**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 09-CIV-81453-ZLOCH/ROSENBAUM**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**3001 AD, LLC,**
**JIMMY L. BARKER,**
**ROBERT J. LADRACH,**
**MARC S. RIFKIN,**
**RONALD B. BOWSKY,**
**JACK MADDOCK and**
**MICHAEL WEIDGANS,**

**Defendants.**

## COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

## I. INTRODUCTION

1. The Commission brings this action to permanently restrain and enjoin Defendants 3001 AD, LLC, Jimmy Barker, Robert J. Ladrach, Marc S. Rifkin, Ronald B. Bowsky, Jack Maddock, and Michael Weidgans from violating the federal securities laws through their unregistered, fraudulent offer and sale of securities. From approximately 1998 through April 2008 ("the relevant period"), the Defendants raised approximately $20 million from about 500 investors throughout the United States through the unregistered and fraudulent offering of securities in 3001 AD and several affiliated general partnerships ("the Partnerships").

2. During the relevant period, the Defendants offered and sold these securities to investors using telephone calls, the mail, internet website postings, e-mail messages, and nationwide radio advertising, while repeatedly misrepresenting and omitting material facts about the amount of sales commissions paid, the use of investor proceeds, an impending initial public offering ("IPO"), and certain business relationships.

3. Through their conduct, the Defendants each violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Additionally, Defendants Barker, Rifkin, Bowsky, Maddock and Weidgans each also violated Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1). Unless permanently enjoined, the Defendants are reasonably likely to continue to violate the federal securities laws.

## II. DEFENDANTS

4. **3001 AD** is a North Carolina limited liability company that had its principal place of business in Delray Beach, Florida, until it ceased operations in April 2008. 3001 AD never registered with the Commission in any capacity and never registered any offering of securities under the Securities Act or any class of securities under the Exchange Act. Between 1999 and 2004, Massachusetts, Pennsylvania, Missouri, and South Dakota entered cease-and-desist orders against 3001 AD for its participation in the transactions that are the subject of this Complaint.

5. **Barker**, 40, resides in Wellington, Florida. Barker was the managing member, CEO, and controlling principal of 3001 AD during most of the relevant period. Between 1999 and 2004, Illinois, Pennsylvania, Missouri, and South Dakota entered cease-and-desist orders against Barker for his participation in the transactions that are the subject of this Complaint. Barker has

never registered with the Commission in any capacity or been associated with any broker-dealer registered with the Commission.

6. **Ladrach**, 45, resides in Lake Worth, Florida. Ladrach was a managing member of 3001 AD and served as its president during most of the relevant period. In 1999 and 2001, Massachusetts and Missouri entered cease-and-desist orders against Ladrach for his participation in the transactions that are the subject of this Complaint.

7. **Rifkin**, 52, resides in Boynton Beach, Florida. Rifkin served as president of 3001 AD for approximately one year, and as 3001 AD's vice-president at other times during the relevant period. Rifkin primarily was the sales manager and a sales agent for 3001 AD from approximately 1999 through approximately October 2007. In 2004, South Dakota entered a cease-and desist-order against Rifkin for his participation in the transactions that are the subject of this Complaint. Rifkin has never registered with the Commission in any capacity or been associated with any broker-dealer registered with the Commission.

8. **Bowsky**, 64, resides in Ft. Lauderdale, Florida. Bowsky was employed as a sales agent and sales manager at 3001 AD from approximately 2000 through 2005. Bowsky has never registered with the Commission in any capacity or been associated with any broker-dealer registered with the Commission.

9. **Maddock**, 51, resides in Boynton Beach, Florida. Maddock was a sales agent at 3001 AD from approximately April 2006 through August 2007, and was not registered with the Commission in any capacity or associated with any broker-dealer registered with the Commission during this time. From April 1988 through 1992, Maddock worked as a registered representative at various registered broker-dealers and held Series 7 and 63 securities licenses. In July 1994, however, the NASD (now FINRA), censured Maddock, barred him from association with any

NASD member in any capacity, fined him $45,000, and ordered him to pay $43,184.92 in restitution for failing to respond to an NASD request for information.

10. **Weidgans**, 44, resides in Cape Coral, Florida. Weidgans was a sales agent at 3001 AD from approximately June 2006 through January 2008. Weidgans has never registered with the Commission in any capacity or been associated with any broker-dealer registered with the Commission.

## III. JURISDICTION AND VENUE

11. 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.

12. The Court has personal jurisdiction over the Defendants and venue is appropriate in the Southern District of Florida, because many of the Defendants' acts and transactions constituting violations of the Securities Act and the Exchange Act occurred within the Southern District of Florida. Additionally, 3001 AD's principal offices were in the Southern District of Florida, and all the individual Defendants reside in the Southern District of Florida.

13. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business complained of herein.

## IV. THE FRAUDULENT UNREGISTERED SECURITIES OFFERINGS

14. 3001 AD purportedly developed, manufactured, and marketed virtual reality products mainly for video game systems. The company's supposed flagship product was a helmet system tracking players' head movements to provide a 360 degree view in a video game.

The Partnerships were merely locations for additional sales representatives raising money for developing the same virtual reality products and supposedly lucrative opportunities 3001 AD pitched.

15. Between 1998 and approximately April 2008, 3001 AD raised approximately $20 million from about 500 hundred investors nationwide through a confusing maze of overlapping and continuous offerings in 3001 AD and the Partnerships. The Defendants offered and sold securities in 3001 AD and the Partnerships for $5,000 each while treating them as interchangeable investments.

16. The Defendants provided offering materials to investors via U.S. Mail, courier services, or the internet, and often spoke to investors about investing in 3001 AD or the Partnerships by telephone. The offering materials for the Partnerships referenced both 3001 AD and the Partnerships, and explained that the offering proceeds would fund the development of the same virtual reality product. Regardless of the particular securities investors purchased, the Defendants, in offering documents, telephone calls, press releases, and internet website postings, among other means, represented to investors they would share in 3001 AD's profits.

17. Barker and 3001 AD commingled investors' funds in a single bank account. Additionally, the Defendants communicated with all investors through press releases, offering documents, and other materials marked "3001 AD."

18. The Defendants conducted the offerings primarily through telemarketer sales representatives at a boiler room in 3001 AD's offices in Delray Beach, Florida. 3001 AD also contracted with various sales offices to offer and sell the 3001 AD and Partnership securities. The typical agreement provided for the payment of a forty percent sales commission to each sales office on the proceeds raised from investors.

19. 3001 AD advertised the investment opportunities over radio stations throughout the country. In addition, 3001 AD sales representatives and the sales offices routinely used lead lists to cold call potential investors. The Defendants communicated with investors through written updates sent via the mail, courier services, or the internet, and through telephone conference calls in which they reiterated misrepresentations and omissions concerning the IPO, commissions, use of proceeds, and business relations explained in more detail below. 3001 AD also maintained a website where it posted announcements, transcripts from the telephone conference calls, press releases, and other correspondence regarding 3001 AD and the Partnerships.

20. The 3001 AD investors were passive, contributing little or nothing to the management of 3001 AD or Partnerships other than money. Although the offering materials indicated investors would have an active role in running 3001 AD and the Partnerships, Barker and 3001 AD actually controlled them. Through 3001 AD, Barker oversaw and ran product development, investor solicitations and communications, business negotiations, and cash expenditures. There was no real investor involvement in 3001 AD or the Partnerships' operations. For example, 3001 AD's conference calls with investors were one-way, and did not allow investors to express their opinions.

## V. MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS

### *A. Failure to Disclose Payment of Excessive Sales Commissions and Misrepresentation of Use of Offering Proceeds*

21. The Defendants failed to disclose to investors the excessively large sales commissions 3001 AD and the Partnerships paid in contravention of the offering documents. The offering documents for the 3001 AD and Partnership securities disclosed the payment of an eight percent sales commission, but 3001 AD and the Partnerships routinely paid sales

commissions ranging from approximately ten to forty percent of investor proceeds. In offering documents, telephone sales calls, website postings, press releases, personal meetings, and telephone conference calls, the Defendants consistently failed to disclose that 3001 AD and its affiliated Partnerships systematically paid sales commissions up to five times more than the eight percent figure in the offering materials.

22. 3001 AD and the Partnerships paid sales offices undisclosed sales commissions of forty percent of investor proceeds. Weidgans operated his own sales office, and neither he nor any other defendant ever disclosed to investors that Weidgans was receiving forty percent of each dollar they contributed.

23. Maddock, Rifkin, and Bowsky received sales commissions from 3001 AD ranging from ten to twenty percent, but did not discuss sales commissions with any of the investors they solicited. Barker, Ladrach, and Rifkin were principals of 3001 AD at various times during the relevant period, and thus were familiar with the sales commission structure and operations of 3001 AD and the Partnerships. Additionally, Barker helped compose the offering materials.

24. Using the mail, courier services, facsimile transmissions, and the internet, all the Defendants routinely sent investors offering materials for the 3001 AD and Partnership investments, which disclosed sales commissions of only eight percent. All the Defendants knew 3001 AD and the Partnerships were paying ten to forty percent commissions, but disclosing only eight percent commissions.

### *B. Misrepresentation of Imminent Initial Public Offering*

25. Throughout the relevant period, 3001 AD, Barker, Ladrach, Rifkin, Bowsky, and Weidgans repeatedly misrepresented to investors that 3001 AD was preparing to conduct an IPO in the near future, telling investors different versions of the purported pending IPO story.

26. In 1999 Ladrach told at least one investor that 3001 AD was planning to go public through an IPO sometime in early 2000.

27. On May 25, 2000, 3001 AD sent a letter to investors signed by Ladrach claiming it would conduct an IPO in the near future.

28. From 2000 through 2005 Bowsky told investors that 3001 AD would soon conduct an IPO, including sending an investor a letter on December 12, 2001 claiming an IPO was nearing and this would be the investor's last chance to buy additional 3001 AD securities. Bowsky also told an investor in April 2002 that 3001 AD was going to conduct an IPO by the end of that year. He also sent a fax to two investors on May 9, 2002, again claiming an IPO was nearing.

29. On January 1, 2004, 3001 AD issued a press release titled "We're Going Public," which it posted on its internet website. This press release falsely stated 3001 AD was reorganizing and working with a securities lawyer to arrange a relationship with a Wall Street firm, while another securities lawyer was going to brief investors on purported progress with the Commission in taking 3001 AD public, as well as "NASDAQ acceptance" of 3001 AD.

30. In December 2002, Barker sent a letter to investors claiming "[t]he time for which many of us have been waiting has finally come . . . ." and soliciting them to purchase additional units prior to a purported pending IPO for a substantial savings in price. Barker also sent a letter to investors in 2007 claiming 3001 AD was negotiating a deal to provide investors with shares in

a publicly traded company or payments from a public company that would purchase the intellectual property of 3001 AD and the Partnerships.

31. From approximately 1999 through October 2007, Rifkin repeatedly told investors 3001 AD would soon be conducting an IPO. In the first few months of 2005, Rifkin told one investor 3001 AD would go public in six months, and repeated the story later that same year while claiming there were audit and other requirements 3001 AD still had to meet.

32. From 2006 to at least early 2008, Weidgans similarly misled investors in personal meetings and telephone calls by regularly telling them 3001 AD was soon going public through IPO.

33. In reality, 3001 AD was never prepared to conduct an IPO. 3001 AD did not take any steps to draft and file the required registration statement for an IPO and did not collect the information required for a registration statement. 3001 AD also never had any audited financial statements, much less the two years of audited financial statements required to conduct an IPO, and it lacked the necessary capital to conduct an IPO. 3001 AD did not take any other necessary steps in relation to the Commission or the NASDAQ to trade publicly.

34. Each of the Defendants was well aware of this when they falsely represented an IPO was imminent.

### *C. Misrepresentation of Business Relationships*

35. Defendants 3001 AD, Barker, Ladrach, Rifkin, and Weidgans also misrepresented 3001 AD's business relationships with prominent companies and business personalities, by issuing press releases prepared by Barker and Ladrach which misrepresented the interest of Microsoft and Apple in 3001 AD's technology and the extent of 3001 AD's relationship with those companies.

36. On November 17, 2005, 3001 AD issued a press release, which Ladrach and Barker prepared, falsely indicating Microsoft was interested in negotiating a contract to license the rights to 3001 AD's Trimersion gaming technology, and claiming 3001 AD expected to be signing agreements with Microsoft. The same misleading press release also falsely stated a Microsoft executive was working with several Microsoft divisions to explore how 3001 AD and Microsoft could cooperate on virtual reality devices. These statements were false because Microsoft expressed no interest in 3001 AD's technology or in contracting with 3001 AD, and there were no negotiations between the companies.

37. Similarly, on December 5, 2005, 3001 AD issued a press release, which Ladrach and Barker also prepared, falsely claiming the company's purported negotiations with Microsoft had triggered Apple's interest in 3001 AD, with Apple "reviewing a Trimersion virtual reality game system for use with its Macintosh computer and the successful iPod." This was impossible because Apple had not even received a Trimersion product at that time. In telephone conference calls late as 2006, 3001 AD, Barker, Ladrach, and Rifkin continued to misrepresent 3001 AD's business relations with Apple, even after Apple had told 3001 AD that it would not be entering into any agreements.

38. In early 2006 telephone calls and postings on 3001 AD's website, the Defendants misrepresented to investors that they were negotiating a business deal with former Disney CEO Michael Eisner. In two teleconference calls in or around March and June 2006, 3001 AD, Barker, and Rifkin told investors Barker had met with Eisner, and Eisner was considering buying a majority position in 3001 AD that could make a buyout potentially available to investors. Weidgans made similar statements when soliciting investors that same year.

39. Additionally, during the June 2006 telephone conference call, Rifkin, using a script Barker prepared, falsely represented to investors that Apple was interested in bundling 3001 AD's technology with Apple's iPod devices. Rifkin continued misrepresenting the business relationships 3001 AD was developing by also asking investors to provide feedback about the purported possibility of significant participation by Eisner, and supposed plans to work with Eisner, Apple, and Microsoft.

40. When they made these statements, 3001 AD, Barker, Ladrach, Rifkin, and Weidgans knew 3001 AD had no business relationships with Apple, Microsoft, or Eisner, that Apple and Microsoft had indicated no interest in or intention of entering into an agreement with 3001 AD, and that Eisner had already rejected attempts at forging a business relationship with 3001 AD.

## VI. CAUSES OF ACTION

### COUNT I

### SALES OF UNREGISTERED SECURITIES IN VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT

**(Against all Defendants)**

41. The Commission repeats and realleges paragraphs 1 through 20 of this Complaint.

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

43. From approximately 1998 through April 2008, the Defendants, directly and indirectly: (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise; (b) carried securities or caused such securities, as described

herein, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; and/or (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 any prospectus or otherwise, as described herein, without a registration statement having been filed or being in effect with the Commission as to such securities.

44. By reason of the foregoing, the Defendants have violated, and unless enjoined, are reasonably likely to continue to violate Sections 5 (a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

## COUNT II

## FRAUD IN VIOLATION OF SECTION 17(a)(1) OF THE SECURITIES ACT

**(Against all Defendants)**

45. The Commission repeats and realleges paragraphs 1 through 40 of this Complaint.

46. Since approximately 1998 through April 2008, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, in the offer or sale of securities, as described herein, knowingly or recklessly employed devices, schemes or artifices to defraud.

47. By reason of the foregoing, the Defendants have violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

## COUNT III

## FRAUD IN VIOLATION OF SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT

**(Against all Defendants)**

48. The Commission repeats and realleges paragraphs 1 through 40 of its Complaint.

49. From approximately 1998 through April 2008, Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities, as described herein: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaged in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

50. By reason of the foregoing, the Defendants have violated, and unless enjoined, are reasonably likely to continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

## COUNT IV

## FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

**(Against all Defendants)**

51. The Commission repeats and realleges paragraphs 1 through 40 of its Complaint.

52. From approximately 1998 through April 2008, Defendants, directly or indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities have knowingly or recklessly: (a) employed devices,

schemes or artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

53. By reason of the foregoing, the Defendants have violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240. 10b-5, thereunder.

## COUNT V

## UNREGISTERED BROKER-DEALER IN VIOLATION OF SECTION 15(a)(1) OF THE EXCHANGE ACT

**(Against Defendants Barker, Rifkin, Bowsky, Maddock, and Weidgans)**

54. The Commission repeats and realleges paragraphs 1 through 40 of its Complaint.

55. From approximately 1998 through April 2008, Defendants Barker, Rifkin, Bowsky, Maddock, and Weidgans, directly and indirectly, by use of the mails or any means or instrumentality of interstate commerce, while acting as a broker or dealer engaged in the business of effecting transactions in securities for the accounts of others, effected transactions in securities, or induced or attempted to induce the purchase or sale of securities, without registering as a broker-dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

56. By reason of the foregoing, Defendants Barker, Rifkin, Bowsky, Maddock, and Weidgans, directly and indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

## RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

**I.**

**Declaratory Relief**

Declare, determine and find that Defendants committed the violations of the federal securities laws alleged herein.

**II.**

**Permanent Injunctive Relief**

Issue a Permanent Injunction, restraining and enjoining:

(a) Defendants 3001 AD, Barker, Ladrach, Rifkin, Bowsky, Maddock and Weidgans, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (i) Sections 5(a), 5(c), and 17(a)(1)-(3) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), 77q(a) (1)-(3); and (ii) Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, thereunder; and

(b) Defendants Barker, Rifkin, Bowsky, Maddock and Weidgans, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them from violating Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

**III.**

**Officer and Director Bars**

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. §78u(d)(2), barring Barker, Ladrach and Rifkin from acting as an officer or director of a publicly-held company.

## IV.

## Penalties

Issue an Order directing all Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

## V.

## Disgorgement

Issue an Order requiring all the Defendants to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts or courses of conduct complained of herein, with prejudgment interest.

## VI.

## Further Relief

Grant such other and further relief as may be necessary and appropriate.

## VII.

## Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be

entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: September 29, 2009

Respectfully submitted,

By: 

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