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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 SECURITIES AND EXCHANGE COMMISSION, 12 Plaintiff, 13 vs. 14 PACKETSWITCH.COM, INC. and STEVEN A. RISTAU, 15 Defendants.	Case No. COMPLAINT
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17 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

18 **SUMMARY OF THE ACTION**

19 1. From February 1999 through at least September 2000, Defendants Steven A. Ristau
20 ("Ristau") and PacketSwitch.Com, Inc. ("PacketSwitch.Com" or the "Company") fraudulently sold
21 the stock of PacketSwitch.Com to at least 700 investors in an unregistered offering. Using their
22 relationships with several churches and congregations in the San Jose area, Ristau and
23 PacketSwitch.Com convinced investors to purchase stock by representing that the Company had a
24 proprietary, new technology for broadcasting movies wirelessly over the Internet, significant
25 overseas operations, and contracts with governments and well-known telecommunications
26 companies.

27 2. In reality, PacketSwitch.Com was a start-up with no revenue, no product, and no foreign
28 operations or sales contracts. The Company's purported "technology" was an off-the-shelf

1 commercial product that did not have the capability of broadcasting movies wirelessly from any
2 significant distance.

3 3. Moreover, a significant portion of the funds the Company raised went to finance
4 Ristau's lavish lifestyle, including purchasing a \$1.8 million home in San Jose, and paying for
5 Ristau's family vacation to Hawaii, delinquent child support, personal bodyguards and Lexus
6 automobile.

7 **AUTHORITY TO BRING THIS ACTION**

8 4. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
9 Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)] and Section 21(d) of the
10 Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and (e)].

11 **JURISDICTION**

12 5. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of
13 the Securities Act [15 U.S.C. §§ 77t(d)(1) and 77v(a)] and Sections 21(d)(3), 21(e) and 27 of the
14 Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78aa]. The defendants, directly or indirectly, have made
15 use of the means and instrumentalities of interstate commerce or of the mails in connection with the
16 acts, transactions, practices and courses of business alleged in this Complaint.

17 6. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15
18 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Ristau resides in the
19 Northern District of California, PacketSwitch.Com conducts business in the Northern District of
20 California and certain of the transactions, acts, practices and courses of business alleged below
21 occurred in this District.

22 **INTRADISTRICT ASSIGNMENT**

23 7. Assignment to the San Jose Division is appropriate pursuant to Civil Local Rule 3-2(e)
24 because certain of the transactions, acts, practices and courses of business alleged below occurred in
25 Santa Clara County, California.

THE DEFENDANTS

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2 8. PacketSwitch.Com is a California corporation with its principal place of business in San
3 Jose, California. The Company is a start-up with no revenue.

4 9. Ristau resides in San Jose, California.

5 **DEFENDANTS' FRAUDULENT COURSE OF CONDUCT**

6 10. In February 1999, Ristau formed PacketSwitch.Com as a California corporation,
7 authorized to issue 40,000,000 shares of common stock. Ristau appointed himself as President and
8 Chief Executive Officer of the Company. He later appointed himself Chairman of the Board and the
9 sole Board member of PacketSwitch.Com.

10 11. From February 1999 through at least September 2000, Ristau and PacketSwitch.Com
11 raised \$3.7 million by offering and selling the common stock of PacketSwitch.Com to at least 700
12 investors. Ristau and PacketSwitch.Com solicited several potential investors by using the
13 defendants' relationships with several churches in the San Jose area and their contacts within that
14 community. There was no registration statement filed or in effect for the common stock of
15 PacketSwitch.Com prior to the offer or sale of these securities.

16 **The Defendants' Misrepresentations**

17 A. The Company's Purported Technology

18 12. During some of the Company's presentations to investors and potential investors,
19 Ristau showed excerpts from a movie, The Matrix, and stated that the film was being broadcast over
20 the Internet from 12 miles away, using the Company's proprietary, state-of-the-art, wireless, "last-
21 mile," Internet technology.

22 13. Contrary to Ristau's representations, the Company had no new, proprietary
23 technology, but, rather, used a commercially available, off-the-shelf device to "broadcast" the movie.
24 Ristau had the device hidden in the ceiling to conceal it from investors and any wireless transmission
25 was over a distance of 8 feet rather than 12 miles.

26 B. The Company's Purported Patents & Licenses

27 14. During some of the Company's presentations to investors and potential investors,
28 Ristau claimed that PacketSwitch.Com had patents on the "technology" it had demonstrated.

1 15. Contrary to Ristau's representations, the Company had no patents for the "technology"
2 that it demonstrated; it had not submitted any patent applications or even written a patent application
3 for anything it showcased in its investor presentations.

4 16. The Company, through Ristau, led investors to believe that it had the legal right to
5 broadcast movies over the Internet.

6 17. The Company failed to disclose to investors that it would need to obtain broadcast
7 licenses from the Federal Communications Commission to operate legally the wireless broadcasting
8 system that Ristau described to investors. PacketSwitch.Com further failed to disclose the substantial
9 expense involved with obtaining such licenses and that it did not have the means to obtain such
10 licenses.

11 C. Misuse and Misappropriation of Funds

12 18. The Company published written business plans, which were distributed to investors
13 and potential investors. In these business plans, the Company stated the following goals: that it
14 would (1) pursue construction of "optical cybercenter farms"; (2) provide "wireless last-mile"
15 services to users; (3) market the Company's patents to licensees; and (4) sell Internet-related
16 applications, including streaming movies and television, radio, music, telephone service, and video
17 conferencing.

18 19. Rather than use Company funds to further PacketSwitch.Com's business goals as set
19 forth in the business plans, Ristau misappropriated Company funds. Ristau used approximately
20 \$550,000 in Company funds towards the purchase of a \$1.8 million house with a pool and spa and
21 put the real estate in the name of himself and his wife. He had the Company pay \$66,000 for his
22 past-due child support obligations. He used Company funds to take his family on a personal vacation
23 in Hawaii. He used Company funds to pay for his personal bodyguards. Ristau also used Company
24 funds to make several personal purchases including a camper/trailer for his wife, scuba equipment for
25 his children and a trip to a spa in Calistoga.

26 20. Ristau also misused Company funds by having the Company pay for "image
27 maintenance" items, including lease payments for Ristau's Lexus automobile, luggage, clothes,
28 watch, haircuts, gym memberships and dry cleaning.

1 D. The Company's Purported Strategic Relationships and Contracts

2 21. In the Company's business plans and presentations, defendants falsely claimed that
3 PacketSwitch.Com had strategic alliances and partnerships with large, publicly-held companies
4 including Level(3) Communications, Global Crossing and Qwest Communications.

5 22. In the Company's presentations, Ristau falsely claimed that PacketSwitch.Com had a
6 billion dollar contract with the Republic of Korea to provide services to the people of South Korea.

7 E. The Company's Purported Overseas Subsidiaries and Operations

8 23. In its business plans, PacketSwitch.Com falsely claimed to have interests in two
9 companies, MC Hammer Africa.com and Packetswitch Africa.com, both organized and doing
10 business in Nigeria. In fact, neither company was incorporated anywhere.

11 24. In Company presentations, Ristau stated that a Company affiliate,
12 PacketswitchAsia.Com, had already raised \$12 million and that its stock was selling in private
13 transactions for \$75 per share. Ristau also estimated the price per share for PacketSwitchAsia.Com
14 when it opened on the Kosdaq (the Korean over-the-counter market that is akin to The Nasdaq Stock
15 Market) would be between \$300 and \$1,000. Contrary to Ristau's representations, neither
16 PacketSwitch.Com nor any of its affiliates had raised \$12 million, and PacketswitchAsia.Com was
17 not selling in private transactions for \$75 per share. Ristau had no reasonable basis to state that the
18 price per share for PacketSwitchAsia.Com would be between \$300 and \$1,000 if it were to open on
19 the Kosdaq.

20 25. In Company presentations, Ristau stated that PacketSwitch.Com had "just signed a
21 contract with a high-level individual for Vietnam." Contrary to Ristau's representations, the
22 Company did not have any contracts with "high-level individuals" who were connected to the
23 government of Vietnam. Rather, the contract to which Ristau was referring was a contract with an
24 individual of Vietnamese descent (who worked as a corrections officer in the Santa Clara County
25 Sheriff's Office) to bring potential investors from the Vietnamese American community to Company
26 presentations.

FIRST CAUSE OF ACTION
Violations of Section 17(a) of the Securities Act

26. The Commission incorporates Paragraphs 1 through 25 by this reference.

27. Defendants have, by engaging in the conduct set forth above, directly or indirectly, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or of the mails: (a) with scienter, employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or by omitting 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; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

28. By reason of the foregoing, defendants have directly or indirectly violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and unless enjoined will continue to violate Section 17(a) of the Securities Act.

SECOND CAUSE OF ACTION
Violations of Section 10(b) of the Exchange Act and Rule 10b-5

29. The Commission incorporates Paragraphs 1 through 25 by this reference.

30. Defendants have, by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons, in connection with the purchase or sale of securities.

31. By reason of the foregoing, defendants, directly or indirectly, violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] and unless enjoined will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5.

THIRD CAUSE OF ACTION

Violations of Section 5(a) and 5(c) of the Securities Act

32. The Commission incorporates Paragraphs 1 through 25 by this reference.

33. Defendants have, by engaging in the conduct set forth above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or of the mails, offered to sell or sold securities in the form of common stock of PacketSwitch.Com or carried or caused such securities to be carried through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

34. No registration statement was filed with the Commission or was in effect with respect to the securities offered by defendants prior to the offer or sale of these securities.

35. By reason of the foregoing, defendants have directly or indirectly violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], and unless restrained and enjoined will continue to violate these provisions.

FOURTH CAUSE OF ACTION

Violations of Section 15(a) of the Exchange Act

[15 U.S.C. §§ 78o(a)]

(Against Defendant Ristau)

36. The Commission incorporates Paragraphs 1 through 25 by this reference.

37. Defendant Ristau has, by engaging in the conduct set forth above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or of the mails, offered to sell or sold securities, or, directly or indirectly, carried or caused such securities to be carried through the mails or in interstate commerce, for the purpose of sale or delivery after sale without associating with a registered broker-dealer or registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

38. By reason of the foregoing, Defendant Ristau violated and, unless restrained and enjoined, will continue to violate, Section 15(a) of the Exchange Act.

PRAYER FOR RELIEF

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WHEREFORE, the Commission respectfully requests that the Court:

- (a) Enjoin defendants PacketSwitch.Com and Ristau from future violations of the federal securities laws alleged above;
- (b) Order defendants to disgorge all benefits gained as a result of their illegal conduct;
- (c) Order defendant PacketSwitch.Com to pay civil money penalties 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) Prohibit defendant Ristau from acting as an officer or director of public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)];
and
- (e) Grant such other and further relief as this Court may deem appropriate.

DATED: July __, 2001

Respectfully submitted,

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