ROBERT S. MUELLER, III (CSBN 59775)
United States Attorney

ORIGINAL
FILED

SEP -2 1999

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. TERRY G. MARSH, JOHN T. "Jack" DAWSON, JAMES T. "Tracy" MARSH, RICHARD BAUER, and MARIO ANDRADE, Defendants.	No. CR 96-251 SI VIOLATIONS: 18 U.S.C § 371 -- Conspiracy to Commit Securities Fraud; 15 U.S.C. §§ 78j(b), 78ffa and 17 C.F.R. 240.10b-5 -- Securities Fraud; 18 U.S.C. § 371 Conspiracy to File False Reports with the Securities and Exchange Commission 15 U.S.C. §§ 78m(a) and 78ff, 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 Filing False Reports with Securities and Exchange Commission; 18 U.S.C. § 1956 -- Money Laundering. SAN FRANCISCO VENUE

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE: (18 U.S.C. § 371-Conspiracy to Commit Securities Fraud)

At all times relevant to this indictment:

1. Scorpion Technologies, Inc., ("Scorpion") was a Colorado corporation

which maintained offices in San Jose and Los Gatos, California. Scorpion represented that it was in the business of developing and selling computer software conversion systems and image processing technology. The common stock of Scorpion was registered with the United States Securities and Exchange Commission ("SEC") pursuant to Section 12(g) of the Securities Exchange Act of 1934 [15 U.S.C. Section 781(g)]. Scorpion was required to file periodic and annual reports with the SEC pursuant to Section 13(a) of that Act. The annual reports were required to be filed on a Form 10-K; the quarterly reports were required to be filed on a Form 10-Q. In addition, SEC regulations required the reporting of significant events related to Scorpion on a Form 8-K. On November 25, 1991, there was a reverse 3-1 stock split, resulting in the substitution of one share for three of Scorpion's common stock.

a. Defendant Terry G. Marsh was the President, Chief Executive Officer, Chief Accounting Officer and Chief Financial Officer of Scorpion, and was one of three members of the Board of Directors. In these capacities, defendant Terry Marsh signed all of Scorpion's SEC filings during the period covered in this indictment, including the 1991 and 1992 Forms 10-K and all of the Forms 10-Q and 8-K identified in this indictment.

b. Defendant John T. "Jack" Dawson was an attorney who maintained offices in San Jose, California, and was the attorney for Scorpion during the time period covered by this indictment.

c. Defendant James T. Marsh, hereafter referred to as Tracy Marsh, was Vice-President of Scorpion.

d. Defendant Richard Bauer was one of three members of Scorpion's Board of Directors. Defendant Bauer was also a principal of Century Loan Corporation, Century Funding and Century Financial Programs (collectively referred to hereafter as "Century");

e. Defendant Mario Andrade was a resident of Santa Cruz, Bolivia.

The Conspiracy

2. Beginning in or about January, 1991, and continuing until November, 1993,

these funds were not bona fide payments for goods sold. Rather, in most cases, the source of the funds was the proceeds of the sales of Scorpion stock.

c. The defendants announced the acquisition of assets which were recorded on Scorpion's books and records which either did not exist or were grossly overvalued.

d. The defendants made and caused to be made false statements to the auditors who were responsible for auditing the financial statements of Scorpion, and to securities underwriters and a financial institution.

e. The defendants incorporated these false revenues, earnings and assets into Scorpion's annual and quarterly reports and into other statements made directly and indirectly to the investing public and to stock brokers.

f. Having created a materially false and misleading picture of Scorpion's revenues, earnings, and assets, the defendants sold and aided and abetted the sale of over 18.75 million shares of Scorpion's common stock to a large number of investors for over 16.5 million dollars.

Creation of False Revenue on Sales to Foreign Companies

4. As a part of and in furtherance of the scheme to defraud, between in or about March 1991, and the end of June 1992, each defendant falsely recorded, and aided and abetted the false recording of, sales by Scorpion of its products known as SRV and SRVSPARC software and internally developed menu driven software technology to the following foreign entities: Rykoff Ltd., Polastra Ltd., Stevenage Consultants Ltd., Applied Logic Computers Ltd., Largo International Ltd., Enersur S.A., Cocodrill-Oil, Azimi International, Apiciem, Carswell Investments Ltd., Wolfdale Ltd., Washington International and Associates, Northport Holding Ltd., Campbell Technology, and Verbatim Co. These sales were sham transactions designed to inflate falsely Scorpion's sales revenue.

Creation of False Revenue on Sales to Domestic Companies

5. As a part of the scheme to defraud, between in or about July 1991, and continuing through in or about January 1992, defendant Terry Marsh and co-conspirators

within the Northern District of California and elsewhere, the defendants

TERRY G. MARSH, JOHN T. DAWSON, JAMES T. MARSH,

RICHARD BAUER, and MARIO ANDRADE,

did knowingly and intentionally conspire and agree with each other and with Eric Brown, Michael Horne, Charles Herpick, and others to

a. use and employ a device or scheme to defraud;

b. make untrue statements of material facts and omit to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and

c. engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon purchasers and prospective purchasers of Scorpion securities,

by use of the means of communication in interstate commerce and by use of the mails, directly and indirectly in the offer or sale of Scorpion securities, and in connection with the purchase or sale of Scorpion securities, in violation of 15 U.S.C. §§ 78j(b) and 78ffa and 17 C.F.R. 240.10b-5 promulgated thereunder.

3. The defendants engaged in the scheme to defraud the investing public by improperly inflating the reported revenues, earnings, and assets of Scorpion and, based on this false information, selling and aiding and abetting the sale of the Scorpion stock described in this indictment. The scheme was accomplished as follows:

a. The defendants recorded and caused to be recorded in Scorpion's books and records and financial statements millions of dollars in sales of computer software and hardware. A substantial number of these sales in fact had not occurred, but were sham transactions designed to inflate falsely Scorpion's sales revenue and earnings.

b. In order to create the appearance that the supposed "customers" had in fact paid for the products they had allegedly ordered, and to avoid detection of the scheme to defraud, the defendants, directly and indirectly, arranged for funds to be delivered to Scorpion ostensibly as "payment" for the Scorpion products. In fact, the vast majority of

Eric Brown, Kelly Lee and Steven Kolb created false product sales by Scorpion to domestic companies. In order to create the false impression that Scorpion had been paid for the fictitious sales, defendant Terry Marsh and others arranged for Scorpion's own money to be paid out and sent back to Scorpion. These sales were sham transactions designed to inflate falsely Scorpion's sales revenue.

Sham Purchase of Technology from Rykoff

6. As a part of and in furtherance of the scheme to defraud, at the direction of defendants John T. Dawson and Terry Marsh, Scorpion purported to enter into an agreement with Rykoff Ltd. ("Rykoff") dated April 1, 1991, whereby Rykoff agreed to transfer scanner technology to Scorpion in return for 4 million shares of Scorpion stock valued at $.50 per share. The agreement further allowed Scorpion to have a period of six months in which to evaluate the technology.

a. This agreement was disclosed by Scorpion in a Form 8-K, dated September 30, 1991, signed by defendant Terry Marsh, and filed with the SEC on October 1, 1991. The Form 8-K stated that "On August 2, 1991, the Company completed evaluation and formally purchased a technology ("RPI")... [which is] an image processing system... . The Company had previously issued 4,000,000 of its Class A common shares, valued at $.50 per share, for the purchase of said technology. For the past several months, the Company had tested, evaluated and reviewed the RPI technology to determine its compatibility with SRV products... ."

7. The sale of technology by Rykoff to Scorpion was a sham transaction designed falsely to inflate the assets of Scorpion and provide a source of funds to pay for the fictitious receivables. In fact, Rykoff never owned any scanner technology, and no actual transfer of technology occurred.

8. To convince Scorpion's independent auditors that Scorpion's acquisition of technology from Rykoff was a legitimate transaction, between late 1991 and in or about the spring of 1992, defendants Terry and Tracy Marsh caused an engineering firm to create a back-dated set of design documents bearing Rykoff's name. The defendants

Terry and Tracy Marsh provided these false documents to the auditors and the SEC to prevent detection of the scheme.

9. To conceal the scheme, defendants Terry Marsh and Dawson, and co-conspirator Brown provided to the auditors a supposedly independent technical evaluation of the Rykoff scanner technology allegedly prepared by defendant Mario Andrade, whose offices were located in La Paz, Bolivia. In fact, no such evaluation was made by defendant Andrade. Rather, at defendant Terry Marsh's direction, others prepared the technical evaluation, which was then faxed to defendant Andrade in Bolivia, reprinted, signed by defendant Andrade, and transmitted to the independent auditors.

10. As a further part of the scheme to defraud, and to conceal the scheme, defendants Terry Marsh and Dawson arranged to provide to Scorpion's auditors a verification of the scanner technology agreement with Rykoff. On or about January 9, 1992, Michael Horne, a director of Rykoff, confirmed to the independent auditors that Rykoff was the sole owner of the scanner technology it had sold to Scorpion for 4 million shares of Scorpion stock. This representation, as defendants Terry Marsh, and Horne then knew, was false.

Creation of Overvalued Asset: the Osicom Purchase

11. As a part of and in furtherance of the scheme to defraud, in or about June and July 1992, defendants Terry Marsh and Dawson negotiated the purchase by Scorpion of Osicom Technologies, U.K. Ltd. ("Osicom"), a company located in Wales which manufactured computer products. The purchase was effective on or about August 1, 1992. Scorpion acquired ninety-nine per cent of the stock of Osicom from Saturn Enterprises, Ltd., ("Saturn"), a British Virgin Islands company with no other assets, employees or operations. Defendant Andrade signed the contract on behalf of Saturn.

12. In its Form 8-K filed with the SEC on or about August 26, 1992, Scorpion disclosed the Osicom purchase transaction to the public. The form 8-K disclosed that Scorpion had acquired the Osicom stock for a purchase price of $7,750,000, to be paid by

//

6,933,333 shares of Scorpion common stock valued at $.93 per share and the issuance of a promissory note for $1.25 million.

13. In its amended Form 8-K filed with the SEC on or about December 2, 1992, Scorpion disclosed that it acquired the Osicom stock for a purchase price of $7,750,000, to be paid by 10,000,000 shares of Scorpion common stock valued at $.65 per share and the issuance of a promissory note for $1.25 million.

14. As defendants Terry Marsh and Dawson knew and omitted to disclose to the public, immediately prior to selling Osicom to Scorpion, Saturn had acquired Osicom for $3.75 million. Therefore, Scorpion paid Saturn four million dollars more than Saturn had paid for Osicom only a short time before. The overpayment was designed to inflate falsely Scorpion's assets and to enable the defendants to sell the stock issued to Saturn.

Creation of False Investments in Century

15. As a part of and in furtherance of the scheme to defraud, between in or about July 1991 and through December 1991, defendants Terry Marsh and Tracy Marsh directed Scorpion to transfer approximately $1.25 million to Century and reported the transactions as "investments" in Century.

16. In or about December, 1991, defendants Dawson, Bauer and co-conspirator Charles Herpick caused $700,000 to be "invested" with Century to be returned to Scorpion, which in turn recorded the $700,000 as payments for goods allegedly sold to Scorpion's foreign customers. The funds were wire transferred through Switzerland to conceal their origin.

17. To conceal the fact that Scorpion's own funds were used to pay fictitious receivables, and falsely to overstate Scorpion's assets, on or about March 5, 1992, defendants Terry Marsh and co-conspirator Charles Herpick falsely represented to Scorpion's independent auditor that Scorpion had invested approximately $1.25 million in Century between July and December 1991.

18. To further conceal the fact that Scorpion's own funds were used to pay fictitious receivables, on or about March 26, 1992, defendant Bauer falsely represented to

Scorpion's independent auditor that the $1.25 million had been invested with Century in second deeds of trust.

19. To further conceal the conspiracy, on or about March 26, 1992, defendant Bauer directed Eric Brown to prepare a false financial statement for Century. Brown prepared the false financial statement, which was sent by defendant Bauer to the independent auditor.

Representations to the Public

20. As a part of and in furtherance of the conspiracy, defendants Terry Marsh, John T. Dawson, Richard Bauer and co-conspirator Eric C. Brown incorporated false revenues, earnings and asset figures into Scorpion's 1991 and 1992 annual reports, and quarterly reports filed with the SEC, as well as into other statements. They distributed and aided and abetted the distribution of the materially false and misleading information about the business operations and financial condition and prospects of Scorpion to the SEC, the public and to securities brokers and dealers. These distributions of false information constitute overt acts in furtherance of the conspiracy, as follows:

Overt Acts

21. In a press release dated March 11, 1991, Scorpion announced that it had available for sale its SRV-SPARC raster to vector computer conversion software, and estimated that the revenue from SRV-SPARC sales would be about $12 million over the next three years.

22. In a press release dated April 18, 1991, and in its Form 8-K filed with the SEC on April 19, 1991, Scorpion reported an agreement to sell software to Rykoff for $1.5 million.

23. On or about July 8, 1991, Scorpion reported net income for the second quarter of 1991 of $0.07 per share on revenues of over $2.6 million (as compared to net loss of $0.04 per share on revenues of $419,000 for the second quarter in 1990). On that day, defendant Terry Marsh publicly attributed Scorpion's sharp increase in revenues and

//

income for the second quarter of 1991 to "the wide acceptance of Scorpion's image conversion software."

24. In its Form 10-Q filed with the SEC on August 12, 1991, for the three month period from April 1 through June 30, 1991, Scorpion reported its revenues to be over $2.6 million, as compared to revenues of $419,000 for the second quarter of 1990.

25. On or about October 14, 1991, Scorpion reported that its revenue for the third quarter ending September 30, 1991, had increased to $3.5 million, compared to $771,000 in the third quarter of 1990. Scorpion also reported that it expected net income in the third quarter of 1991 to be $1.5 million or $0.06 per share, as compared to an $863,000 net loss for the third quarter of 1990.

26. On or about October 14, 1991, defendant Terry Marsh publicly stated that the Company's products were gaining wider acceptance and that Scorpion software will become the "de facto standard in the image conversion business."

27. In its Form 10-Q filed with the SEC on November 15, 1991, for the three month period from June 1, 1991, through September 30, 1991, Scorpion reported that its revenue for the nine month period ending September 30, 1991, increased 445 percent, to over $8 million from $1.477 million for the nine month period ending September 30, 1990.

28. On November 15, 1991, Scorpion filed an S-1 Registration Statement with the SEC seeking authorization to issue two million shares for sale to the public. It filed Amendment Number 1 to that statement on January 10, 1992. In this filing, Scorpion reported, among other things, that for the nine month period ended September 30, 1991, three customers accounted for 54.3% of Scorpion's revenue: Polastra (21.7%), Atric Systems (10.6%) and Rykoff, Ltd. (22%).

29. In a press release dated March 27, 1992, Scorpion announced Scorpion's audited revenues and earnings for the fiscal year ending December 31, 1991. Scorpion reported revenues of $12,453,119 and income of $3,691,619, or $0.55 per share. In its Form 10-K filed with the SEC on April 7, 1992, for the year 1991, Scorpion reported

audited revenues of over $12.4 million, and income of over $3.6 million. The 10-K further stated:

a. "Revenue for 1991 increased 500% to $12,453,119 from $2,074,160 recorded in 1990";

b. "Gross profit as a percentage of software revenue and licensing increased in 1991 to 95% from 80% in 1990. This increase is attributable to sales of the SRVSPARC product (released in March 1991) which has a higher sales price and correspondingly higher margin than earlier versions of SRV software."

c. "Approximately 68% of total revenue for the year ended December 31, 1991 was derived from international sales. Countries where material amounts of sales took place include England, Ireland and Hong Kong. Revenue from international sales was primarily attributable to marketing efforts focused on development of foreign distributors and re-sellers of SRV products. The company does not currently anticipate loss of revenue due to adverse changes in foreign economic or regulatory conditions, although the same cannot be assured."

d. "In 1991, two customers accounted for 32% of total revenue. RYKOFF LTD. (18%) purchases SRV software and internally developed menu driven software technology. POLASTRA, LTD. (14%) purchased SRV software and co-processor board technology."

30. The Notes to the Consolidated Statements of Operations filed as a part of Scorpion's 1991 10-K recited that:

a. "Sales of Product are recorded as revenue upon shipment";

b. "In April 1991, the Company entered into a contract to sell and transfer on a non-exclusive basis to Rykoff Ltd., a key customer, certain internally developed menu driven software technology. The sales price was reported as $1.5 million and was recognized as revenue by the Company for the year ended December 31, 1991."

c. "On August 2, 1991, the Company completed evaluation and formally purchased ... an image processing system.... The Company issued 1,333,333 of its Class

A common shares for the purchase of said technology.... The Company has valued the investment in technology at $2,000,000... ."

31. On May 5, 1992 Scorpion announced increases in revenue and net income for the quarter ended March 31, 1992 of 43% and 67% respectively. Scorpion's press release stated that: "Management attributes these positive results to greater market acceptance of Scorpion's raster-to-vector software."

32. In its Form 10-Q filed with the SEC on May 20, 1992, for the three month period ended March 31, 1992, Scorpion reported net income as $893,367. The Form 10-Q also stated:

a. "Revenues for the quarter ended March 31, 1992 were $2,699,553, an increase of 43% over revenues reported for the comparable quarter in 1991. Sales of the Company's SRV software product line were 93% of total revenue recorded in the first quarter of 1992. This compares with 36% of total revenue for this product line category in the first quarter of 1991. Management believes that software revenue and licensing will continue to be a major percentage of total revenues due to marketplace acceptance of current SRV products and release of new SRV and other software products that address the drawing conversion segment of the image processing industry."

33. In its Form 10-Q filed with the SEC on August 19, 1992 for the six month period ended June 30, 1992, Scorpion reported revenues for the preceding six months were $7,566,151, an increase of approximately 93% over revenues for the same period in 1991.

34. In its Form 10-Q filed with the SEC on December 18, 1992 for the nine month period ended September 30, 1992, Scorpion reported revenues for the preceding nine months increased 9.8% over revenue for the same period in 1991. It also reported sales returns of $2.875 million of SRV product during the third quarter of 1992 from distributors as a result of a detrimental litigation verdict and uncertainty about Scorpion's development, marketing and support of these products.

//

35. In its Form 8-K filed with the SEC on or about August 26, 1992, Scorpion disclosed the Osicom purchase transaction to the public. The form 8-K disclosed that Scorpion had acquired the Osicom stock for a purchase price of $7,750,000, to be paid by 6,933,333 shares of Scorpion common stock valued at $.93 per share and the issuance of a promissory note for $1.25 million.

36. In its amended Form 8-K filed with the SEC on or about December 2, 1992, Scorpion disclosed that it acquired the Osicom stock for a purchase price of $7,750,000, to be paid by 10,000,000 shares of Scorpion common stock valued at $.65 per share and the issuance of a promissory note for $1.25 million.

37. In its Form 10-K filed with the SEC on or about July 22, 1993, for the year 1992, which was signed by defendants Terry Marsh and Bauer, Scorpion reported that on April 27, 1993, the FBI conducted a search of its offices pursuant to a judicially authorized search warrant; that the warrant refers to statements made by two former employees and questions the validity of $6.7 million SRV sales from September 1991 and June 1992; and that Scorpion's auditors had performed additional procedures with respect to $2.8 million in software shipments in 1991 and "have not found any evidence to substantiate the allegations made".

38. Scorpion's 1992 Form 10-K also reported Scorpion had received repayments of loans and advances to related parties in the amount of over $800,000, and had received a $350,000 payment for a land transaction.

Sales of Securities

39. While disseminating the false and misleading information regarding Scorpion described above, as a part of and in furtherance of the scheme to defraud, the defendants, directly and indirectly, sold and aided and abetted the sales of the Scorpion securities described below.

The Sale of Shares Through H.K. Freeland and G & C Partners

40. In November 1989, Scorpion filed a registration statement covering two million shares of common stock with the SEC. The SEC declared this offering effective

on February 11, 1991.

a. In or about February 1991, Scorpion sold one million of the two million registered shares for $.75 per share to Pacific Rim Equity Advisors ("Pacific Rim"), which then sold the shares to H.K.Freeland and Company. Between April and September of 1991, H.K. Freeland and Company sold 1.275 million shares of Scorpion stock to hundreds of individuals for over $1.47 million.

b. In or about March 1991, Scorpion sold approximately 870,000 shares of Scorpion stock to G & C Partners. Between in or about April and September of 1991, G&C sold 870,000 shares of Scorpion stock to hundreds of individuals for over $836,000.

The Sale of Shares Through Rykoff

41. As a result of the sham scanner technology transfer described in this indictment, as of April 1991, Rykoff was the holder of 4 million shares of Scorpion common stock. In addition to the shares issued in connection with the sham technology transfer, in or about July 1992, Scorpion issued 500,000 shares to Rykoff for no consideration. Between in or about April 16, 1991 and August 20, 1991, at the direction of defendants Terry Marsh and Dawson, Rykoff sold these 4.5 million shares of Scorpion stock for over $5.3 million.

42. A large portion of the proceeds of the sales of this stock was wired from Rykoff's brokerage accounts to Hong Kong, then subsequently transferred back to Scorpion in the United States and recorded as payment for the fictitious accounts receivable supposedly owed to Scorpion by Rykoff and by other foreign entities.

The Sale of Shares Through Polastra Ltd.

43. In or about August 1991, defendants Terry Marsh and Dawson caused 500,000 shares of Scorpion common stock to be issued to Polastra for no consideration. Between in or about August 23, 1991 and September 25, 1991, Polastra sold these 500,000 shares to numerous individuals for a total of over $770,000.

44. Most of the proceeds of the sales of this stock was wired from Polastra's brokerage account to Hong Kong, then subsequently transferred back to Scorpion in the

United States, and recorded as payment for the fictitious accounts receivable supposedly owed to Scorpion by Polastra and by other foreign entities.

The Sales of Shares Through Adera Anstalt

45. In or about January 1992, defendants Terry Marsh, Dawson and Bauer caused 500,000 shares of Scorpion common stock to be issued to Adera Anstalt, a Liechtenstein company. In or about February 1992, at the direction of defendant Dawson, Adera Anstalt sold these shares to numerous investors for over $618,000.

46. As a part of the scheme to defraud, some of the proceeds of the sales of this stock were transferred back to Scorpion and recorded by Scorpion as payment for goods supposedly sold to a Scorpion foreign customer.

The Sales of Shares Through Mayfair Financial Ltd.

47. Between in or about May 1992, and October 1992, defendants Terry Marsh and Bauer directed that Scorpion issue 1.75 million shares of stock to an entity known as Mayfair Financial Ltd., a Panamanian corporation, in return for "consulting services." Between in or about June 1992 and October 1992, Mayfair Financial, Ltd. sold these shares to numerous investors for a total of over $2.6 million.

48. As a part of the scheme to defraud, at least $890,000 of the proceeds of the sales of Scorpion stock issued to Mayfair Financial Ltd. were transferred back to Scorpion through an account defendant Terry Marsh controlled in Guernsey, the Channel Islands, and, on instructions of defendant Terry Marsh, and recorded by defendant Brown as "payments" on fictitious accounts receivable.

The Sales of Shares Through Saturn, Ltd.

49. As set forth above at paragraphs eleven through fourteen of this indictment, in or about August, 1992, defendants Terry Marsh, Dawson and Bauer directed that Scorpion issue ten million shares of stock to Saturn in exchange for the stock of Osicom. At the direction of defendants Terry Marsh, Dawson and Andrade, Saturn caused some of these shares to be reissued in the names of other entities, including Trisun Enterprises, Version Enterprises, Tecnica Asociados Ltd., and Interex SA. Between in or about October 1993

and January 1994, defendants Terry Marsh, Dawson and Andrade, directly and indirectly, caused the ten million shares to be sold to the public for over $5.6 million.

50. As a further part of the scheme to defraud, the defendants Terry Marsh, Dawson and Bauer caused most of the proceeds of the sales of the shares issued to Saturn to be returned to their control. Certain of these proceeds were returned to Scorpion and were falsely recorded on the books and records of Scorpion and its affiliates as payment for land, payment of accounts receivable from customers, and return of investments in Century.

In violation of 18 United States Code § 371, 15 United States Code Sections 78j(b), 78ffa and 17 C.F.R. 240.10b-5 promulgated thereunder.

COUNTS TWO THROUGH TEN: (15 U.S.C. §§ 78j(b), 78ffa and 17 C.F.R. 240.10b-5 promulgated thereunder- Securities Fraud)

1. Paragraphs 1, and 3 through 10 and 15 through 37 of Count One of this indictment are realleged in each of the counts two through ten of this indictment as though fully set forth.

2. Beginning in or about January, 1991, and continuing until in or about October, 1993, within the Northern District of California and elsewhere, the defendants

TERRY G. MARSH,

JAMES T. MARSH, and RICHARD BAUER,

did, directly and indirectly, by use of the means of communication in interstate commerce and by use of the mails, in connection with the purchase or sale of Scorpion Technologies, Inc., (hereafter "Scorpion") securities,

(1) use and employ a device or scheme to defraud;

(2) make untrue statements of material facts and omit to state material facts necessary in order to make statements made, in light of the

circumstances under which they were made, not misleading; and

(3) engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon purchasers and prospective purchasers of Scorpion securities.

3. During the course of and as an object of the scheme to defraud, on or about the dates set forth in each of the counts two through ten of this indictment, the following persons did purchase Scorpion common stock in the amounts set forth in each count:

Count	Investor	Date	Amount
TWO:	Elmer Goodman	9/09/91	8,800 shares
THREE	Elmer Goodman	11/4/91	12,000 shares
FOUR:	Thomas Tollefson	9/21/91	3,000 shares
FIVE:	Neil Hriber	2/21/92	1,000 shares
SIX:	Neil Hriber	2/26/92	2,000 shares
SEVEN:	Neil Hriber	6/3/92	2,000 shares
EIGHT:	David Stillson	5/19/92	800 shares
NINE	David Stillson	5/27/92	1,000 shares
TEN:	Gerald De Carnelle	6/26/92	5,000 shares

In violation of 15 United States Code Sections 78j(b) and 78ffa and 17 C.F.R. 240.10b-5 promulgated thereunder.

COUNT ELEVEN: (18 U.S.C. §371 - Conspiracy to File False Reports with the SEC)

1. Paragraphs 1, and 3 through 49 of Count One of this indictment are realleged as though fully set forth.

2. Beginning in or about January 1991, and continuing until in or about November 1993, within the Northern District of California and elsewhere, the defendants

TERRY G. MARSH, JOHN T. DAWSON,

JAMES T. MARSH, and RICHARD BAUER

and others, did knowingly and intentionally combine, conspire, to make and cause Scorpion Technologies, Inc. to make false filings with the United States Securities and Exchange Commission ("SEC".)

In violation of 18 United States Code Section 371 and 15 United States Code Sections 78m(a) and 78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder.

COUNT TWELVE: (15 U.S.C. §§ 78m(a), 78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder). Filing False Reports with the SEC).

1. Paragraphs 1, and 3 through 10 and 15 through 49 of Count One of this indictment are realleged as though fully set forth.

2. On or about August 12, 1991, within the Northern District of California and elsewhere, the defendants

TERRY G. MARSH and TRACY MARSH

did knowingly aid and abet the filing by Scorpion of a quarterly report Form 10-Q for the three month period from April 1 through June 30, 1991, which report contained untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in that Scorpion reported its revenues to be over $2.6 million when the defendants well knew that Scorpion's revenue for the period between April 1 through June 30, 1991, was materially less than reported.

In violation of 18 United States Code Section 2 and 15 United States Code Sections 78m(a), 78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder.

COUNT THIRTEEN: (15 U.S.C. §§ 78m(a), 78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder). Filing False Reports with the SEC).

1. Paragraphs 1, 3 through 10 and 15 through 49 of Count One of this indictment are realleged as though fully set forth.

2. On or about October 1, 1991, within the Northern District of California and elsewhere, the defendant

TERRY G. MARSH

did knowingly aid and abet the filing by Scorpion of a Form 8-K, dated September 30, 1991, signed by defendant Terry Marsh, and filed with the SEC, which report contained untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in that the Form 8-K stated that:

a. "On August 2, 1991, the Company completed evaluation and formally purchased a technology ("RPI") ... [which was] an image processing system... ."

b. "The Company had previously issued $4,000,000 of its Class A common shares, valued at $.50 per share, for the purchase of said technology."

c. "For the past several months, the Company had tested, evaluated and reviewed the RPI technology to determine its compatibility with SRV products ... ."

3. At the time this Form 8-K was filed, the defendants knew that the technology purchase was a sham transaction.

In violation of 18 United States Code Section 2 and 15 United States Code Sections 78m(a), 78ffa, and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder.

COUNT FOURTEEN: (15 U.S.C. §§ 78m(a) and 78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder) Filing False Reports with the SEC)

1. Paragraphs 1, 3 through 10 and 15 through 49 of Count One of this indictment are

realleged as though fully set forth.

2 On or about November 15, 1991, within the Northern District of California and elsewhere, the defendant

TERRY G. MARSH,

did knowingly aid and abet the filing by Scorpion of a quarterly report Form 10-Q filed with the SEC, for the three month period from June 1, 1991 through September 30, 1991 which report contained untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in that:

a. the Form 10-Q reported that Scorpion's revenue for the nine month period ended September 30, 1991, reflected an increase of 445% to over $8 million;

b. the Form 10-Q reported that Scorpion had acquired technology valued at $2 million.

3. At the time this Form 10-Q was filed, the defendants knew that it materially overstated the revenues, earnings and assets of Scorpion.

In violation of 18 United States Code Section 2 and 15 United States Code Sections 78m(a) and 78ffa, and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder.

COUNT FIFTEEN: (15 U.S.C. §§ 78m(a), 78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder). Filing False Reports with the SEC).

1. Paragraphs 1, 3 through 10 and 15 through 49 of Count One of this indictment are realleged as though fully set forth.

2. On or about April 7, 1992, within the Northern District of California and elsewhere, the defendants

TERRY G. MARSH, TRACY MARSH,

RICHARD BAUER, and MARIO ANDRADE

did knowingly aid and abet the filing by Scorpion of an annual report Form 10-K with the SEC, for the year 1991, which report contained untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in that the report stated that:

a. Scorpion's 1991 revenue was over $12.4 million, and its income was over $3.6 million;

b. the increase in revenue over 1990 was attributable to sales of the SRVSPARC product (released in March 1991) which has a higher sales price and correspondingly higher margin than earlier versions of SRV software;

c. "In April 1991, the Company entered into a contract to sell and transfer on a non-exclusive basis to Rykoff, Ltd. a key customer, certain internally developed menu driven software technology. The sales price was $1.5 million and was recognized as technology revenue by the Company for the year ended December 31, 1991."

d. "On August 2, 1991, the Company completed evaluation and formally purchased ... an image processing system... The Company issued 1,333,333 of its Class A common shares for the purchase of said technology...

The Company has valued the investment in technology at $2,000,000... ."

3. At the time this Form 10-K was filed, the defendants knew that it materially overstated the revenues, earnings and assets of Scorpion, and that there was no purchase of an image processing system.

In violation of 18 United States Code Section 2 and 15 United States Code Sections 78m(a) and 78ffa and, 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder.

COUNT SIXTEEN: (15 U.S.C. §§ 78m(a),78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder). Filing False Reports with the SEC).

1. Paragraphs 1, 3, 4, 6 through 10 and 15 through 49 of Count One of this

indictment are realleged as though fully set forth.

2. On or about May 20, 1992, within the Northern District of California and elsewhere, the defendant

TERRY G. MARSH

did knowingly aid and abet the filing by Scorpion of a quarterly report Form 10-Q with the SEC, for the three month period ending March 31, 1992, which report contained untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in that:

a. Scorpion reported net income as $893,367;

b. Scorpion reported that "[r]evenues for the quarter ended March 31, 1992, were $2,699,553, an increase of 43% over revenues reported for the comparable quarter in 1991. Sales of the Company's SRV software product line were 93% of total revenue recorded in the first quarter of 1992. This compares with 36% of total revenue for this product line category in the first quarter of 1991. Management believes that software revenue and licensing will continue to be a major percentage of total revenues due to marketplace acceptance of current SRV products and release of new SRV and other software products that address the drawing conversion segment of the image processing industry."

3. At the time this Form 10-Q was filed, the defendants knew that it materially overstated the revenues, earnings, assets and prospects of Scorpion.

In violation of 18 United States Code Section 2 and 15 United States Code Sections 78m(a) and 78ffa, and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder.

COUNT SEVENTEEN: 15 U.S.C. §§ 78m(a),78ffa and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder). Filing False Reports with the SEC).

1. Paragraphs 1, and 3 through 49 of Count One of this indictment are realleged as

1. Paragraphs 1, and 3 through 49 of Count One of this indictment are realleged as though fully set forth.

2. On or about July 22, 1993, within the Northern District of California and elsewhere, the defendants

TERRY G. MARSH, JOHN T. DAWSON

and

RICHARD BAUER

did knowingly aid and abet the filing by Scorpion of an annual report Form 10-K for the year ending 1992, which report contained untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in that:

a. the report falsely stated that Scorpion had experienced a decline in software revenues due to sales returns of its SRV software products as a result of an adverse litigation verdict.;

b. the report falsely stated Scorpion acquired Osicom U.K. for a purchase price of $7,750,000, to be paid by 10,000,000 Scorpion shares valued at $.65 per share and the issuance of a promissory note for $1.25 million.

c. the report falsely stated that on April 27, 1993, the FBI conducted a search of its offices pursuant to a judicially authorized search warrant; that the warrant refers to statements made by two former employees and questions the validity of $6.7 million SRV sales from September 1991 and June 1992; and that Scorpion's auditors had performed additional procedures with respect to $2.8 million in software shipments in 1991 and "have not found any evidence to substantiate the allegations made".

3. At the time this Form 10-K was filed, the defendants knew that:

a. the decline in revenue experienced by Scorpion was not as a result of an adverse litigation verdict;

b. Scorpion's purchase of Osicom U.K. was not a bona fide purchase for value of $7.75 million, but rather had been structured to permit the issuance of Scorpion

c. the defendants had misled the auditors; and

d. it materially overstated the revenues, earnings, assets and prospects of Scorpion.

In violation of 18 United States Code Section 2 and 15 United States Code Sections 78m(a) and 78ffa, and 17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13 promulgated thereunder.

COUNT EIGHTEEN: (Title 18, U.S.C. § 1956(a)(2)(A) – (Money Laundering)

1. Paragraphs 1, 3 through 10, 15 through 38, and 39 through 43 of Count One of this indictment are realleged as though fully set forth.

2. On or about December 16, 1991, within the Northern District of California and elsewhere, the defendants

TERRY G. MARSH, JAMES T. MARSH,

and

RICHARD BAUER

did knowingly and intentionally transport, transmit and transfer $700,000 in funds from San Jose, California to Zurich, Switzerland, with the intent to promote the carrying on of specific unlawful activity, to wit, securities fraud.

In violation of Title 18, United States Code Section 1956 (a)(2)(A).

COUNT NINETEEN: (18 U.S.C. § 1956 (a)(1)(A)(i) – (Money Laundering)

1. Paragraphs 1, and 3 through 10, 15 through 38, and 40 through 43 of Count One of this indictment are realleged as though fully set forth.

2. On or about December 23, 1991, within the Northern District of California, and elsewhere, the defendant

TERRY MARSH

did knowingly and intentionally conduct a financial transaction affecting interstate

commerce, to wit, the transfer of $507,240 from Scorpion to Trans Computer, which represented the proceeds of the securities fraud described in the paragraphs of Count One incorporated in this Count, with the intent to promote the carrying on of the securities fraud.

In violation of Title 18, United States Code Section 1956 (a)(1)(B)(i).

COUNT TWENTY: (18 U.S.C. § 1956 (a)(1)(B)(i) – (Money Laundering)

1. Paragraphs 1, and 3 through 10, 15 through 38, and 40 through 43 of Count One of this indictment are realleged as though fully set forth.

2. On or about December 30, 1991, in the Northern District of California, and elsewhere, the defendants

TERRY G. MARSH and TRACY MARSH

did knowingly and intentionally conduct a financial transaction affecting interstate commerce, to wit, the wire transfer of $616,768 from Scorpion to Trans Computer, which represented the proceeds of a specified unlawful activity, that is the securities fraud described in the paragraphs of Count One incorporated in this Count, with the intent to promote the carrying on of the securities fraud.

In violation of Title 18, United States Code Section 1956 (a)(1)(B)(i).

COUNT TWENTY ONE: (18 U.S.C. § 1956 (a)(1)(B)(i) – (Money Laundering)

1. Paragraphs 1, and 3 through 10, 15 through 38, 49 and 50 of Count One of this indictment are realleged as though fully set forth.

2. On or about March 22, 1993, in the Northern District of California, and elsewhere, the defendants

JOHN T. DAWSON and RICHARD BAUER

did knowingly and intentionally conduct a financial transaction affecting interstate commerce, to wit, the wire transfer of $500,000 from the Chekiang First Bank, Hong Kong, to Century Funding which represented the proceeds of the securities fraud described in the

paragraphs of Count One incorporated in this Count, knowing that the transaction was designed in whole or in part to conceal and disguise the source, ownership and control of the proceeds of the securities fraud and knowing that the money involved in such financial transaction represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code Section 1956 (a)(1)(B)(i).

COUNT TWENTY TWO: (18 U.S.C. § 1956 (a)(1)(B)(i) – (Money Laundering)

1. Paragraphs 1, and 3 through 10, 15 through 38, 49 and 50 of Count One of this indictment are realleged as though fully set forth.

2. On or about May 4, 1993, in the Northern District of California, and elsewhere, the defendants

JOHN T. DAWSON and RICHARD BAUER

did knowingly and intentionally conduct a financial transaction affecting interstate commerce, to wit, the wire transfer of $100,000 from Merrill Lynch to the Chekiang First Bank which represented the proceeds of the securities fraud described in the paragraphs of Count One incorporated in this Count, knowing that the transaction was designed in whole or in part to conceal and disguise the source, ownership and control of the proceeds of the and knowing that the money involved in such financial transaction represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code Section 1956 (a)(1)(B)(i).

DATED:

A True Bill.

FOREPERSON

ROBERT S. MUELLER, III
United States Attorney

JOHN W. KENNEDY
Chief, Oakland Branch

Approved as to Form: Z
AUSA: Zanides