

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 52411 / September 13, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2311 / September 13, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-12037

<p>In the Matter of</p> <p style="text-align:center">VINCENT STECKLER,</p> <p>Respondent.</p>
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ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Vincent Steckler (“Steckler” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.¹

¹ As part of a final resolution of the Commission’s claims against him, Steckler has also offered to settle a pending civil action by consenting to the entry of a district court judgment ordering Steckler to pay a civil

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

Summary

1. During 1999, Legato Systems, Inc. ("Legato" or the "Company") improperly recorded millions of dollars in revenue and income from contingent sales transactions arranged by its senior sales executives. Vincent Steckler, while a sales executive for a different company that was acting as a reseller of Legato's products, was a cause of Legato's and its executives' fraudulent reporting of its financial results during the third quarter ending September 30, 1999, based on a large transaction between Legato and Logicon, Inc. ("Logicon"), then a subsidiary of a public company.

2. In particular, Steckler participated in his employer, Logicon, placing a \$7 million order with Legato, which Logicon had the right to cancel pursuant to a separate, "side" agreement. Under Generally Accepted Accounting Principles ("GAAP"), the cancellation provision in the side agreement prevented Legato from counting any part of the order as a current sale, although Steckler knew or was reckless in not knowing that Legato's sales executives would submit the order to Legato without revealing the side agreement. Steckler and the sales executives thereby caused Legato to include revenue from the order in Legato's third-quarter 1999 financials announced publicly and filed with the Commission, which materially overstated Legato's financial results for the quarter.

Respondent

3. Vincent Steckler, age 45, was from July 1998 through August 2000 a vice president in charge of sales to government purchasers for Logicon.

Other Relevant Entity

4. Legato Systems, Inc. ("Legato") was, during the relevant period, a Mountain View, California corporation that developed and marketed software for managing the data-storage functions of computer networks. Legato issued common stock that was registered with the Commission pursuant to Section 12(g) of the Exchange Act and quoted on the NASDAQ National Market System. In 2003, Legato was acquired by another company.

monetary penalty of \$35,000. SEC v. Steckler, Civil Action No. 03-04067 JW (Northern District of California).

² The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Legato's Third-Quarter 1999 Financials Were Materially Overstated by Revenue from the Large, Contingent Transaction Negotiated with Logicon

5. On November 10, 1999, Legato filed with the Commission a quarterly report (on Form 10-Q), for its third quarter ended September 30, 1999, setting forth its financial statements. Legato later filed an amended quarterly report (on Form 10-Q/A), restating its financials for that period and reporting that revenue had been originally overstated by more than \$3.7 million or approximately 6 percent, and that its net income had been overstated by more than \$2 million, or approximately 146 percent.

6. In September 1999, Legato's then-Vice President of North American Sales (Legato's "lead sales executive") sent a proposal to Steckler, asking Logicon to buy \$7 million worth of Legato's software and services, for resale by Logicon to the U.S. Air Force. Because Logicon had a pre-existing relationship with the Air Force but Legato did not, Legato needed Logicon in order to complete a sale by the end of its third quarter. However, Logicon did not yet have an existing "reseller agreement" with Legato, which under Legato's practices would have permitted the proposed transaction to be completed through a purchase order. Consequently, the persons negotiating the arrangement determined to document the order in an "order letter" that was to be followed by a reseller agreement consistent with the terms of the order letter.

7. The deal hit a stumbling block when Steckler informed Legato's lead sales executive that Logicon would not approve the order letter unless Legato granted Logicon the right to cancel its obligation to pay Legato the \$7 million if Legato and Logicon did not negotiate a mutually acceptable reseller agreement within 30 days. Logicon's requested right to cancel the order, however, would prevent Legato from recognizing revenue from the transaction. GAAP does not permit companies to recognize revenue for a contingent sale, including a sale to a reseller who does not in fact have a binding obligation to pay for the software purchased because the reseller has the right to cancel the purchase before any payment is made. Under GAAP, contingent sales may not be recognized as revenue by the seller because collectibility of the sales price is not probable.

8. Legato's sales executives knew that the Logicon transaction would be jeopardized if the order letter contained any contingencies. Steckler and the Legato executive agreed that Logicon's cancellation right be reflected in a letter separate from the order letter. Steckler knew or was reckless in not knowing that by placing the right to cancel in a separate "side letter," Legato's finance department would not learn of Logicon's right to cancel the order when determining whether to recognize revenue for the transaction.

9. Through a series of phone calls and e-mails, Legato's lead sales executive drafted the proposed side letter containing terms that were agreeable to Steckler and to the Legato sales executives. On September 29, 1999, the lead sales executive sent the

side letter by e-mail to Steckler and others. The e-mailed side letter stated, in relevant part:

“Per our discussion the following is a clarification of the intent of the order letter dated 9-30-99 between Legato and Logicon: The order letter meets the GAP [sic] requirement 97-4 [sic] for revenue recognition. The order letter allows Legato to recognize revenue for our third quarter ending 9-30-99 The order letter gives us 30 days to reach mutually agreeable terms and conditions. In the unlikely event that we do not reach “mutually agreeable terms and conditions”, Logicon will have the right to terminate the order letter and all obligations. This contingency may not be expressly stated in the order letter, because of the impact on revenue recognition. However, you have my assurance that in the event that we can not reach terms we will not hold you to the commitment to pay referenced in the order letter.” (Emphasis added.)

On September 29, 1999, Steckler forwarded the e-mail containing the side letter to the person at Logicon who had authority to sign contracts with the comment, “Let’s go with this.”

10. Legato’s lead sales executive then placed the side letter he had e-mailed to Steckler on Legato letterhead, signed it, and sent it by facsimile to Logicon. On September 30, 1999, the person at Logicon who had authority to sign contracts signed and transmitted an order letter from Logicon to Legato to purchase \$7 million worth of software and support services. The side letter containing the right to cancel was not, however, attached to, referenced in, or included with Logicon’s order letter. The Legato sales executives did not forward the side letter to Legato’s legal or finance departments.

11. Upon receipt of Logicon’s \$7 million order letter, Legato recognized \$5.8 million as current revenue in the third quarter of 1999. The order letter stated that the \$5.8 million was for product that Legato had shipped. (The remaining \$1.2 million was to be separately recognized as revenue in later periods by Legato.) However, because the Logicon order was subject to the 30-day cancellation clause contained in the side letter, it was improper for Legato to recognize revenue on the Logicon order during the third quarter of 1999.

12. In January 2000, the \$5.8 million in revenue Legato had recorded for the Logicon transaction in September 1999 was reversed when Legato’s outside auditors determined, based on events subsequent to the order letter but unrelated to the side letter, that Legato should not have recognized revenue on the Logicon transaction. Legato publicly announced that it would be restating the results of the quarter ended September 30, 1999 due to “an adjustment concerning one contract,” referring to the reversal of revenue from the Logicon transaction. However, with its finance department still unaware of the side letter, Legato also stated that it believed “the revenue [from the Logicon transaction] will be recorded in the first and second quarters of 2000.” The price

of Legato's stock declined materially following the announcement of the planned restatement. In 2000, the Logicon transaction was cancelled by mutual agreement of the parties.

Violations

13. Material misrepresentations or omissions of fact made knowingly or recklessly and disseminated publicly by a company about its financials in a press release, or in a Form 10-Q filed with the Commission, constitute securities fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. E.g. SEC v. Rana Research, Inc., 8 F.3d 1358, 1362 (9th Cir. 1993).

14. Legato's third-quarter 1999 financial results, disseminated to the public in press releases and in its Form 10-Q filed with the Commission, were materially misstated by the inclusion of \$5.8 million in revenue from the Logicon order. Logicon's order was subject to a cancellation clause, which Steckler working with others caused to be concealed in a separate side letter that made revenue recognition in the third quarter improper, and which caused Legato's books and records and Form 10-Q to be materially misleading. Accordingly, Steckler was a cause of Legato's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

15. Also as a result of the conduct described above, Steckler was a cause of Legato's violations of Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder, which require issuers with securities registered under Section 12 of the Exchange Act to file quarterly reports with the Commission that are true and correct and contain information necessary to ensure that the statements made in them are not misleading.

16. Finally, by the above conduct Steckler also was a cause of others' violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, which prohibit any person from knowingly circumventing internal accounting controls and from falsifying any required book, record or account. Steckler also thereby was a cause of Legato's violations of Section 13(b)(2)(A) of the Exchange Act, which requires companies whose securities are registered pursuant to Section 12 of the Exchange Act to make and keep accurate books, records and accounts.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Steckler's Offer.

Accordingly, it is hereby ORDERED that Respondent Steckler cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and from causing

any violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

By the Commission.

Jonathan G. Katz
Secretary