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SUPERIOR COURT OF THE STATE OF CALIFORNIA

SANTA CLARA COUNTY

ACROPOLIS SYSTEMS, INC., a California corporation, et al.,

Plaintiffs,

vs.

SYNNEX INFORMATION TECHNOLOGIES, INC., a California corporation, et al.,

Defendants.

AND RELATED CROSS-COMPLAINT

Case No. 1-01-CV-803125

DEFENDANT AND CROSS-COMPLAINANT STEPHEN R. BOWLING'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION AS TO PLAINTIFFS' FIRST CAUSE OF ACTION

Date: Thursday, August 23, 2007
Time: 9:00 AM
Place: Department 16, Judge McKenney

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INTRODUCTION

The plaintiffs in this case, Acropolis Systems, Inc. ("Acropolis") and Tony Yeh ("Yeh"), are two former corporate insiders of one of the many bankrupt "dot-com" busts, eManage, Inc. ("eManage"). In fact, both Acropolis and Yeh claimed a right to founders stock even before eManage was incorporated in 1999. Incredibly, these plaintiffs seek to recover for allegedly being tricked into purchasing eManage stock during the summer and early fall of 2000. Far from being tricked, like so many others, the plaintiffs simply gambled and lost. eManage had hoped to survive long enough to complete a merger and obtain additional financing, but it was forced to file for bankruptcy by the end of November of 2000.

The moving party here is defendant and cross-complainant, Stephen R. Bowling ("Bowling"), the former President of eManage. With this motion for summary adjudication, Bowling seeks to clear one of the three causes of action from the table. Plaintiffs' First Cause of Action for alleged violations of California securities law is barred by the one year statute of limitations applying to these claims.[1] As conclusively held in *Deveny v. Entropin, Inc.* (2006) 139 Cal.

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[1] Though denominated as one cause of action, plaintiffs actually bring two varieties of claims based on alleged violations of the California Corporations Code. One variety, for alleged misrepresentations and/or non-disclosures, is brought pursuant to Corporations Code §25401 and §25501. The second type of claim is for the alleged sale of unregistered securities and is brought pursuant to Corporations Code §25110. The claim based on the sale of unregistered securities are not only barred by the statue of limitations, but as discussed *infra* at pages 15

App. 4th 408, 428, the clock starts running on the limitations period when the plaintiff has inquiry notice of circumstances of the alleged misconduct sufficient to suggest to a prudent person the possibility that he has been defrauded. In the securities context that applies here, inquiry notice is triggered by "storm warnings" of financial difficulties and related disclosure problems that would alert a reasonable person of potential wrongdoing. Such notice imposes upon the plaintiff a duty to make reasonable investigation and charges plaintiff with constructive notice of what such investigation would have revealed.

The plaintiffs here were deluged with specific warnings by mid-November of 2000, more than one year before they filed their complaint. The most minimal investigation – searching public records available on-line -- would have revealed to plaintiffs the primary fact as to which it is claimed they were kept in the dark: the existence of a UCC-1 lien securing loans provided by another of eManage's founders, Synnex Information Technologies, Inc. ("Synnex"). Plaintiffs thus are charged with inquiry notice of the UCC-1 filing, which notice would have left no doubt as to their awareness of the basis for their securities law claims.

FACTUAL BACKGROUND

A. Plaintiffs' Investment in eManage.

Plaintiffs' claim in the First Cause of Action is for alleged corporate securities violations arising from the purchase by plaintiffs of stock in eManage during 2000. Separate Statement of Undisputed Material Facts ("UMF"), #1. Plaintiffs were far from ordinary investors. Plaintiff Acropolis was intimately involved with the formation of eManage in 1999 and claims to have originated the

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to 18, also fails on the independent ground that the undisputed facts show the securities were exempt from the registration requirements.

eManage business concept and created the eManage business plan. Acropolis, through its CEO John Pham, was a member of the Board of Directors of eManage during the critical period from November 10, 2007 to November 17, 2000. UMF #2. Plaintiff Yeh was a member of the Board of Directors of eManage from March 5, 1999, until after eManage's November 15, 2000 bankruptcy filing. Yeh was also General Manager of eManage from November 23, 1999 until December 29, 2000. Another former eManage shareholder, Equity Pier LLC ("Equity Pier"), assigned its claims to Tony Yeh. Equity Pier, through its CEO and founder Thomas Sweeney, was a Director of eManage from July 18, 2000 until November 9, 2000. UMF #3.

Plaintiffs were not only sophisticated insider investors, but Acropolis and Equity Pier were represented by counsel (Acropolis by its current litigation counsel) throughout the relevant time period. In March of 1999, John C. Gorman, Esq. began representing Acropolis with respect to the involvement of Acropolis in the formation of eManage. UMF #4. Gorman was always a part of eManage's negotiations regarding the purchase of eManage shares by Acropolis between 1999 and September of 2000. Id. Gorman represented Acropolis and Yeh as litigation counsel through the filing of the first complaint in this matter to the present. Id.

Ignoring their primary role as the developers of the very basic concept behind eManage, Acropolis and Yeh claim that they purchased the stock in reliance on alleged misrepresentations buried in a series of stock purchase agreements and that they are entitled to recover for purchasing securities that were not qualified or exempted from qualification under the California Securities laws. The alleged misrepresentations essentially were that (1) no security interests had been granted by eManage in favor of Synnex Information Technologies, Inc.

("Synnex"); (2) eManage's debt to Synnex would be converted to equity; and (3) there had been no material adverse change from the financial position of eManage reflected in financial statements as of May 31, 2000. UMF #5. These statements are alleged to be false because (a) on June 20, 2000 eManage filed a UCC-1 financing statement in favor of Synnex; (b) Synnex ultimately failed to convert their working capital loans to eManage to equity prior to releasing these loans in bankruptcy; and (c) eManage's financial condition had deteriorated when plaintiffs purchased their stock. Id.

The claim based on the alleged sale of unqualified securities is even more far fetched. The plaintiffs will have no basis to dispute that the securities were exempt from registration by the express terms of California Corporations Code § 25102(f). Plaintiffs themselves specifically agreed that the securities were exempt from registration and met the qualifications for such exemption when they purchase the eManage stock. UMF #21. Plaintiffs will not be able to raise the slightest factual dispute that all four of the requirements for the exemption were met: (1) the eManage securities were not sold to more than 35 purchasers (UMF #22); (2) plaintiffs all had a pre-existing personal and business relationship with eManage, the securities issuer, prior to the purchase of eManage stock (UMF ##23 - 25); (3) plaintiffs purchased the eManage shares for their own account (UMF #26); and (4) the eManage securities at issue were not sold by publication or advertisement (UMF #27). The shares were squarely exempt from California's qualification requirement under Corporations Code §25102(f), which forecloses the claim as a matter of law.

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B. Plaintiffs' Early Suspicions of Wrongdoing.

Acropolis, as evidenced by the vitriolic written communications of its counsel, Gorman, believed by August of 2000 that eManage and Synnex (1) had misrepresented material facts and made material omissions in violation of both California and Federal Securities laws regarding the potential purchase of eManage shares by Acropolis; (2) had illegally issued stock; (3) had held corporate meetings improperly; (4) that eManage was a "sham corporation"; and (5) that eManage violated fiduciary duties to Acropolis. UMF #6.

Plaintiffs' concerns were magnified quickly. Plaintiffs understood in July of 2000 that eManage was not profitable, had never made a profit, and that a new round of financing would be required by October of 2000 for eManage to survive. UMF #7. They were well aware of such issues when Acropolis reviewed eManage's then-current financial statements; corporate records; and other company information between August 29, 2000 and in September 2000 when completing plaintiffs' purchase of the eManage shares. UMF #8.

C. The Storm Hits.

When plaintiffs purchased the eManage stock they were rolling the dice hoping to cash in on a potential business combination upon which eManage's survival hinged. In August and September of 2000 eManage was negotiating a merger with a company called TelePlace, Inc. ("TelePlace"), whereby TelePlace would provide a cash infusion of $10 million to eManage. TelePlace and eManage entered into a letter of intent to complete the merger dated September 12, 2000, which expired by its own terms on September 30, 2000. Sweeney, the CEO of Equity Pier, was on the Board of Directors of both eManage and TelePlace during this time period. UMF #9. Acropolis thought it would profit immediately upon the completion of eManage's anticipated merger with TelePlace. UMF #10.

It was a short lived hope. TelePlace notified eManage that it was withdrawing from the proposed merger with eManage by the end of October of 2000. Sweeney suggested responding to TelePlace with a "highly inflammatory" and "nasty" "rambogram." UMF #11. eManage was left in dire straights.

D. The Roof Collapses.

On November 3, 2000, eManage's Chairman of the Board resigned and control was turned over to Equity Pier's representative, Tom Sweeney, as eManage attempted to obtain bridge financing. The urgency of eManage's immediate funding needs was on the agenda for an eManage Board of Directors meeting on November 5, 2000. UMF #12. The only available funding source for eManage was its shareholders. On November 6, 2000 plaintiff Yeh sent to Sweeney an e-mail noting that the "status right now" involved "splitting among shareholders on funding the payroll, offsetting by the A/R." Sweeney circulated the e-mail on November 7, 2000 to others at Equity Pier with the comment, "The fireworks begin." UMF #13.

The inevitable financial collapse soon was recognized formally. On November 9, 2000, Yeh signed a consent form as a director of eManage approving the documentation of about $3.4 million of working capital loans by Synnex as Convertible Promissory Notes. The resolution noted that eManage "was in serious financial condition and that failure to attract short-term interim or bridge funding in a timely manner will cause the corporation to be insolvent and unable to meet its debts as they become due." UMF #14. Equity Pier representative Sweeney resigned from the eManage Board of Directors by November 9, 2000. On November 10, 2000, defendant Bowling also resigned from the Board of Directors and was replaced by the CEO of Acropolis, John Pham. UMF #15.

On November 17, 2000, eManage voted to file for bankruptcy. UMF #16. At least as early as November 20, 2000 plaintiffs undeniably had actual knowledge as to the existence of the publicly filed UCC-1 executed by eManage in favor of Synnex. In fact, on November 30, 2000, Gorman the lawyer acting on behalf of plaintiffs, wrote a letter complaining that the filing of the UCC-1 was a highly material fact that should have been disclosed to investors. UMF #17. Despite the passage of more than a year since their acute awareness of the problems with the eManage deal, plaintiffs did not file their original complaint in this action until November 15, 2001. UMF #18.

Plaintiffs always had the ability to uncover through a minimal investigation the existence of the alleged "secretly" executed UCC-1 financing statement filed by eManage in favor of Synnex. The statement could have been easily obtained from public filings with a simple search and plaintiffs were aware of the ability to conduct such a search in the summer and fall of 2000. UMF #19. Moreover, of course, on November 9, 2000 plaintiff Yeh signed as a member of eManage's Board of Directors the corporate authorization to document the working capital loans by Synnex and to issue Convertible Promissory Notes for the loans.

ARGUMENT

A party may move for summary adjudication as to one or more causes of action, one or more affirmative defenses, or one or more claims for damages, when the party contends that the cause of action has no merit or that it can establish an affirmative defense thereto as a mater of law. (6 Witkin, California Procedure *Proceedings Without Trial* §239 (4th ed. 1997). When, as here, summary adjudication is sought on the basis of the statute of limitations, summary judgment is proper where the uncontradicted facts are susceptible of only one legitimate inference. (*Jolly v. Eli Lily & Co.* (1988) 44 Cal. 3d 1103, 1112.)

"[F]or purposes of summary adjudication, *separate and distinct* wrongful acts give rise to separate causes of action regardless of the manner of pleading. A party may move for summary adjudication challenging a separate and distinct wrongful act, even if that act is combined with other wrongful acts alleged in the same pleaded "cause of action" or count." (6 Witkin, *supra* at §242.) Plaintiffs here include distinct wrongful acts in the First Cause of Action for Violation of Securities Laws. As noted above, while their primary claim is for misrepresentations and non-disclosures pursuant to Corporations Code §25401 and §25501, they also include a claim for alleged violations of Corporations Code §25110 for the sale of securities that were not qualified in California.

With respect to the second claim, not only is that claim barred by the statute of limitations, but the undisputed facts establish that the securities were exempt from qualification pursuant to Corporations Code §25102(f). Thus, summary adjudication as to this claim is warranted as the claim or "cause of action" has no merit.

I. Plaintiffs' Misrepresentation and Nondisclosure Claims in the First Cause of Action Are Barred By the One Year Statute of Limitations As They Were on Inquiry Notice Prior to November 14, 2000.

The undisputed material facts outlined in defendant's separate statement conclusively demonstrate that plaintiffs were on, at the very least, inquiry notice of their claims prior to November 14, 2000 and thus more than one year prior to the filing of the complaint. California Corporations Code §25506(a) provides that claims for California securities law violations filed prior to January 1, 2005 must have been brought before the expiration of one year after discovery of the facts constituting the violation.

In *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 423, the court held that inquiry notice rather than actual notice is all that is required to trigger the running of the statute of limitations under Corporations Code §25506. To determine if plaintiffs were on inquiry notice, the court will look for "storm warnings" that would have placed plaintiffs on such notice. Where plaintiffs are found to have inquiry notice, they are deemed to have constructive notice of all the facts that could have been learned through diligent investigation after they had inquiry notice.

In reaching its conclusion the *Deveny* court relied on the basic tenet embodied in Civil Code §19, which provides that, "Every person who has actual knowledge of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of that fact itself in all cases in which, by prosecuting such inquiry, he might have learned of such fact." (139 Cal. App. 4th at 421.) In other words, "circumstances which put a reasonable person on inquiry of a false claim are constructive notice of the false claim itself." (*Id.*)

"Inquiry notice—often called 'storm warnings' in the securities context—gives rise to a duty of inquiry 'when the circumstances would suggest to an investor of ordinary intelligence the probability that she has been defrauded.' . . . . '[i]f the investor makes no inquiry once the duty arises, knowledge will be imputed as of the date the duty arose.'" (139 Cal. App. 4th at 428.) "Storm warnings may be found whenever there are "'any financial, legal, or other data . . . that would tend to alert a reasonable person to the likelihood of fraud.'" (*Id.*)

The undisputed material facts identified by defendant show that plaintiffs not only received ample "storm warnings," but were well aware that the actual storm hit prior to November 14, 2000. The warnings were stark. First, these plaintiffs were knowledgeable corporate insiders that can only be considered

sophisticated investors.[2] UMF ## 2, 3, and 4. Second, plaintiffs knew that eManage had never been profitable throughout its short existence and needed a new round of financing to survive. UMF #7. Third, plaintiffs were represented by counsel who by August of 2000 charged eManage and Synnex with a wide variety of serious misconduct in connection with the very transactions at issue. UMF #6. In plaintiffs' counsel's own words, "I am very concerned about the conduct of emanage and Synnex . . . . [a]fter 18 months of ignoring Acroplis' interests and self-dealing by the Synnex cadre." Declaration of Maureen Harrington in Support of Defendant's Motion for Summary Adjudication, etc. at Exhibit 12. Storm warnings obviously include "'substantial conflicts between oral representations of the brokers and the text of the prospectus, . . . the accumulation of information over a period of time that conflicts with representations that were made when the securities were originally purchased,' or 'any financial, legal or other data that would alert a reasonable person to the probability that misleading statements or significant omissions had been made.'" (*Mathews v. Kidder, Peabody & Co.* (3d Cir. 2001) 260 F.3d 239, 252 [emphasis added].) Plaintiffs' own attorney was making such charges of wrongdoing by late summer of 2000.

The storm was fully unleashed at the end of October when the TelePlace merger, upon which eManage and plaintiffs were relying, had completely unraveled. UMF ## 9, 10, and 11. eManage was desperate for funding and put plaintiff's representative, Tom Sweeney, in control on November 3, 2000 to try

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[2] Courts, of course, should take into account the sophistication of the plaintiffs as investors in determining whether they were on inquiry notice. (*See Tab Partnership v. Grantland Financial Corp.* (S.D.N.Y. 1994) 866 F. Supp. 807; *Falik v. Parker Duryee Rosoff & Haft* (S.D.N.Y. 1994) 869 F. Supp. 228.)

and obtain immediate bridge financing. UMF #12. By November 7, 2000, Sweeney himself wrote that the "fireworks" had begun and plaintiff Yeh knew that eManage was relying upon short-term funding by its shareholders to meet payroll. UMF #13.

On November 9, 2000 plaintiff Yeh provided a written consent as one of the members of the Board of Directors acknowledging that past working capital loans from Synnex in the amount of $2,958,730 would be documented in the form of a Convertible Promissory Note (UMF #14 and Exhibit 3103 to Sweeny deposition at Exhibit 6 to the Declaration of Maureen Harrington in Support of Defendant's Motion for Summary Adjudication, etc) – directly contradicting the alleged representations that Synnex would convert all of the eManage debt to equity. The same resolution acknowledged an additional loan by Synnex on October 26, 2000 of $307,873 "to fund payroll," which together with a new loan of $232,127 would be secured by a second Promissory Note. (Id.) The resolution left no doubt about eManage's perilous future, stating that eManage "was in serious financial condition and that failure to attract short-term interim or bridge funding in a timely manner will cause the corporation to be insolvent and unable to meet its debts as they become due." UMF #14.

The financial disaster at eManage was apparent to the plaintiffs by, at the very latest, November 9, 2000. Such storm warnings left no ambiguity as to the investment's potential risk and the plaintiff cannot simply wait before investigating further or bringing suit. (*Byelick v. Vivadelli* (E.D. Va. 1999) 79 F. Supp. 2d 610, 621.) "[O]nce placed on inquiry notice by storm warnings an investor must perform a reasonable investigation into the possibility of fraud." (*Deveny*, *supra*, 139 Cal. App. 4th at 428.) The inquiry notice imputes the plaintiffs here with constructive notice of all facts that they could have learned

through a diligent investigation. (139 Cal. App. 4th at 429 ["If the plaintiffs' duty to exercise due diligence is triggered, the plaintiffs 'are held to have constructive notice of all facts that could have been learned through diligent investigation during the limitations period.'"]).

There can be no disagreement that a minimal investigation by plaintiffs would have revealed immediately the publicly filed UCC-1 executed by eManage in favor of Synnex. UMF #19. It is inherent in the very California statutory structure that the filing of a UCC-1 financing statement places parties on notice that there is a lien in effect on the subject property. As described by the California Supreme Court:

> [T]he UCC provides that a perfected security interest is generally effective against a purchaser of the collateral. This rule is premised upon the assertion that the filing of a financing statement with the secretary of state will permit prospective purchasers and encumbrancers to ascertain the existence of security interests in the property by checking a centralized record system. In other words, the UCC's perfection system, like the title recordation systems employed for real property, is based on constructive notice given through recordation.

(*T&O Mobile Homes, Inc. v. United Cal. Bank* (1985) 40 Cal. 3d 441, 448 [emphasis added]; *Recorded Picture Co., Ltd v. Nelson Entertainment, Inc.* (1997) 53 Cal. App. 4th 350, 365-66 ["[n]o doubt, the recording of the UCC-1" put plaintiff "on constructive notice of the information contained in those documents"]; Cal. Civil Code §19 [defining constructive notice]; *Whirlpool Financial Corp. v. GN Holdings* (7th Cir. 1995) 67 F.3d 605, 610 ["A reasonable investor is presumed to have information available in the public domain, and therefore [plaintiff] is imputed with constructive knowledge of this information."]).

Plaintiffs must be charged with constructive notice of the filing of the UCC-1 financing statement by eManage in favor of Synnex no later than November 10, 2000.[3] The obvious implication of such knowledge can be found in the words of plaintiffs' current litigation counsel on November 30, 2000: "The existence of the security agreement (and concurrent UCC-1 filing) encumbering emanage's assets was a highly material fact that should have been disclosed to investors as a matter of state and federal securities law." UMF #17; Declaration of Maureen Harrington in Support of Defendant's Motion for Summary Adjudication, etc. at Exhibit 12. The constructive knowledge of the UCC-1 filing provided plaintiff with the discovery of facts constituting the securities law violation. Plaintiffs did not file within one year of such constructive knowledge and thus the limitation period in Corporations Code §25506(a) expired.

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[3] Plaintiffs cannot escape this result by claiming to have been stalled by defendants or eManage from discovering the UCC-1 or the formal acknowledgement by eManage of the debt owed to Synnex reflected in the resolution of November 9, 2000. As insiders and in the face of all the storm warnings, plaintiffs could not expect the defendants or eManage to be forthcoming with such information and could not reasonably be deterred by any alleged lack of cooperation. (*Byelick, supra,* 79 F. Supp. 2d at 620-21 ["the dispositive point here is that Byelick was on inquiry notice of the prudence of acting affirmatively even if that meant legal action to protect his rights as a shareholder'].)

II. Plaintiffs' Claim in the First Cause of Action for the Sale of Unqualified Securities Fails as A Matter of Law.

Summary adjudication also should be granted with respect to the plaintiffs' claim for alleged violation of Corporations Code §25110, which makes it unlawful to sell in this state any security in an issuer transaction unless the security has been qualified or is exempted. First, plaintiffs were actually aware of "the facts constituting their cause of action," as well as on inquiry notice, more than one year prior to November 15, 2001 when they filed their complaint. An action for damages based on violations of §25110 under §25503 must be brought within one year of the discovery by the plaintiff of the facts constituting such violation. Corporations Code §25507. Plaintiffs themselves acknowledged in the Stock Purchase Agreements that the securities they were buying were not qualified in California. UMF #21. To the contrary, plaintiffs knew that the issuer (eManage) claimed that the securities were exempt and plaintiffs acknowledged both the fact that the securities were exempt and that all of the requirements for exemption had been met. UMF ## 21 - 27. Thus, plaintiffs had actual knowledge of all the facts constituting the alleged violation: [4] that they had purchased unqualified securities

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[4] The holding and developed rationale of the court in *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 423, that inquiry notice rather than actual notice is all that is required to trigger the running of the statute of limitations under Corporations Code §25506, should apply to the limitations period in Corporations Code §25507 as well. There is dicta in the earlier case of *Eisenbaum v. Western Energy Resources, Inc.* (1990) 218 Cal. App. 3d 314, 325-36, that actual knowledge of the facts are required, but the case turned on the presence of a fiduciary relationship between plaintiffs and the defendant and the dicta regarding

in California. If true, such facts constitute a claim for rescission or damages under Corporations Code §25503 (if the securities are not exempt from qualification).

Second, and more fundamentally, plaintiffs' claim lacks merit because the undisputed facts (as plaintiffs themselves acknowledged in the stock purchase agreements upon which they base their claim) establish that the securities were exempt from the qualification requirements. California Corporations Code §25102(f) provides an exemption for the "sale of any security in a transaction . . . that meets each of the following criteria:"

> (1) Sales of the security are not made to more than 35 persons . . .
>
> (2) All purchasers either have preexisting personal or business relationships with the offeror or any of its partners, officers, directors or controlling persons . . . , or by reason of their business experience or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.
>
> (3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account . . . .
>
> (4) The offer and sale of the security is not accomplished by the publication of any advertisement.

Plaintiffs' cannot seriously raise the slightest doubt that each of these four criteria for this exemption were met. Absent facts to challenge the applicability of the exemption, plaintiffs have no viable claim. (*See Bowden v. Robinson* (1977)

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a requirement of actual knowledge is unlikely to be followed. (*See Grace Brothers, Ltd. v. DNA Plant Technology* (9th Cir. 2000) U.S. App. LEXIS 12815). In any event, the plaintiffs had actual notice of facts sufficient for them to bring them claim more than one year prior to filing their complaint.

67 Cal. App. 3d 705, 718 [summary judgment proper on claim under §25110 as no facts other than bare conclusions alleged to indicate stock was not exempt). In contrast, the defendant presents undisputed facts showing the exemption criteria were met.

- The eManage securities were not sold to more than 35 purchasers and plaintiffs do not contend to the contrary. UMF #22.
- Each of the purchasers of the eManage stock at issue had preexisting personal or business relationships with eManage prior to purchasing the stock.[5] UMF## 23 – 25. Plaintiff Acropolis claims to have developed the eManage business concept, created the eManage business plan, and was involved from the 1999 formation of eManage. UMF #2. Plaintiff Yeh was employed by eManage and on its board of directors from 1999 until its bankruptcy. UMF #3. The other purchaser, Equity Pier, was a sophisticated investor formed as a venture capital investor in start-up high technology companies and thus met both prongs of Corporations Code §25102(f)(2). UMF #25.
- Plaintiffs each purchased the securities for their own account. UMF #26.
- The eManage securities were not sold by advertisement or publication. UMF #27.

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[5] Plaintiffs' longstanding involvement from the outset in eManage was far more than necessary to provide a "reasonably prudent purchaser" with awareness of the character, business acumen, and general business and financial circumstances of eManage. Cal. Code. Reg. §260.102.12(d)(1).

These material facts leave no triable issue as to the applicability of the exemption in Corporations Code §25102(f) and summary adjudication is therefore warranted as to this claim on this independent ground as well.

CONCLUSION

Plaintiffs' were on inquiry notice by at least November 10, 2000 as to their misrepresentation claims and are imputed with constructive notice of what they easily would have discovered – the publicly filed UCC-1 financing statement. Plaintiffs had sufficient notice of the facts giving rise to both varieties of their securities law claims more than one year prior to November 15, 2001, the date they filed the lawsuit. UMF#18. Thus, the claims in the First Cause of Action are barred by the statute of limitations as a matter of law. The claim for the sale of unqualified securities lacks merit as the sales were exempt from the qualification requirement. Defendant's motion for summary adjudication should be granted.

DATED: May 23, 2007

MCGRANE GREENFIELD LLP

By:_____
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