for Gryphon Partners' Canadian account. The limit order to sell the PIPE shares and the limit order to buy the PIPE shares would be placed simultaneously, or nearly simultaneously. These buy and sell orders would match on the ECN and the Canadian broker-dealer would use the PIPE shares that Gryphon Partners had just purchased from its domestic account to cover Gryphon Partners' Canadian short positions.

33. By placing his limit order to sell the same amount of PIPE shares simultaneously, or nearly simultaneously, with his buy limit order to cover Gryphon Partners' short position, Lyon knew there was a high likelihood that the two orders would match, and thus, eliminate Gryphon Partners' exposure to the market moving against one side of the trade.

34. "Wash sales" are transactions involving no change in beneficial ownership. "Matched orders" are orders for the purchase or 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.

35. A "limit order" is an order to buy or sell a security at a specific price. A buy limit order can only be executed at the limit price or lower, and a sell limit order can only be executed at the limit price or higher.

36. When Defendants established short positions in their domestic prime brokerage account, they used the following deceptive trading techniques to cover those short positions: "closing the box" and pre-arranged trades. To "close the box," Defendants simply directed their prime broker to journal their PIPE shares from their cash account to their short account with instructions to cover the short position using the PIPE shares.

37. For the pre-arranged trades, Defendants sold their PIPE shares to certain brokers, which then sold the same shares back to Defendants. Once Defendants received their PIPE shares back from the brokers, they used those PIPE shares to cover their domestic short positions.

38. Although the manner of establishing and covering the short positions differed from deal to deal, the Medis Technologies Ltd. ("Medis") PIPE offering that closed on January 13, 2004 illustrates Defendants' basic trading strategy: Gryphon Partners invested $1,500,000 in the offering, receiving 150,000 restricted Medis shares at $10 per share – a discount of approximately 30% from Medis's then-market price of approximately $14.48 per share.

39. Defendants, through their Canadian broker, sold short 149,887 shares at prices ranging from $11.57 to $14.06 per share, garnering proceeds of approximately $1,939,000. These short sales were placed prior to the registration statement being declared effective.

40. The Canadian short sales were "naked" short sales, meaning Defendants neither borrowed nor delivered to the purchaser the shares of Medis stock that they sold short.

41. Once the Commission declared the resale registration statement effective, Defendants, as described above, engaged in wash sales and matched orders with their Canadian broker, and used their PIPE shares to cover the 149,887 share short position. Gryphon Partners' profit was therefore locked in at the moment its short sales were executed: the $1,939,000 short sale proceeds minus the $1,500,000 investment, for a net profit of approximately $439,000.

42. An example of directly delivering the PIPE shares to cover occurred in the October 2003 Immune Response Corporation ("IMNR") PIPE offering. As part of that PIPE offering, Gryphon Partners purchased 371,287 restricted PIPE shares and sold short, through its Canadian broker, 344,969 shares of IMNR prior to the registration statement being declared effective.

43. The Canadian short sales were "naked" short sales, meaning Defendants neither borrowed nor delivered to the purchaser the shares of IMNR stock that they sold short.

44. On December 17, 2003, subsequent to the IMNR registration statement being declared effective, Defendants directly delivered all 371,287 PIPE shares to their Canadian broker to cover their short position.

45. By selling short the PIPE Issuers' securities before the effective date of the resale registration statement for the PIPE shares and covering those short positions with the PIPE shares after the resale registration statement became effective, Defendants sold the PIPE shares prior to their effective registration.

III. Defendants Made Materially False Representations to the PIPE Issuers

46. As a necessary part of the unlawful trading scheme, Lyon, or those directed by Lyon, intentionally made materially false representations to the PIPE Issuers to induce them to sell their securities to Gryphon Partners. Each securities purchase agreement between the PIPE Issuers and Gryphon Partners contained a provision in which Gryphon Partners represented that it was purchasing the PIPE securities in compliance with Section 5 of the Securities Act. In each offering, Gryphon Partners represented, among other things, that it was purchasing the securities for its own account and without any present intention of distributing the securities.

47. This representation was material to the PIPE Issuers, who, as the stock purchase agreements made clear, relied on the investors' representations in order to qualify for an exemption from the registration requirements for their private offering. Without securing such representations, the PIPE Issuers could not have permitted Defendants to participate in the offering because the PIPE Issuers would not have qualified for a registration exemption.

48. Lyon, or those directed by Lyon, signed these securities purchase agreements despite knowing that Gryphon Partners (i) was not purchasing the PIPE securities for its own account and (ii) had a present intention to distribute the PIPE securities through its short selling and covering with the PIPE shares in violation of Sections 5(a), 5(b), and 5(c) of the Securities Act.

IV. Insider Trading

49. Defendants also engaged in insider trading in connection with at least four PIPE offerings (Celsion Corporation ("Celsion"); Gentner Communications Corporation ("Genter"); Manufacturers' Services Limited ("Manufacturers' Services"); and PhotoMedex, Inc. ("PhotoMedex") (collectively, "Four PIPEs")) by selling short the issuers' securities prior to the public announcement of the offering.

50. Although Defendants received legal advice advising them not to trade prior to the public announcement of PIPE offerings, Defendants disregarded this advice and continued to trade prior to the public announcement of certain PIPE offerings.

A. Information Concerning the Four PIPEs was Material and Nonpublic

51. Advance news of a PIPE offering is valuable and material nonpublic information since the announcement typically precipitates a decline in the price of a PIPE issuer's securities due to the dilutive effect of the offering and the PIPE shares being issued at a discount to the then prevailing market price of the issuer's stock.

52. A reasonable investor would have considered information concerning each of the Four PIPEs – including the date of the PIPE offering, the discounted price of the stock, and the number of shares issued – important to his or her investment decision and a

significant alteration of the total mix of information available to the public.

53. For each of the Four PIPEs, the market price of the stock for each of the issuers declined when the PIPE offering was announced publicly.

B. Defendants Owed a Duty of Trust and Confidence

54. In connection with the Four PIPEs, Defendants received offering documents with language requiring them to maintain the information contained therein in confidence and/or to refrain from trading on that information prior to the public announcement of the offering.

55. The language contained in the purchase agreement for the Gentner PIPE offering stated that "[f]or the benefit of the Company, the Purchaser agreed orally with the Placement Agent to keep confidential all information concerning this private placement." The document also stated that "[t]he Purchaser agrees to use the information contained in the Private Placement Memorandum for the sole purpose of evaluating a possible investment in the Shares...."

56. By signing the purchase agreement, Lyon further agreed that he understood that "the federal securities laws impose restrictions on trading based on information regarding this offering." Defendants breached their duty to maintain the information about the PIPE in confidence by accumulating a short position of 87,500 shares of Gentner on November 15, 2001, one day prior to the November 16, 2001 public announcement of the PIPE offering.

57. On November 16, 2001, Gentner's stock price closed down $1.02 – nearly 5% – from the prior day's closing price.

58. On March 21, 2001, Lyon received an email from the placement agent for the PhotoMedex PIPE offering. Contained within that email was the following:

> By accepting the attached materials pertaining to PhotoMedex, Inc. (the "Company"), you agree that the attached materials and any other information which you receive from us or the Company in connection with your evaluation of the Company (collectively, the "Confidential Information") will be used by you and your affiliates and advisors solely for the purpose of evaluating the potential acquisition of the Company's securities and the Confidential Information will be kept confidential by you and your affiliates and advisors....The term Confidential Information shall not include any information once such information becomes known to the public, but, to the extent not known publicly, shall include that the Company is undertaking or considering undertaking a transaction involving the potential sale of its securities. By accepting the Confidential Information, you acknowledge that you may be receiving material nonpublic information concerning the Company and are aware that the United States securities laws restrict the purchase and sale of securities by persons who possess certain nonpublic information relating to issuers of securities.

Later that day, in breach of their duty to maintain the confidentiality of the information, Defendants accumulated a 50,000 share short position in PhotoMedex. The PIPE offering was announced publicly on March 23, 2001.

59. On March 23, 2001, PhotoMedex's stock price closed down approximately 6% from the prior day's closing price.

60. The placement agent for the Manufacturers' Services PIPE offering sent a private placement memorandum to Lyon on February 27, 2002. The front cover of the private placement memorandum contained the following:

> By reading the information contained within this document, the recipient agrees with Manufacturers' Services Limited and Robertson Stephens, Inc. to maintain in confidence such information, together with any other non-public information regarding Manufacturers' Services Limited obtained from Manufacturers' Services Limited, Robertson Stephens, Inc. or their agents during the course of the

> proposed financing. Manufacturers' Services Limited and Robertson Stephens, Inc. have caused these materials to be delivered to you in reliance upon such agreement and upon Rule 100(b)(2)(ii) of Regulation FD as promulgated by the Securities and Exchange Commission.

Although Defendants did not invest in this PIPE offering, they breached their duty to maintain the confidentiality of the information and sold short 20,000 shares of Manufacturers' Services on March 6, 2002 and 3,000 shares of Manufacturers' Services on March 11, 2002. The PIPE offering was announced publicly on March 13, 2002.

61. On March 13, 2002, Manufacturers' Services' stock price closed down approximately 4.1% from the prior day's closing price.

62. As to the Celsion PIPE offering, Defendants received a private placement memorandum on June 3, 2003 requiring them to maintain the confidentiality of the information contained therein. On June 9, 2003, in breach of their duty to maintain the confidentiality of the information, Defendants began selling short shares of Celsion and accumulated a short position of 377,700 shares prior to the PIPE offering being announced publicly on July 8, 2003.

63. On July 8, 2003, Celsion's stock price closed down approximately 8.5% from the prior day's closing price.

C. Defendants Traded and Used Material Nonpublic Information in Breach of a Duty of Trust and Confidence

64. Defendants, after learning about each of the Four PIPEs and prior to each of the Four PIPEs being announced publicly, sold short the issuers' securities.

65. Defendants used material nonpublic information and sold short, in anticipation that the announcement of the PIPE offering for each of the Four PIPEs would have a

negative impact on the issuers' stock price.

66. Having received material nonpublic information concerning the Four PIPEs and having agreed to maintain that information in confidence, Defendants owed a duty of trust and confidence to the issuers of the Four PIPEs and their placement agents not to trade, or to direct others to trade, in the securities of the issuers of the Four PIPEs.

67. By the conduct set forth above, Defendants breached that duty of trust and confidence.

68. Defendants knew, or were reckless in not knowing, that they made untrue statements and omissions and/or engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business that operated as a fraud and deceit upon other persons, as further described above.

69. As a result of the Defendants' insider trading, Defendants made substantial unlawful profits.

FIRST CLAIM FOR RELIEF

INSIDER TRADING AND FRAUD
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

70. The Commission realleges and reincorporates paragraphs 1 through 69 as if fully set forth herein.

71. From at least 2001 to 2004, the Defendants, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omissions to state material facts necessary in order to make the statement made, in light of the circumstances under which they were made,

not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit.

72. By reason of their actions alleged herein, the Defendants each violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

INSIDER TRADING
Violations of Section 17(a) of the Securities Act

73. The Commission realleges and reincorporates paragraphs 1 through 72 as if fully set forth herein.

74. From at least 2001 to 2004, the Defendants, by use of the means or instrumentalities of interstate commerce or of the mails, in the offer or sale of securities: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of the securities offered and sold by the defendants.

75. By reason of their actions alleged herein, the Defendants each violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM FOR RELIEF

REGISTRATION AND PROSPECTUS DELIVERY
Violations of Sections 5(a), 5(b), and 5(c) of the Securities Act

76. The Commission realleges and reincorporates paragraphs 1 through 75 as if fully set forth herein.

77. Defendants, directly or indirectly: (a) without a registration statement in effect as to the securities, (i) made use of the means or instruments of transportation or communication or the mails to sell such securities through the use or medium of a prospectus or otherwise, or (ii) carried or caused to be carried through the mails, or in interstate commerce, by any means or instruments of transportation, such securities for the purpose of sale or for delivery after sale; (b) carried or caused to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale without being accompanied or preceded by a prospectus; and (c) 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 through the use or medium of a prospectus or otherwise securities for which a registration statement had not been filed as to such securities.

78. By reason of their actions alleged herein, the Defendants each violated Sections 5(a), 5(b), and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(b), and 77e(c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendants from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 5(a), 5(b), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(b), 77e(c), and 77q(a)];

II.

Ordering defendants Gryphon Master Fund, L.P., Gryphon Partners, L.P., Gryphon Partners (QP), L.P., Gryphon Offshore Fund, Ltd., Gryphon Management Partners, L.P., Gryphon Management Partners III, L.P., and Gryphon Advisors, L.L.C. to disgorge the profits and proceeds they obtained as a result of their actions alleged herein and to pay prejudgment interest thereon;

III.

Ordering defendants Gryphon Master Fund, L.P., Gryphon Partners, L.P., Gryphon Partners (QP), L.P., Gryphon Offshore Fund, Ltd., Gryphon Management Partners, L.P., Gryphon Management Partners III, L.P., and Gryphon Advisors, L.L.C. to pay a civil monetary penalty 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)];

IV.

Ordering defendant Edwin Buchanan Lyon, IV to disgorge the profits and proceeds he obtained as a result of his actions alleged herein and to pay prejudgment interest thereon;

V.

Ordering defendant Edwin Buchanan Lyon, IV to pay a civil monetary penalty 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)]; and

VI.

Granting such other relief as this Court may deem just and proper.

Dated: December 12, 2006

Respectfully submitted,

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