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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of DAVID G. DERRICK, SR., Respondent.	**ANSWER** Administrative Proceeding File No. 3-16213

Pursuant to Rule 220 of the Commission's Rules of Practice, respondent David G. Derrick, Sr. ("Derrick"), by and through counsel, hereby answers the Order Instituting Cease-And-Desist Proceedings Pursuant To Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (the "OIP") and admits, denies, and avers presently as follows:

A. RESPONDENT

1. David G. Derrick, Sr. ("Derrick") was a founder of SecureAlert, Inc. and served as Chairman of the Board and Chief Executive Officer ("CEO") from February 2001 until June 30, 2011. Derrick, [redacted] years old, is a resident of Farmington, Utah.

Response to Paragraph 1:

1. Answering paragraph one (1) of the OIP, Derrick avers that he is [redacted]-years old, and admits each and every allegation of said paragraph.

B. OTHER RELEVANT ENTITY AND INDIVIDUAL

2. SecureAlert, Inc. ("SecureAlert"), formerly known as Remote MDx, Inc., incorporated in Utah in 1995, markets and sells tracking technology devices in the area of adult probation and parole. SecureAlert's principal place of business is in Sandy, Utah. SecureAlert's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades on the OTC Bulletin Board. SecureAlert files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and Related rules thereunder.

Response to Paragraph 2:

2. Answering paragraph two (2) of the OIP, paragraph two, in part, sets forth legal conclusions to which no response is required. Derrick denies the allegations set forth in paragraph two (2) for lack of sufficient present information and belief.

3. James J. Dalton, Jr. ("Dalton") was a founder of SecureAlert and served as a Director from 2001 to November 2, 2009 and was President from August 2003 to June 19, 2008. Dalton, [redacted] years old, is a resident of Park City, Utah.

Response to Paragraph 3:

3. Answering paragraph three (3) of the OIP, Derrick denies the allegations set forth in paragraph three (3) for lack of sufficient present information and belief.

C. BACKGROUND

4. In 2007, SecureAlert sold its product through a distributorship system, whereby distributors were given specific territories in which to market SecureAlert product. SecureAlert had been struggling for years and was making a substantial effort to boost sales and revenues.

Response to Paragraph 4:

4. Answering paragraph four (4) of the OIP, Derrick denies the allegations set forth in paragraph four (4) for lack of sufficient present information and belief.

Undisclosed Personal Guarantees by Derrick and Dalton

5. On September 20, 2007, just prior to the end of the fiscal year on September 30, 2007, SecureAlert entered into an Exclusive Distribution Agreement ("Distribution Agreement") with a larger investor ("Distributor"). The Distribution Agreement called for Distributor to purchase 2,000 devices at $500 each for a total of $1 million, with payment due in six months.

Response to Paragraph 5:

5. Answering paragraph five (5) of the OIP, Derrick avers that the alleged Exclusive Distribution Agreement speaks for itself. Except as averred, Derrick denies the allegations set forth in paragraph five (5) for lack of sufficient present information and belief. The allegations set forth in paragraph five are time barred by 28 U.S.C. § 2462.

6. Derrick negotiated the Distribution Agreement on behalf of SecureAlert. Prior to executing the agreement, Distributor informed Derrick and Dalton that he would

not pay for any product and would not subject himself to liability for purchasing product if he was unable to sell it. Dalton does not recall that either Derrick or Distributor told him whether Distributor had sold any SecureAlert product to end user customers but Distributor told Derrick or Dalton that Distributor was engaging in significant efforts to leverage his business and personal connections to, among other things, establish a sales infrastructure to sell SecureAlert product. Derrick, Dalton and Distributor knew this was a new technology application and that the possibility of product failure existed.

Response to Paragraph 6:

6. Answering paragraph six (6) of the OIP, Derrick admits that he was involved in the negotiation of the September 20, 2007 Exclusive Distribution Agreement, and avers that Randy Olshen ("Olshen") participated in the drafting of the Exclusive Distribution Agreement. Olshen also drafted the guarantee letter for the Exclusive Distribution Agreement. Dalton signed the Exclusive Distribution Agreement on behalf of SecureAlert. Derrick signed the Exclusive Distribution Agreement on behalf of RemoteMDX as an acknowledgement. The Distributor represented to SecureAlert that he had the units sold to the penal system of Puerto Rico. Derrick denies that Distributor informed Derrick that Distributor would not pay for any product and would not subject himself to liability for purchasing product if he was unable to sell it. Derrick avers that the contents of the Exclusive Distribution Agreement and guarantee letter generally were known at various times within SecureAlert by, among others, Dalton, Michael Acton ("Acton"),

John Hastings, and Olshen. Derrick admits that he knew that the technology was new and the possibility of product failure existed. Except as expressly admitted, Derrick denies each and every allegation for lack of sufficient present information and belief. The allegations set forth in paragraph six are time barred by 28 U.S.C. § 2462.

7. Distributor further informed Derrick that he did not need any product at the time because he did not yet have customers. Derrick insisted that Distributor accept shipment of the 2,000 units from SecureAlert, and Derrick and Dalton agreed that Distributor would not have to pay for product that Distributor was not able to sell. To document this, the Distribution Agreement gave Distributor a right of return and reimbursement for any unused units in the event the contract was terminated for any reason.

Response to Paragraph 7:

7. Answering paragraph seven (7) of the OIP, Derrick denies that Distributor informed Derrick that he did not need any product at the time because he did not yet have customers. Derrick avers that Distributor represented to Derrick that through his contacts with the Government of Puerto Rico, he would be placing five thousand (5,000) devices. Derrick admits that the terms of the Exclusive Distribution Agreement speak for themselves. Except as expressly admitted, Derrick denies each and every allegation of said paragraph. The allegations set forth in paragraph seven are time barred by 28 U.S.C. § 2462.

8. To further protect himself from liability, Distributor also required Derrick and Dalton to personally guarantee that they would pay for any unused units under the Distribution Agreement if Distributor was not satisfied with the devices or the business arrangement for any reason. Derrick and Dalton signed a letter dated September 20, 2007 to that effect. Derrick and Dalton did not disclose the personal guarantee to other Board members or employees of SecureAlert, nor did they disclose it to SecureAlert's independent auditor or outside securities counsel. Distributor accepted the 2,000 units but did not pay for any product at the time.

Response to Paragraph 8:

8. Answering paragraph 8 of the OIP, Derrick avers that the September 20, 2007 guarantee letter speaks for itself. Derrick denies that he failed to disclose the personal guarantee letter to other Board members or employees of SecureAlert, and denies that he failed to disclose the personal guarantee letter to SecureAlert's independent auditor or outside securities counsel. Derrick admits that Distributor accepted the 2,000 units, and that SecureAlert was paid for the units. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph eight are time barred by 28 U.S.C. § 2462.

9. On December 13, 2007, near the end of the following quarter, Derrick and Dalton requested a purchase order from Distributor to purchase an additional 2,000 devices from SecureAlert at $500 each for a total of $1 million, with payment due in six months. Dalton does not recall Derrick or Distributor at the time of the

second purchase order, telling Dalton that Distributor had not yet sold any of the first 2,000 units or any additional devices that would be requested by a purchase order. Distributor informed Derrick he did not need any more devices, but Derrick insisted on the purchase order and that Distributor accept shipment of the devices. Derrick and Dalton again agreed to provide a personal guarantee that they would pay for any unused units. Derrick and Dalton did not disclose this agreement to other Board members or employees of SecureAlert, nor did they disclose it to SecureAlert's independent auditor or outside securities counsel. Distributor accepted the second 2,000 units but did not pay for any product at the time.

Response to Paragraph 9:

9. Answering paragraph nine (9) of the OIP, Derrick avers that the purchase order with Distributor speaks for itself. Derrick denies that Distributor informed him that he had not yet sold any of the first 2,000 units or that Distributor did not need any more devices. Derrick denies insisting on the purchase order and that Distributor accept shipment of the devices. Derrick avers that Distributor represented that he had sold five thousand (5,000) units in Puerto Rico. Derrick did not personally guarantee the December 13, 2007 purchase order as alleged. Derrick avers that SecureAlert was aware of the purchase order. Derrick avers that the Distributor accepted the second 2,000 units, and SecureAlert was paid for the units. Except as expressly admitted, Derrick denies each and every allegation

of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph nine are time barred by 28 U.S.C. § 2462.

10. Derrick and Dalton knew or should have known that the personal guarantees were material related-party agreements that should have been disclosed and should have been considered in SecureAlert's financial statements.

Response to Paragraph 10:

10. Answering paragraph ten (10) of the OIP, Derrick avers that said paragraph contains a legal conclusion to which no response is required. To the extent any response is required, Derrick denies each and every allegation in said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph ten are time barred by 28 U.S.C. § 2462.

11. SecureAlert filed its Form 10-KSB for the fiscal-year ended September 30, 2007 ("2007 Form 10-KSB") on January 15, 2008. The financial statements reported $1 million in revenue for the September 20, 2007 transaction with Distributor. The $1 million was also recorded as an accounts receivable due in six months, on or around March 20, 2007. Derrick signed certifications for the 2007 Form 10-KSB as CEO. The 2007 Form 10-KSB did not disclose the personal guarantee and did not consider the personal guarantee in its accounting treatment of the $1 million purported sale in September 2007.

Response to Paragraph 11:

11. Answering paragraph eleven (11) of the OIP, Derrick avers that the 2007 Form 10-KSB speaks for itself. Except as expressly admitted, Derrick denies each and

every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph eleven are time barred by 28 U.S.C. § 2462.

12. The $1 million in reported revenue for the September 2007 transaction represented 29% of product revenues and 12% of total revenues for fiscal 2007 and represented a gross profit of $254,000. SecureAlert reported a gross loss of $404,000 for the year. Without gross profits from the $1 million "sale" to Distributor at year-end, the gross loss would have been 63% greater.

Response to Paragraph 12:

12. Answering paragraph twelve (12) of the OIP, Derrick avers that the 2007 Form 10-KSB speaks for itself. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph twelve are time barred by 28 U.S.C. § 2462.

13. SecureAlert filed its Form 10-QSB for the period ended December 31, 2007 ("December 31, 2007 Form 10-QSB") on February 14, 2008. The December 31, 2007 Form 10-QSB reported $1 million in revenue for the December 2007 transaction with Distributor. The $1 million was also recorded as an accounts receivable due in six months, on or around June 13, 2008. Derrick signed certifications for the December 31, 2007 Form 10-QSB. The December 31, 2007 Form 10-QSB did not disclose the personal guarantee that Distributor would not

be liable for unsold product and did not consider this personal guarantee in its accounting treatment for the $1 million purported sale in December 2007.

Response to Paragraph 13:

13. Answering paragraph thirteen (13) of the OIP, Derrick avers that the December 31, 2007 Form 10-QSB speaks for itself, and avers that there was no written or verbal guarantee for the December 2007 sale. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph thirteen are time barred by 28 U.S.C. § 2462.

14. On March 13, 2008, staff in the Commission's Division of Corporation Finance ("Corp Fin Staff") issued a comment letter ("March 13 Comment Letter") with regard to SecureAlert's 2007 Form 10-KSB and its December 31, 2007 Form 10-QSB. The March 13 Comment Letter included a question as to why the year-end accounts receivable balance was more than half of SecureAlert's revenue for the year.

Response to Paragraph 14:

14. Answering paragraph fourteen (14) of the OIP, Derrick avers that the March 13 Comment Letter speaks for itself. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph fourteen are time barred by 28 U.S.C. § 2462.

Undisclosed Personal Financing of Transactions By Derrick and Dalton

15. Soon after receiving Corp Fin Staff's comment letter, payment for the first $1 million purported sale to Distributor became due, on or around March 20, 2008. In the meantime, Distributor had learned that many of the devices shipped to him were defective or damaged. Distributor had not sold any devices at that point, and he refused to pay for defective devices or devices he had not sold. Derrick attempted to arrange financing to pay the accounts receivable due, in an apparent attempt to conceal the fact that revenue should not have been recognized in the transaction. In this way, SecureAlert's accounting records would reflect the $1 million accounts receivable as fully paid at or around the due date.

Response to Paragraph 15:

15. Answering paragraph fifteen (15) of the OIP, Derrick avers that the accounting books and records of SecureAlert speak for themselves. Derrick admits that he and others attempted to arrange bank financing for Distributor, but that traditional bank financing was unavailable. Derrick denies that he attempted to conceal his efforts to obtain financing for Distributor from SecureAlert. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph fifteen are time barred by 28 U.S.C. § 2462.

16. Derrick reached out to a third party financing entity ("Third Party"), with which he had previously done business. Third Party agreed to make the payment for the accounts receivable to SecureAlert. However, Third Party would not provide

funding because of the risk, so Derrick and Dalton provided their own personal funds, through their entity, to finance the transaction.

Response to Paragraph 16:

16. Answering paragraph sixteen (16) of the OIP, Derrick admits that he and Dalton arranged financing for Distributor in conjunction with a third party, which transaction speaks for itself. Except as expressly admitted, Derrick denies each and every allegation of said paragraph. The allegations set forth in paragraph sixteen are time barred by 28 U.S.C. § 2462.

17. The Third Party transaction was documented with a promissory note dated March 26, 2008, in which Distributor promised to pay Third Party $1 million plus interest by March 31, 2009. Distributor signed the promissory note, but Derrick and Distributor agreed that the transaction was executed on paper only and that Distributor had no obligation to pay $1 million to Third Party. Derrick and Distributor also agreed that Distributor would not be liable for any interest due under the note. Dalton was made aware of the agreement between Derrick and Distributor. Derrick and Dalton did not disclose to Distributor that they provided the $1 million in funds to Third Party.

Response to Paragraph 17:

17. Answering paragraph seventeen (17) of the OIP, Derrick admits that the March 26, 2008 Promissory Note speaks for itself. Derrick denies that he informed Distributor that the transaction was executed on paper only, and denies that Distributor had no obligation to pay the Promissory Note. Derrick denies that he

agreed that Distributor would not be liable for any interest due under the Promissory Note. Derrick admits that Dalton and others were aware of the Promissory Note. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 17 are time barred under 28 U.S.C. § 2462.

18. Derrick and Dalton sent $1 million of their personal funds to Third Party on March 31, 2008. Third Party, in turn, sent the funds to SecureAlert to satisfy the $1 million accounts receivable due in March 2008.

Response to Paragraph 18:

18. Answering paragraph eighteen (18) of the OIP, Derrick admits that he participated in the loan transaction to Distributor, and that the Distributor borrowed funds to pay Distributor's receivable to SecureAlert. Except as expressly admitted, Derrick denies each and every allegation for lack of sufficient present information and belief. The allegations set forth in paragraph 18 are time barred under 28 U.S.C. § 2462.

19. The accounts receivable for the December 2007 $1 million purported sale to Distributor became due on or around June 13, 2008. Again, Distributor had not yet sold any devices, so he refused to pay for devices that were defective or unsold. Derrick again approached Third Party, which agreed to make a second payment for the accounts receivable to SecureAlert if Derrick and Dalton again provided the funds.

Response to Paragraph 19:

19. Answering paragraph nineteen (19) of the OIP, Derrick admits that he participated in arranging financing for Distributor, which financing was used by Distributor to make a second payment to SecureAlert. Except as expressly admitted, Derrick denies each and every remaining allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 19 are time barred under 28 U.S.C. § 2462.

20. The second Third Party transaction was documented with a promissory note dated September 16, 2008, in which Distributor promised to pay Third Party $1 million plus interest by September 16, 2009. Distributor signed the promissory note, but again Derrick and Distributor agreed that this transaction was executed on paper only and that Distributor had no obligation to pay the $1 million to Third Party. Derrick and Distributor also agreed that Distributor would not be liable for any interest due under the note. Dalton was made aware of the agreements. Derrick and Dalton did not disclose to Distributor that they provided the second $1 million in funds to Third Party.

Response to Paragraph 20:

20. Answering paragraph twenty (20) of the OIP, Derrick admits that Distributor signed a September 16, 2008 promissory note, the terms of which speak for themselves. Derrick denies that Derrick agreed that the promissory note was executed on paper only and that Distributor had no obligation to pay the obligation. Derrick also denies that he informed Distributor that Distributor

would not be liable for interest due under the note. Derrick admits that Dalton and others were aware of the promissory note signed by Distributor. Except as expressly admitted, Derrick denies each and every remaining allegation for lack of sufficient present information and belief. The allegations set forth in paragraph 20 are time barred under 28 U.S.C. § 2462.

21. Derrick and Dalton sent $1 million of their personal funds to Third Party on September 12, 2008. This time, Third Party wired the money to Distributor, who in turn forwarded $1 million to SecureAlert on September 25, 2008, just prior to the end of fiscal year 2008. The $1 million was used to pay the $1 million accounts receivable due in June 2008.

Response to Paragraph 21:

21. Answering paragraph twenty-one (21) of the OIP, Derrick admits that he and Dalton arranged for financing for Distributor. Derrick avers that the accounting books and records of SecureAlert speak for themselves. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 21 are time barred under 28 U.S.C. § 2462.

22. Derrick and Dalton did not disclose their personal financing of the Third Party transactions to other Board members or employees of SecureAlert, nor did they disclose it to SecureAlert's independent auditor or outside securities counsel.

Response to Paragraph 22:

22. Answering paragraph 22 of the OIP, Derrick denies the allegations of said paragraph as alleged against Derrick. Except as admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 22 are time barred under 28 U.S.C. § 2462.

Comment Process with Corp Fin Staff

23. From March to June 2008, SecureAlert engaged in the comment process with Corp Fin Staff. On April 28, 2008, SecureAlert filed a response to the staff's March 13, 2008 comment letter, and discussed SecureAlert's revenue recognition policies. The letter was signed by Derrick and represented that SecureAlert only recognized revenue if the following conditions were met: persuasive evidence of an arrangement exists, title passes to the customer and the customer cannot return the devices, prices are fixed or determinable, and collection is reasonably assured.

Response to Paragraph 23:

23. Answering paragraph twenty three (23) of the OIP, Derrick avers that the April 28, 2008 letter speaks for itself. Derrick also avers that the Commission has ignored the Amended Distribution Agreement, which extinguished the earlier guarantee. Except as admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 23 are time barred under 28 U.S.C. § 2462.

24. SecureAlert also made the following separate representations about revenue recognition in its April 28, 2008 response: (1) "Distributors do not have general rights of return;" (2) Generally, title and risk of loss pass to the buyer upon delivery of the devices;" (3) "The distributors do not have general rights of return for these devices."

Response to Paragraph 24:

24. Answering paragraph twenty four (24) of the OIP, Derrick avers that the April 28, 2008 letter and the Amended Distribution Agreement speaks for themselves. Except as admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 24 are time barred under 28 U.S.C. § 2462.

25. The statements related to revenue recognition were false in the case of Distributor because Derrick and Dalton had made assurances to Distributor that he would not be liable for any unsold devices and that Distributor could return devices at any time for any reason.

Response to Paragraph 25:

25. Answering paragraph twenty five (25) of the OIP, Derrick denies the allegations of said paragraph. The Commission has ignored the Amended Distribution Agreement, which extinguished the earlier guarantee. The allegations set forth in paragraph 25 are time barred under 28 U.S.C. § 2462.

26. In the April 28, 2008 response and a response to additional staff comments filed on May 14, 2008, SecureAlert represented that it had collected 100% of the

accounts receivable due from Distributor for the first $1 million purported sale. The responses did not disclose that Distributor did not pay the receivable. The responses did not disclose that Derrick and Dalton actually paid the receivable with their own personal funds through a third party. The responses did not disclose that Derrick and Dalton had agreements with Distributor that he was not liable to pay for any devices he did not sell.

Response to Paragraph 26:

26. Answering paragraph twenty six (26) of the OIP, Derrick avers that the April 28, 2008 and May 14, 2008 responses speak for themselves. Derrick also denies the characterizations of the alleged facts at issue, and avers that the Amended Distribution Agreement extinguished the earlier guarantee. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 26 are time barred under 28 U.S.C. § 2462.

27. During the comment process, SecureAlert reviewed the Distribution Agreement. SecureAlert, in consultation with its independent auditor and outside securities counsel, determined that the provision in the Distribution Agreement allowing Distributor a right to return product did not allow for revenue to be recognized. Therefore, SecureAlert informed Corp Fin Staff that it would restate the $1 million initially recorded as revenue from the purported sale in September 2007 to "deferred revenue."

Response to Paragraph 27:

27. Answering paragraph twenty seven (27) of the OIP, Derrick admits that SecureAlert at all relevant times was aware of the terms of the Distribution Agreement. Derrick also admits that SecureAlert's independent auditor and outside securities counsel were aware of the terms of the Distribution Agreement. Derrick also admits that based on SecureAlert's auditors and outside counsel, SecureAlert restated its revenue, and entered into the Amended Distribution Agreement. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 27 are time barred under 28 U.S.C. § 2462.

28. On May 6, 2008, SecureAlert filed a Form 8-K announcing a restatement of the financial statements, including the deferral of the $1 million in revenue from the September 2007 contract with Gonzalez. The Form 8-K contained no disclosure of the personal guarantee or the personal financing of the $1 million "sale".

Response to Paragraph 28:

28. Answering paragraph twenty eight (28) of the OIP, Derrick admits that the SecureAlert Form 8-K speaks for itself. Derrick avers that the Amended Distribution Agreement extinguished the earlier guarantee. Except as admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 28 are time barred under 28 U.S.C. § 2462

29. To avoid future issues with revenue recognition, SecureAlert amended the Distribution Agreement in April 2008 ("Amended Distribution Agreement") to remove Distributor's unilateral right to return product. SecureAlert determined that under the Amended Distribution Agreement, revenue from sales to Distributor could be recognized immediately if they met the required revenue recognition conditions, including that title passes to the customer and the customer cannot return devices. Based on this determination, SecureAlert concluded it did not need to restate revenue from the December 2007 purported sale to Distributor. Derrick and Dalton did not disclose their side agreement that Distributor could return unused or unsold product for any reason and that Distributor would not be liable for any product it did not use.

Response to Paragraph 29:

29. Answering paragraph twenty nine (29) of the OIP, Derrick admits that SecureAlert entered into an Amended Distribution Agreement, the terms of which speak for itself. Derrick also avers that pursuant to its terms, the Amended Distribution Agreement extinguished the earlier guarantee by Derrick of the Exclusive Distribution Agreement, among other things. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 29 are time barred under 28 U.S.C. § 2462.

SecureAlert Files Materially Misstated Periodic Reports with the Commission

30. On or about June 18, 2008, SecureAlert filed an amended Form 10-QSB/A for the period ended December 31, 2007 ("December 2007 Form 10-QSB/A"). The $1 million in revenue for the second purported sale to Distributor in December 2007 was not restated and remained in the financials as revenue. Derrick signed certifications as CEO for the December 2007 Form 10-QSB/A.

Response to Paragraph 30:

30. Answering paragraph thirty (30) of the OIP, Derrick admits that SecureAlert filed the December 2007 Form 10-QSB/A, which speaks for itself, and admits that the accompanying certifications speak for themselves. Derrick denies that the December 2007 Form 10-QSB/A and the certifications are materially misstated, and avers that the Commission has not alleged why they are materially misstated, particularly given the terms of the Amended Distribution Agreement. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 30 are time barred under 28 U.S.C. § 2462.

31. On June 19, 2008, SecureAlert filed an amended Form 10-KSB/A ("2007 Form 10-KSB/A"). The 2007 Form 10-KSB/A restated the $1 million revenue from the first purported sale in September 2007 as "deferred revenue." The Distribution Agreement was attached as an exhibit to the filing; however, the personal guarantee and the personal financing arrangements were not disclosed. Derrick signed certifications as CEO for the 2007 Forms 10-KSB/A and 10-QSB/A.

Response to Paragraph 31:

31. Answering paragraph thirty one (31) of the OIP, Derrick admits that SecureAlert filed the 2007 Form 10-KSB/A and the signed certifications, which documents speak for themselves. Derrick denies that the 2007 Form 10-KSB/A and the certifications are materially misstated, and avers that the Commission has not alleged why they are materially misstated, particularly given the terms of the Amended Distribution Agreement. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 31 are time barred under 28 U.S.C. § 2462.

32. On August 15, 2008, SecureAlert filed its Form 10-Q for the period ended June 30, 2008 ("June 2008 Form 10-Q"). Because of the Amended Distribution Agreement, SecureAlert determined it could now recognize revenue from the September 2007 $1 million purported sale to Distributor. Derrick signed certifications as CEO for the June 2008 Form 10-Q.

Response to Paragraph 32:

32. Answering paragraph thirty two (32) of the OIP, Derrick admits that SecureAlert filed its June 2008 Form 10-Q and certifications, which documents speak for themselves. Derrick denies that the June 2008 Form 10-Q and the certifications are materially misstated, and avers that the Commission has not alleged why they are materially misstated, particularly given the terms of the Amended Distribution Agreement. Except as expressly admitted, Derrick denies each and every

allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 32 are time barred under 28 U.S.C. § 2462.

33. On December 26, 2008, SecureAlert filed its Form 10-K for the fiscal year ended September 30, 2008 ("2008 Form 10-K"). The entire $2 million for the September and December 2007 purported sales was reported as revenue in the year-end financial statements. The $2 million in reported revenue made up 78% of SecureAlert's product revenues and 16% of all revenues for fiscal year 2008. Derrick signed certifications as CEO for the 2008 Form 10-K.

Response to Paragraph 33:

33. Answering paragraph thirty three (33) of the OIP, Derrick admits that SecureAlert filed its 2008 Form 10-K and certifications, which documents speak for themselves. Derrick denies that the 2008 Form 10-K and the certifications are materially misstated, and avers that the Commission has not alleged why they are materially misstated, particularly given the terms of the Amended Distribution Agreement. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 33 are time barred under 28 U.S.C. § 2462.

34. The materially misstated financial statements continued to be reported in SecureAlert's filings through the end of fiscal year 2009. The filings included Forms 10-Q for the periods ended December 31, 2008, March 31, 2009, and June 30, 2009. The Form 10-K for the fiscal year ended September 30, 2009 ("2009 Form 10-K") was the last report to contain the misstated financial

statements and was filed on January 13, 2010. Derrick signed certifications as CEO for each of the quarterly reports filed during fiscal year 2009 and the 2009 Form 10-K.

Response to Paragraph 34:

34. Answering paragraph thirty four (34) of the OIP, Derrick admits that SecureAlert filed the filings and certifications listed in paragraph thirty four (34), which filings speak for themselves. Derrick denies that the filings and the certifications are materially misstated, and avers that the Commission has not alleged why they are materially misstated, particularly given the terms of the Amended Distribution Agreement. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The December 31, 2008, March 31, 2009, June 30, 2009 and September 30, 2009 set forth in paragraph 34 filings are time barred under 28 U.S.C. § 2462. The January 13, 2010 also is time barred and cannot be used to revive an expired claim. *SEC v. Fisher*, No. 07 C 4483, 2008 WL 2062699, at *7 (N.D. Ill. May 13, 2008); *McGregor v. Louisiana State Univ. Bd. Of Sup'rs*, 3 F.3d 850, 867 (5th Cir. 1983); *S.E.C. v. Jones*, No. 05 Civ. 7044 (RCC), 2006 WL 1084276, at *5 (S.D.N.Y. Apr. 25, 2006).

35. Derrick made misrepresentations to SecureAlert's independent auditor during the yearly audit and quarterly review periods for each of the relevant periods. For each period, he signed a management representation letter to the auditor, representing, among other things, that: financial statements were fairly presented

in conformity with GAAP along with related disclosures, that he had no knowledge of any fraud or suspected fraud, and that all related party transactions had been properly recorded or disclosed. These representations were false in light of the undisclosed personal guarantees and personal related-party financing of transactions.

Response to Paragraph 35:

35. Answering paragraph thirty five (35) of the OIP, Derrick admits that the management representation letters speak for themselves. Except as expressly admitted, Derrick denies each and every allegation of said paragraph, and avers that the Commission has ignored the terms of the Amended Distribution Agreement, among other things, which speaks for itself. Derrick also avers that he relied upon the advice of counsel and/or auditors at all relevant times in executing management representation letters. The allegations set forth in paragraph 35 are time barred under 28 U.S.C. § 2462.

Assignment of Third Party Promissory Notes to Derrick and Dalton Entity

36. By June 2009, SecureAlert and its distributors continued to struggle. There were still problems with technology and defective units and Distributor had sole little, if any, of the $2 million in product purportedly sold to him in September and December 2007. The $2 million owed to Third Party had not been paid. The first $1 million was three months overdue, and Derrick knew that Distributor would not pay. Although Third Party had not provided any funds for the transactions, Third Party desired to remove the large, stale accounts receivables from Third

Party's balance sheet. Therefore, Derrick devised a plan to arrange additional transactions, which served to cover up the personal financing arrangements and the personal guarantees.

Response to Paragraph 36:

36. Answering paragraph thirty six (36) of the OIP, Derrick denies that he devised a plan to cover up the financing for Distributor or the guarantees, which had been extinguished by the Amended Distribution Agreement. Derrick admits that the Third Party wanted to remove the receivable from Distributor from its balance sheet. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 36 are time barred under 28 U.S.C. § 2462.

37. In June 2009, Derrick formed an entity called JBD Management, LLC ("JBD"). JBD was owed by Derrick (47.5%), Dalton (47.5%) and Third Party (5%). Derrick arranged for Third Party to assign its interest in the March 2008 $1 million promissory note and the September 2008 $1 million promissory note to JBD. The assignment involved a series of transactions and documents executed in July 2009. Interest due on the notes had previously been paid to Third Party by Derrick and Dalton.

Response to Paragraph 37:

37. Answering paragraph thirty seven (37) of the OIP, Derrick admits that SecureAlert's securities counsel formed JBD, owed by Derrick (47.5%), Dalton (47.5%) and Third Party (5%). Derrick also admits that SecureAlert's securities

counsel drafted the assignment of the loans from Third Party to JBD. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 37 are time barred under 28 U.S.C. § 2462.

38. The end result was that, on paper, Distributor appeared to owe $2 million to JBD. Derrick and Dalton did not disclose that Distributor was not obligated to pay the $2 million to JBD, nor did they disclose that funds for the Third Party transactions had been personally provided by Derrick and Dalton.

Response to Paragraph 38:

38. Answering paragraph thirty eight (38) of the OIP, Derrick avers that Distributor did, in fact, owe JBD $2 million, as evidenced by the later payment of the obligation. Derrick also avers that the Distributors' obligation to JBD was disclosed to SecureAlert, including, without limitation, its securities counsel and auditors, among others. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 38 are time barred under 28 U.S.C. § 2462.

39. In addition, Derrick and Dalton executed and signed a second undisclosed side agreement, dated July 13, 2009 to personally guarantee the re-purchase of any unused product in Distributor's possession by December 31, 2010. This personal guarantee apparently documented the agreement that Distributor would not be liable for the 2,000 units purportedly sold to him in December 2007, and he would

not have to make payments on the financing arrangement, which were to come due in September 2009, if Distributor did not need or sell devices. Derrick and Dalton did not disclose this personal guarantee to other Board members or employees of SecureAlert, nor did they disclose it to SecureAlert's independent auditor or outside securities counsel.

Response to Paragraph 39:

39. Answering paragraph thirty nine (39) of the OIP, Derrick avers that the July 13, 2009 Letter Agreement speaks for itself. Derrick avers that the July 13, 2009 Letter Agreement was disclosed to SecureAlert, including certain officers and directors. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations set forth in paragraph 39 are time barred under 28 U.S.C. § 2462.

40. During the relevant period, Derrick and Dalton solicited investments in SecureAlert and obtained money or property, including money for the sale of SecureAlert stock, by means of the material misstatements and omissions contained in the company's financial statements and the non-disclosure of their personal guarantees and material related-party transactions. During that time period, SecureAlert was engaged in offering and selling its securities in private offerings and via Forms S-8. SecureAlert issued 23,927,219 shares of common stock to a number of private parties for prices ranging from $0.20 to $1.00 and a total of $8,307,914.00. In addition, on August 26, 2008 and March 9, 2009, SecureAlert filed Forms S-8 to register shares for sales or awards of stock to

employees. The August 26, 2008 Form S-8 incorporated by reference SecureAlert's materially false financial statements found in SecureAlert's 2007 Form 10-KSB. The March 9, 2009 Form S-8 incorporated by reference SecureAlert's materially false financial statements found in SecureAlert's 2008 Form 10-K. Derrick's and Dalton's actions also constituted a transaction, practice, or course of business which operated as a fraud or deceit in the offer or sale of SecureAlert securities.

Response to Paragraph 40:

40. Answering paragraph forty (40) of the OIP, Derrick avers that the referenced Forms S-8 filed by SecureAlert speak for themselves. Derrick denies that he caused any materially false financial statements to be filed in SecureAlert's S-8 filings. Derrick also denies that his actions constituted a transaction, practice, or course of business which operated as a fraud or deceit in the offer or sale of SecureAlert's securities. Except as expressly admitted, Derrick denies each and every allegation for lack of sufficient present information and belief. The allegations set forth in paragraph 40 are time barred under 28 U.S.C. § 2462.

Internal Control Deficiencies

41. During the relevant period, Derrick and Dalton knowingly failed to implement a system of internal accounting controls for SecureAlert and directly or indirectly caused to be falsified SecureAlert's books, records, and accounts.

Response to Paragraph 41:

41. Answering paragraph 41 of the OIP, Derrick avers that the Chief Financial Officer of SecureAlert is responsible for internal controls. Except as expressly admitted, Derrick denies each and every allegation of said paragraph alleged against Derrick. With respect to all remaining allegations, Derrick denies each and every allegation for lack of sufficient present information and belief. The allegations set forth in paragraph 41 are time barred under 28 U.S.C. § 2462.

42. Through their conduct, Derrick and Dalton caused SecureAlert's books and records to be inaccurate and caused SecureAlert to fail to devise or maintain a system of sufficient internal accounting controls.

Response for Paragraph 42:

42. Answering forty-two (42) of the OIP, Derrick denies all allegations alleged against him. With respect to all remaining allegations, Derrick denies each and every allegation for lack of sufficient present information and belief. The allegations set forth in paragraph 42 are time barred under 28 U.S.C. § 2462.

Discovery of Undisclosed personal Guarantees and Personal Financing

43. In or about Spring of 2011, Distributor and Derrick discussed the issue of obligation under the Third Party transactions. For the first time, Derrick admitted to Distributor that he and Dalton had provided the financing for the Third Party transactions. Over the next several months, Distributor had discussions with the Board regarding the situation. The Board ultimately asked for Derrick's resignation, which he provided on June 30, 2011.

Response to Paragraph 43:

43. Answering paragraph forty three (43) of the OIP, Derrick avers that the financing transactions with Distributor generally were known by SecureAlert, including certain officers, directors, securities counsel and auditors, prior to 2011. Indeed, documentation has been provided to the Commission disclosing in 2009 the financing to various SecureAlert officers, directors and/or securities counsel. The allegations are time barred and cannot be used to revive an expired claim. *SEC v. Fisher*, No. 07 C 4483, 2008 WL 2062699, at *7 (N.D. Ill. May 13, 2008); *McGregor v. Louisiana State Univ. Bd. Of Sup'rs*, 3 F.3d 850, 867 (5th Cir. 1983); *S.E.C. v. Jones*, No. 05 Civ. 7044 (RCC), 2006 WL 1084276, at *5 (S.D.N.Y. Apr. 25, 2006). Derrick also avers that the Distributor falsely put forth his position in order to have his territory bought out at a five million dollar ($5 million) profit, which profit is reported in the 2012 10-K.

44. After Derrick left SecureAlert, the Board authorized an internal investigation into Derrick's business dealings, including transactions with Distributor and Third Party. SecureAlert self-reported the possible violations and, later, the results of the internal investigation to Commission Enforcement Staff. After initiation of the internal investigation, SecureAlert implemented a number of internal control procedures to prevent future violations of the federal securities laws.

Response to Paragraph 44:

44. Answering paragraph forty-four (44) of the OIP, Derrick avers that he jointly self-reported the events at issue to the Commission Enforcement Staff with

SecureAlert, and fully cooperated with SecureAlert's as well as the Commissions' investigations. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. The allegations are time barred and cannot be used to revive an expired claim. *SEC v. Fisher*, No. 07 C 4483, 2008 WL 2062699, at *7 (N.D. Ill. May 13, 2008); *McGregor v. Louisiana State Univ. Bd. Of Sup'rs*, 3 F.3d 850, 867 (5th Cir. 1983); *S.E.C. v. Jones*, No. 05 Civ. 7044 (RCC), 2006 WL 1084276, at *5 (S.D.N.Y. Apr. 25, 2006).

Reclassification of Revenues

45. After learning of the personal guarantees and personal financing arrangements by Derrick and Dalton, SecureAlert, with the help of its independent auditor, concluded it should reclassify the $2 million for the Distributor transactions as capital contributions. SecureAlert determined that the transactions should be treated as capital contributions because JBD was ultimately issued stock for the $2 million that Derrick and Dalton paid to finance the transactions. This was pursuant to the assignment of the Third Party notes to JBD and subsequent transactions involving SecureAlert and Distributor.

Response to Paragraph 45:

45. Answering paragraph forty-five (45) of the OIP, Derrick avers that the accounting records and filings of SecureAlert concerning the reclassification speak for themselves. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. .

The allegations are time barred and cannot be used to revive an expired claim. *SEC v. Fisher*, No. 07 C 4483, 2008 WL 2062699, at *7 (N.D. Ill. May 13, 2008); *McGregor v. Louisiana State Univ. Bd. Of Sup'rs*, 3 F.3d 850, 867 (5th Cir. 1983); *S.E.C. v. Jones*, No. 05 Civ. 7044 (RCC), 2006 WL 1084276, at *5 (S.D.N.Y. Apr. 25, 2006).

46. The reclassification was made in the second quarter of fiscal year 2012 and reported in SecureAlert's Form 10-Q for the period ended March 31, 2012, which was filed on May 17, 2012. For that period, SecureAlert's 2008 statement of operations was no longer presented in its filings. As a result, the reclassification was made directly between SecureAlert's accumulated deficit and additional paid-in capital. At the time, SecureAlert's balance sheet reflected $249 million in additional paid-in capital and an accumulated deficit of $234 million.

Response to Paragraph 46:

46. Answering paragraph forty six (46) of the OIP, Derrick avers that SecureAlert's filings speak for themselves. Except as expressly admitted, Derrick denies each and every allegation of said paragraph for lack of sufficient present information and belief. . The allegations are time barred and cannot be used to revive an expired claim. *SEC v. Fisher*, No. 07 C 4483, 2008 WL 2062699, at *7 (N.D. Ill. May 13, 2008); *McGregor v. Louisiana State Univ. Bd. Of Sup'rs*, 3 F.3d 850, 867 (5th Cir. 1983); *S.E.C. v. Jones*, No. 05 Civ. 7044 (RCC), 2006 WL 1084276, at *5 (S.D.N.Y. Apr. 25, 2006). The allegations also prove laches, as the SEC

was on notice as early as February 28, 2012 of the alleged violations, but did not file the OIP until October 24, 2014, to the prejudice of Derrick.

D. VIOLATIONS:

Response to Paragraphs one (1) to six (6):

1. to 6: Answering paragraphs one (1) to six (6) of the Violations section of the OIP, Derrick avers that the allegations set forth therein contain legal conclusions to which no response is required. Except as admitted, Derrick denies each and every allegation of said paragraphs, and denies any and all alleged violations.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The OIP is barred by 28 U.S.C. § 2462, which requires that a federal action for "any civil fine, penalty, or forfeiture, pecuniary or otherwise" be brought "within five years from the date when the claim first accrued." *See, e.g., S.E.C. v. Bartek*, 484 Fed. Appx. 949, 957 (5th Cir. 2012); *Gabelli v. S.E.C.*, 133 S.Ct. 1216, 1224 (2013); *S.E.C. v. Fisher*, No. 07 C 4483, 2008 WL 2062699, at *7 (N.D. Ill. May 13, 2008); *McGregor v. Louisiana State Univ. Bd. Of Sup'rs*, 3 F.3d 850, 867 (5th Cir. 1993); *S.E.C. v. Jones*, No. 05 Civ. 7044 (RCC), 2006 WL 1084276, at *5 (S.D.N.Y. Apr. 25, 2006); *S.E.C. v. Graham*, Case No. 13-10011-CIV-KING (S.D. Fla. May 12, 2014). Derrick has been prejudiced by the late filing of this case to the extent that the memory of witnesses has faded, documents have disappeared, and/or witnesses are otherwise not available. The OIP also is barred by the doctrine of laches and the Commissions undue delay. Derrick and SecureAlert jointly self-reported the events at issue to Bill McKean of the

Commission's staff in Salt Lake City, Utah on February 28, 2012. The SEC, however, did not file the OIP until more than two and one-half years later on or about October 24, 2014. Derrick has been substantially prejudiced by the SEC's unreasonable delay to the extent that the memory of witnesses has faded, documents have disappeared, and/or witnesses are not otherwise available.

In the alternative, the S.E.C.'s requested relief that Derrick pay any civil fine, penalty, or forfeiture, pecuniary or otherwise, for conduct and events that took place more than five (5) years prior to October 24, 2014 is time barred under *Gabelli v. S.E.C.*, 133 S.Ct. 1216, 1224 (2013). Even under the SEC's limited and incorrect theory of the applicability of *Gabelli*, the SEC admits that it can only seek injunctive relief and/or disgorgement, if any, for events, transactions and alleged violations that took place prior October 24, 2009. Accordingly, the SEC cannot seek any civil fine, penalty, forfeiture, pecuniary or otherwise, for events and violations that were alleged to have occurred prior to October 24, 2009. Under the SEC's theory of *Gabelli v. S.E.C.*, 133 S.Ct. 1216, 1224 (2013), the SEC is limited to injunctive relief and disgorgement as a remedy in this action. Since there are no ill-gotten gains here, the SEC is limited to injunctive relief.

Second Affirmative Defense

At no time did Derrick in any way act with scienter, and at all relevant times, Derrick acted with innocent intent.

Third Affirmative Defense

The Amended Distribution Agreement, which was a fully integrated agreement and that provided for no right to return product, contractually bars many of the violations alleged by the

SEC after April 2008. The Amended Distribution Agreement extinguished the guarantee on the September 20, 2007 sale, for example. There was no guarantee on the December 2007 sale.

Fourth Affirmative Defense

As evidenced by the lack of any change in SecureAlert's stock price and the small impact on the company's net loss following the reclassification of revenues in 2012, as well as trading history of SecureAlert, among other things, the claims alleged are not material.

Fifth Affirmative Defense

At relevant times, Derrick relied upon the advice of securities counsel, Kevin Pinegar and the law firm of Durham, Jones & Pinegar, concerning SecureAlert's disclosure obligations related to the transactions at issue. Indeed, Kevin Pinegar and other lawyers at Durham, Jones & Pinegar drafted many of the documents at issue, which the SEC alleges constitute violations.

Sixth Affirmative Defense

At relevant times, Derrick relied upon the advice of SecureAlert's auditors, including, without limitation Kent Bowman and/or Hansen and Barnett, concerning SecureAlert's disclosure obligations related to transactions at issue.

Seventh Affirmative Defense

At relevant times, Derrick relied upon the advice of SecureAlert's Chief Financial Officers, including, Michael Acton and Chad Olsen, concerning SecureAlert's disclosure obligations related to transactions at issue.

Eighth Affirmative Defense

The Commission's requested disgorgement is inappropriate as Derrick did not economically benefit from the alleged events at issue, and thus there are no alleged ill-gotten gains to disgorge.

Ninth Affirmative Defense

The Commission's requested injunction is inappropriate as there is no reasonable likelihood that Derrick will engage in any future violations. The alleged related party violations, if any, were merely technical in nature. *See S.E.C. v. Brown*, 878 F. Supp. 2d 109, 119 (D.D.C. 2012).

Tenth Affirmative Defense

Derrick relied upon the advice of numerous other officers and directors of SecureAlert, including, without limitation, John Hastings, Chad Olsen, Michael Acton, James Dalton, Bob Childers, David Hanlon, and Larry Schafran, among others, who had knowledge of the transactions at issue, concerning SecureAlert's disclosure obligations.

Eleventh Affirmative Defense

The relief sought by the Commission is excessive concerning the alleged facts at issue. *See SEC v. Hohol*, LR-22906.

Twelfth Affirmative Defense

Derrick self-reported the events at issue to the S.E.C.'s Bill McKean on February 28, 2012, and fully cooperated with SecureAlert's investigation, as well as the SEC's investigation, including by providing on the record testimony, producing documents, and meeting numerous times with the Commission's staff.

Thirteenth Affirmative Defense

The OIP fails to state claims upon which relief can be granted.

Fourteenth Affirmative Defense

The SEC has failed to comply with Rule 230 and has failed to produce all documents required by the Rules of Practice, including all exculpatory documents.

Fifteenth Affirmative Defense

Concurrently herewith, Derrick has filed a motion for a more definite statement as the alleged facts do not indicate what violations, if any, allegedly were committed by Derrick during which time period, and the OIP does not specify what relief the Commission is seeking for which violations based on which set of facts. Given the statute of limitations issues in this action, Derrick cannot sufficiently prepare to defend the case given the vague and non-specific violations set forth in the OIP. The Commission is required to specify the conduct which gives rise to the specific violations, which it has failed to do.

Sixteenth Affirmative Defense

Derrick reserves the right to add additional affirmative defenses, and allegations, averments, and/or denials as additional facts, documents and information become available in this proceeding.

Derrick requests that the hearing be scheduled to take place in Salt Lake City, Utah.

DATED: December 3, 2014.

PARSONS BEHLE & LATIMER

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