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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

<p><b>TECO Electric &amp; Machinery Co., Ltd.,</b>  Plaintiff,</p> <p>vs.</p> <p><b>Syntax-Brilliant Corp.,</b>  Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No.</p> <p><b>COMPLAINT</b></p>
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Plaintiff TECO Electric & Machinery Co., Ltd. (“TECO” or “Plaintiff”), by and through its co-counsel Lewis and Roca LLP and Hahn & Hessen LLP, hereby files this complaint, against Syntax-Brilliant Corp. (“SB” or “Defendant”) and, in support thereof, alleges:

**NATURE OF THE ACTION**

1. In late 2006 through mid 2007, SB filed disclosures with the United States Securities and Exchange Commission (“SEC”) and made numerous public statements touting its financial performance, and in particular, the strength of its revenues and earnings. SB’s bullish statements served their intended purpose -- permitting SB’s stock to trade artificially in the \$6.00-\$7.00 range. In or around June 2007, SB and TECO engaged in discussions about whether TECO would be willing to provide SB with a substantial amount of strategic financing in return for an equity interest in SB. Because of, among other things, SB’s self-proclaimed financial

1 wherewithal and SB's solid stock price, TECO took an immediate interest in SB's  
2 proposal and commenced a review of the documents and information to which SB  
3 directed (or otherwise made available to) TECO, including, among other things, SB's  
4 SEC filings and public statements.

5         2.       On August 23, 2007, TECO, in reliance on the information to which SB  
6 directed TECO's attention and which was otherwise publicly available, executed the  
7 Securities Purchase Agreement ("Agreement") with SB and, thereby, purchased  
8 approximately 3.1 million shares of SB's treasury common stock for approximately  
9 \$6.50 per share for a total cash outlay of \$20 million. On September 12, 2007 -- a  
10 mere three (3) weeks after TECO made its \$20 million investment -- SB, in two  
11 stunning press releases, announced (1) dismal 2007 fiscal year-end results; (2) first  
12 quarter 2008 fiscal year projections that were significantly below expectations due to  
13 anticipated weak sales in China; and (3) the resignation of its then Chief Financial  
14 Officer, Wayne Pratt ("Pratt"). All of these facts were known to SB and its directors  
15 and officers, prior to TECO's equity investment, but nonetheless, SB did not disclose  
16 such facts, but rather, intentionally and fraudulently led TECO to believe otherwise.  
17 These revelations caused SB's stock to take a huge hit, so much so that on September  
18 13, 2007, its stock dropped to \$4.01 (reflecting a 38% drop), leading TECO to sustain  
19 a loss of nearly \$7.7 million. Bad news concerning SB's financial performance  
20 continued to pour out of the company, and as of June 11, 2008, its stock trades at a  
21 paltry 56 cents. Thus, TECO's \$20 million equity investment has effectively been  
22 wiped out.

23         3.       SB was responsible for the accuracy of its representations and  
24 information contained in the Agreement, as well as its public filings and statements,  
25 and, is, therefore, liable for the loss TECO has sustained.

26         4.       This action seeks monetary damages or alternatively equitable relief for,  
27 among other things, the false and misleading statements SB knowingly made to  
28

1 TECO, thereby causing TECO to enter into the Agreement, and suffer a \$20 million  
2 loss.

### 3 **JURISDICTION AND VENUE**

4 5. The claims alleged herein arise under and pursuant to, among other laws,  
5 Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C.  
6 §§ 78j(b)) and the rules and regulations promulgated thereunder by the SEC, including  
7 Rule 10b-5 (17 C.F.R. § 240.10b-5).

8 6. This Court has jurisdiction over the subject matter and the parties  
9 pursuant to Section 5.9 of the Agreement and Section 27 of the Exchange Act (15  
10 U.S.C. § 78aa) and 28 U.S.C. § 1331.

11 7. Venue is proper in this District pursuant to Section 5.9 of the Agreement  
12 and Section 27 of the Exchange Act. SB is headquartered in, and many of the acts and  
13 transactions alleged herein occurred in substantial part, in this District.

14 8. In connection with the acts, transactions and conduct alleged herein, SB,  
15 directly and indirectly, used the means and instrumentalities of interstate and  
16 international commerce, including the United States mails, interstate and international  
17 communications and the facilities of the national securities exchanges.

### 18 **PARTIES**

#### 19 **A. Plaintiff**

20 9. TECO is a publicly-held Taiwan-based conglomerate, having worldwide  
21 business operations, and is a leading manufacturer of heavy electrical industrial brand  
22 home appliances, telecommunications equipment, IT systems, electromechanical  
23 components, and commercial electronics.

#### 24 **B. Corporate Defendant**

25 10. SB is a publicly-held Delaware corporation and is headquartered in  
26 Tempe, Arizona. SB, among other things, designs, develops and distributes LCD and  
27 HDTV (high-definition televisions) and digital and film cameras. Vincent F. Sollitto,  
28 Jr. ("Sollitto") was the Chief Executive Officer and Executive Chairman of the Board

1 of Directors of SB at all relevant times. On October 1, 2007, SB announced that  
2 Sollitto was being replaced by James Li (“Li”) as Chief Executive Officer and that  
3 Sollitto would retain his role as Executive Chairman of SB’s Board of Directors. Li  
4 was the President of SB, at all relevant times. Pratt was SB’s Chief Financial Officer  
5 until September 12, 2007, on which date he resigned.

6 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

7 **A. Defendant’s False and Misleading Statements**  
8 **Leading Up to TECO’s Execution of the Agreement**

9 11. SB sells its LCD and HDTV televisions under the brand-name Olevia in  
10 the United States directly to top retailers and through distributors to consumer  
11 electronics retailers, such as Circuit City, CompUSA, Sears, Target, Amazon.com, and  
12 RadioShack.com. In Asia, SB sold its televisions exclusively through South China  
13 House of Technology (“SCHOT”), its sole Asian distributor.

14 12. On February 8, 2007, SB, through its Form 8-K, released its financial  
15 results for the second fiscal quarter of 2007 for the quarter ended December 31, 2006  
16 (“Second Quarter 2007), and reported (a) revenue of \$242.5 million (up 303% from  
17 second quarter 2006); (b) net income of \$14.8 million (compared with a net loss of  
18 \$1.3 million for the second fiscal quarter of 2006); and (c) accounts receivable of  
19 \$123.5 million from SCHOT (reflecting a \$70.1 million increase, or more than 130%,  
20 from the prior fiscal quarter). In announcing these results, Sollitto stated that “I am  
21 extremely pleased with the performance of our team this quarter .... Revenue and  
22 earnings hit new records as sell-through of the Olevia brand at the retail level  
23 continues to exceed our expectations and we expand distribution into new national  
24 channels.”

25 13. On February 14, 2007, SB filed its Form 10-Q with the SEC for the  
26 Second Quarter 2007, which was signed by Sollitto and Pratt and repeated the  
27 financial results previously announced in its Form 8-K. The 10-Q stated that “[t]he  
28 accompanying unaudited condensed consolidated financial statements have been

1 prepared in accordance with accounting principles generally accepted in the United  
2 States for interim financial information and the instructions to Form 10-Q and Article  
3 10 of Regulation S-X .... In our opinion, all adjustments, which include only normal  
4 recurring adjustments, necessary to present fairly the financial position, results of  
5 operations, and cash flow for all periods presented have been made.”

6 14. SB, in its Second Quarter 2007 10-Q, also indicated that for the first six  
7 months of fiscal year 2007 ended December 31, 2006, its cash flow from operations  
8 was a negative \$46.5 million. Specifically, SB stated that “[t]he operating cash  
9 outflow during the six months ended December 31, 2006 was primarily the result of  
10 increases in account receivables and inventories ...,” and assured the public that “[w]e  
11 believe that the cash from operations and the increased credit facilities will be  
12 sufficient to sustain operations at the current level for the next 12 months.”

13 15. SB’s Second Quarter 2007 Form 10-Q also contained certifications  
14 created by Sollitto and Pratt that stated, in relevant part, that “[t]he information  
15 contained in the Report fairly presents, in all material respects, the financial condition  
16 and results of operations of the Company.”

17 16. On May 10, 2007, SB issued a press release wherein Sollitto increased  
18 the revenue guidance “to a range of \$975 million to \$1.1 billion” for the full calendar  
19 year. Sollitto further represented: “The success of our advertising campaign has  
20 resulted in increased demand for our Olevia HDTVs ....” Later in the same press  
21 release, in a section of the release entitled “Business Outlook,” it was represented  
22 “[f]or the calendar year ending December 31, 2007, [that SB] anticipates revenue in  
23 the range of \$950 million to \$1.1 billion, and gross margins in the range of 16% to  
24 18%.”

25 17. Also on May 10, 2007, SB released (through its Form 8-K) its results for  
26 the third fiscal quarter of 2007 for the quarter ended March 31, 2007 (“Third Quarter  
27 2007”), and reported (a) revenue of \$162.9 million (up 257% from the prior year); (b)  
28 net income of \$5.5 million (compared with a net loss of \$11.4 million for the third

1 fiscal quarter of 2006); and (c) accounts receivable of \$170.8 million from SCHOT  
2 (the accounts receivable owed to SB from SCHOT increased by \$47.3 million from the  
3 prior fiscal quarter and sales to SCHOT accounted for 39% of the company's total  
4 revenue). In connection with these results, Sollitto stated that "I am extremely pleased  
5 with the results this quarter ... our revenue outlook for the full calendar year has now  
6 been increased to a range of \$975 million to \$1.1 billion."

7 18. On May 11, 2007, SB filed a Form 12b-25 with the SEC requesting  
8 additional time to file its quarterly report for the period ended March 31, 2007.  
9 Although SB completed its acquisition of Vivitar, a provider of cameras and digital  
10 imaging equipment, on November 21, 2006, SB curiously stated that the acquisition  
11 was the reason for its inability to timely file its quarterly report. When SB did file its  
12 Form 10-Q with the SEC for its fiscal 2007 third quarter ended March 31, 2007, which  
13 was signed by Sollitto and Pratt, SB reported that revenues for the Third Quarter 2007  
14 increased by \$117.2 million or 257% to \$162.9 million from \$45.7 million in the third  
15 quarter of 2006. Year-to-date revenue was \$492.4 million, up 270% from revenue of  
16 \$133.2 million for the nine months ended March 31, 2006. Net income in accordance  
17 with GAAP for the quarter was \$5.5 million compared with a net loss of \$11.4 million  
18 for the third quarter of 2006. GAAP net income for the nine months ended March 31,  
19 2007 was \$21.4 million compared with a net loss of \$13.4 million for the comparable  
20 period of the previous year. GAAP diluted net income per share was \$0.09 for the  
21 third quarter of fiscal 2007, compared with a diluted net loss per share of \$0.26 for the  
22 third quarter of fiscal 2006.

23 19. Additionally, the 10-Q stated that (a) "[t]he accompanying unaudited  
24 condensed consolidated financial statements have been prepared in [GAAP] applicable  
25 to interim financial information and the instructions to Form 10-Q and Article 10 of  
26 Regulation S-X .... In our opinion, all adjustments, which include only normal  
27 recurring adjustments, necessary to present fairly the financial position, results of  
28 operations, and cash flow for all periods presented have been made"; and (b) "[t]he

1 information contained in the Report fairly presents, in all material respects, the  
2 financial condition and results of operations of the Company ... As of the end of the  
3 period covered by this report, our Chief Executive Officer and Chief Financial Officer  
4 have reviewed and evaluated the effectiveness of our disclosure controls and  
5 procedures, which included inquiries made to certain other of our employees. Based  
6 on their evaluation, our Chief Executive Officer and Chief Financial Officer have each  
7 concluded that our disclosure controls and procedures are effective and sufficient to  
8 ensure that we record, process, summarize, and report information required to be  
9 disclosed by us in our periodic reports filed under the Securities Exchange Act within  
10 the time periods specified by the Securities and Exchange Commission's rules and  
11 forms. During the quarterly period covered by this report, there have not been any  
12 changes in our internal control over financial reporting that have materially affected,  
13 or are reasonably likely to materially affect, our internal control over financial  
14 reporting.”

15 20. On May 23, 2007, SB announced that it had priced a public offering of  
16 25.6 million shares of its common stock at \$5.75 per share, of which \$14.1 million of  
17 the proceeds would go to selling shareholders other than SB. SB closed at \$6.20 per  
18 share on that day. The offering was managed by Merrill Lynch & Co. which also held,  
19 together with other underwriters in the group, an option on as many as 3.8 million  
20 additional shares.

21 21. On July 16, 2007, SB issued a press release wherein it “provided updated  
22 information with respect to its results for the quarter ended June 30, 2007 and updated  
23 revenue guidance for the calendar year ended December 31, 2007.” In the July 16,  
24 2007 press release, Pratt was quoted as follows:

25 “In our quarterly earnings release on May 10, 2007, we  
26 provided revenue guidance for the quarter ended June 30,  
27 2007 of \$190 million to \$210 million on unit volumes of  
28 240,000 to 270,000 units,” said Wayne Pratt, Syntax-  
Brilliant’s Executive Vice President and Chief Financial  
Officer. “While the results of the quarter have not been  
finalized, we believe that revenue for the quarter will be

1 within that range. Additionally, we believe that gross  
2 margins will be within or above the top half of the range of  
15% to 17% that we had previously forecasted.”

3 “Moreover,” said Pratt, “during the quarter ended June 30,  
4 2007, we collected \$129.6 million of cash from South  
5 China House of Technology, our Asian distributor, and as  
6 of June 30, 2007 there were, as expected, no invoices  
7 outstanding for more than the stated 120-day terms.  
8 Finally, we continue to experience strong demand for our  
9 products and have had success penetrating additional retail  
10 accounts during the first half of 2007. As a result of this  
strong demand and the deployment of the proceeds of our  
public stock offering in May as well as the cash from the  
accounts receivable collections, we are raising our revenue  
outlook for the calendar year ending December 31, 2007  
from our previous range of \$950 million to \$1.1 billion to a  
revised range of \$1.1 billion to \$1.3 billion.”

11 22. The July 16, 2007 updated guidance was the second guidance update for  
12 the calendar year ended December 31, 2007, issued by SB in less than 5 months.

13 23. In fiscal year ended June 2007, SB reported that it earned approximately  
14 48% (approximately \$336 million) of its revenue from sales to SCHOT. However,  
15 according to Global Sources (web published information  
16 ([www.globalsources.com/schot.co](http://www.globalsources.com/schot.co))), SCHOT had total annual sales of only USD 20  
17 million to 25 million. *See*  
18 <http://schot.manufacturer.globalsources.com/si/6008800555800/Homepage.htm> 10.29.  
19 07 (The site represents that it is current as of October 8, 2007 and that it has verified  
20 the information on the page via regular supplier visits).

21 **B. The Securities Purchase Agreement**

22 24. In or around June 2007, SB and TECO discussed whether TECO had  
23 any interest in providing financing to SB in return for an equity stake in the company.  
24 TECO was very interested in SB’s proposal in light of, among other things, SB’s  
25 seemingly strong financial position and stock price, which, unbeknownst to TECO,  
26 were falsely trumped-up.

1           25.   TECO commenced a review of SB's various SEC filings, and related  
2 public statements, including, without limitation, those filings and press releases  
3 identified in paragraphs 15 through 23, hereof.

4           26.   During the course of TECO's review, Li confirmed SB's misleadingly  
5 bullish public filings and statements when he stated to TECO, among other things,  
6 that he believed that sales to China would remain strong.

7           27.   Unaware of the false and misleading nature of the SB sourced  
8 information upon which it was relying, on August 23, 2007, TECO, after completing  
9 its review, entered into the Agreement, pursuant to which TECO purchased 3,083,945  
10 shares of SB's treasury common stock at \$6.4852 per share, for a total investment of  
11 \$20 million.

12           28.   Pursuant to Article III, Section 3.1, of the Agreement, SB gave TECO  
13 the following pertinent representations and warranties:

- 14           a.    "The SEC Reports complied in all material respects with the  
15 requirements of the Securities Exchange Act and the rules and  
16 regulations of the Commission promulgated thereunder, and none  
17 of the SEC Reports, when filed, contained any untrue statement of  
18 material fact or omitted to state a material fact required to be  
19 stated therein or necessary in order to make the statements  
20 therein, in light of the circumstances under which they were  
21 made, not misleading."
- 22           b.    "The financial statements of the Company included in the SEC  
23 Reports comply in all material respects with applicable  
24 accounting requirements and the rules and regulations of the  
25 Commission with respect thereto as in effect at the time of filing.  
26 Such financial statements have been prepared in accordance with  
27 [GAAP], except as may be otherwise specified in such financial  
28 statements or the notes thereto and except that unaudited financial  
statements may not contain all footnotes required by GAAP, and  
fairly present in all material respects the financial position of [SB]  
and its consolidated subsidiaries as of and for the dates thereof  
and the results of operations and cash flows for the periods then  
ended, subject, in the case of unaudited statements, to normal,  
immaterial, year-end audit adjustments."
- c.    "Since June 30, 2007, the Company has not experienced or  
suffered any Material Adverse Effect. Neither the Company nor  
any of its Subsidiaries has any liabilities, obligations, claims, or  
losses (contingent or otherwise) other than (A) those incurred in  
the ordinary course of business, (B) those set forth in the SEC  
Reports, and (C) liabilities not required to be reflected in the  
Company's financial statements pursuant to GAAP or required to  
be disclosed in filings made with the Commission. Except for the

1 issuance of the Shares contemplated by this Agreement or as set  
2 forth in the SEC Reports, since June 30, 2007, no event or  
3 circumstance has occurred or exists with respect to [SB] or its  
4 Subsidiaries or their respective business, properties, prospects,  
5 operations or financial condition, that, under applicable law, rule,  
6 or regulation, requires public disclosure or announcement by [SB]  
7 but which has not been so publicly announced.”

8 d. “[SB] and the Subsidiaries maintain [an adequate] system of  
9 internal controls [over its financial reporting].”

10 29. The statements referenced above in paragraphs 15 through 23, and 28,  
11 were materially false and misleading, or omitted to state other facts necessary to make  
12 the statements made not misleading, because (a) SB’s reported revenue, net income  
13 and LCD units sold for the Second and Third Quarters of 2007 were artificially  
14 inflated; (b) there was insufficient end-user demand in China to warrant the quantity of  
15 LCD televisions shipped to SCHOT during the Second and Third Quarters of 2007; (c)  
16 the Second and Third Quarter 2007 Form 10-Qs did not fairly present, in all material  
17 respects, SB’s financial condition and results of operations; (d) SB’s negative working  
18 capital and cash flow was caused by SCHOT’s failure to pay for televisions that it  
19 received but was unable to sell; and (e) SB’s cash from operations and credit facilities  
20 were not sufficient to sustain operations.

21 30. Pursuant to Article V, Section 5.9, of the Agreement, TECO is entitled to  
22 recover its attorneys’ fees and other costs and expenses incurred in connection with  
23 this action.

### 24 **C. SB Significantly Cuts Its Revenue and Earnings Forecast**

25 31. After the market closed on September 12, 2007, SB reported its results  
26 for the year-end and fiscal fourth quarter 2007 ended June 30, 2007 (“Fourth Quarter  
27 2007”) as follows: (a) revenue was \$205.3 million and net income was \$8.4 million  
28 (which met expectations); (b) account receivables from SCHOT was \$138.1 million,  
with none of the receivables purportedly more than 120 days past due; and (c) SB had  
\$78.1 million outstanding under its credit line as of June 30, 2007 which, according to  
a statement made by Pratt in the follow-up conference call, was “virtually all of [SB’s]  
borrowing base capacity.”

1           32. For the first quarter 2008 ending September 30, 2007, SB projected (a)  
2 revenue of \$170 to \$180 million, which was significantly below SB's prior projection  
3 of revenues of \$254 million; (b) shipments of LCD televisions of between 270,000 to  
4 290,000 units; and (c) projected revenues for calendar year 2007 of \$1.0 to \$1.1  
5 billion, which was significantly below SB's previous guidance given just two months  
6 earlier.

7           33. In the related press release, SB stated that the current business outlook  
8 "reflects [SB's] decision to take a more cautious approach to sales in Asia." SB also  
9 blamed a tighter credit environment in Asia for the revenue shortfall. During a  
10 conference call with analysts the same day, Sollitto stated that SB was scaling back on  
11 shipments to China. However, the "credit crunch" excuse was just contrived to  
12 conceal the fact that demand for SB's products was decreasing dramatically.

13           34. Also on September 12, 2007, SB announced in a separate press release  
14 the resignation of Pratt, stating that he had accepted a position at a start-up company in  
15 Tempe, Arizona and that SB expected Pratt to relinquish his SB responsibilities by the  
16 end of September.

17           35. Contrary to SB's statements asserting otherwise, outside auditor Ernst &  
18 Young, after conducting an internal audit of the company's internal controls and  
19 policies, concluded in its report ("E&Y Report") that there were several material  
20 weaknesses and deficiencies that needed to be corrected, stating that:

21                   In our opinion ..., Syntax-Brilliant Corporation has not  
22                   maintained effective internal control over financial  
23                   reporting as of June 30, 2007, based on the COSO criteria.

24           36. The E&Y Report, dated September 12, 2007, was disclosed to TECO  
25 and the investing public in SB's Annual Report on Form 10-K on September 13, 2007,  
26 which was signed by Pratt and Sollitto. Based on this report, SB's stock price plunged  
27 \$2.12 per share, a loss of 34.6% of SB's value.  
28

1           37.    On October 1, 2007, SB announced that Sollitto was replaced as Chief  
2 Executive officer by Li, who also retained his title as President of the Company, and  
3 that Sollitto would remain as Executive Chairman of the Company's Board.

4           38.    Notably, SB stated in its Form 10-K for the fiscal year ended June 30,  
5 2007 that:

6                   We did not assess the effectiveness of internal control over  
7 financial reporting at this entity because we delayed our  
8 assessment based on time and resource constraints until  
9 our internal audit of the documented controls is completed  
as allowed by the SEC rules. We expect to complete such  
evaluation in fiscal 2008.

10           39.    On October 30, 2007, SB announced that it had secured a five-year \$250  
11 million senior secured credit facility arranged by Silver Point Finance. The facility  
12 will be used to repay and extinguish approximately \$80 million drawn against existing  
13 credit facilities, purchase LCD panels and for general corporate and working capital  
14 purposes. Interest on the credit facility will be paid at an annual rate equal to, at SB's  
15 option, LIBOR plus 6% or Prime plus 5%. Silver Point Finance will receive ten-year  
16 warrants exercisable into approximately 5.28 million shares of common stock at an  
17 exercise price of \$0.01 per share.

18 **D.    SB's First Quarter 2008 Results Are Equally Dismal**

19           40.    On November 8, 2007, SB announced its results for the first quarter of  
20 2008 for the period ended September 30, 2007 ("First Quarter 2008"). The results  
21 were significantly worse than what SB had announced on September 12, 2007, when  
22 there was less than three weeks left in the quarter. LCD sales in China were \$14.6  
23 million, a decline of approximately 85% from the Fourth Quarter 2007.

24           41.    SB also announced, for the first time, that it had ended its exclusive  
25 distributor agreement with SCHOT. Rather than manufacturing and shipping  
26 televisions directly to SCHOT, and immediately recording the revenue, SB announced  
27 that it would now license the "Olevia" brand in Asia to a third-party, Olevia Far East,  
28

1 which would be responsible for all aspects of selling the televisions in Asia, with SB  
2 just receiving a fee for each television sold.

3 42. In the First Quarter 2008, SB made little progress in collecting payment  
4 on televisions shipped to SCHOT during the prior fiscal quarters. Despite the fact that  
5 SB ended shipments of LCDs to SCHOT altogether in the First Quarter 2008, account  
6 receivables owed from SCHOT was \$123.2 million as of September 30, 2007, which  
7 was only \$14.9 million less than the \$138.1 million that SCHOT owed SB as of June  
8 30, 2007.

9 43. On November 15, 2007, before the market opened, SB filed its Form 10-  
10 Q with the SEC for the First Quarter 2008. In the Form 10-Q, SB revealed that, of the  
11 \$123.2 million owed to SB by SCHOT, \$98 million of that was more than 120 days  
12 past due as of November 8, 2007. SB also indicated in the Form 10-Q that its Chief  
13 Accounting Officer resigned in October 2007. On November 15, 2007, shares of SB  
14 closed at \$2.89, a decline of approximately 10% from the prior day's closing price.

15 **E. Additional Scierter Allegations**

16 44. As alleged herein, SB acted with scierter in that, by and through its  
17 officers and directors, SB knew or acted with recklessness with respect to the fact that  
18 the public documents and statements that it issued or disseminated were materially  
19 false and misleading; directed or otherwise intentionally caused such statements or  
20 documents be given to TECO for its consideration in connection with the Agreement;  
21 and knowingly and substantially participated or acquiesced in the issuance or  
22 dissemination of such statements or documents as primary violations of the federal and  
23 applicable state securities laws.

24 **F. In addition to the False Statements Directed at TECO,  
25 Upon Which It Relied, The Presumption of Reliance  
26 Under the Fraud-On-The-Market Doctrine is Applicable**

27 45. The market for SB's securities was open, well-developed and efficient at  
28 all relevant times for, among others, the following reasons:

- a. SB's shares met the requirements for listing, and were listed and actively traded on NASDAQ;
- b. As a regulated issuer, SB filed periodic public reports with the SEC;
- c. SB regularly communicated with public investors *via* established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- d. The market reacted to public information disseminated by SB;
- e. SB was followed by numerous material securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace;
- f. The material misrepresentations and omissions alleged herein would tend to induce a reasonable investor (including TECO) to misjudge the value of SB's securities; and
- g. Without knowledge of the misrepresented or omitted material facts, TECO purchased SB securities between the time SB made the material misrepresentations and omissions, during which time the price of SB's securities was inflated by its misrepresentations and omissions.

46. As a result of the foregoing, the market for SB's securities promptly digested current information regarding SB from all publicly available sources and reflected such information in SB's securities prices. Under these circumstances, all purchasers and acquirers of SB's securities (including TECO) during the relevant

1 period suffered similar injury through their purchase or acquisition of SB's securities  
2 at artificially inflated prices and a presumption of reliance applies.

3 **G. No Safe Harbor**

4 47. The statutory safe harbor provision that provides for forward-looking  
5 statements under certain circumstances does not apply to any of the allegedly false  
6 statements pleaded in this Complaint. Many of the specific statements pleaded herein  
7 were not identified as "forward-looking statements" when made. To the extent there  
8 were any forward-looking statements, there were no meaningful cautionary statements  
9 identifying important factors that could cause actual results to differ materially from  
10 those in the purportedly forward-looking statements. Alternatively, to the extent that  
11 the statutory safe harbor does apply to any forward-looking statements pleaded herein,  
12 SB is liable for those false forward-looking statements because at the time each of  
13 those forward-looking statements was made, SB knew that the particular forward-  
14 looking statement was false, and/or the forward-looking statement was authorized  
15 and/or approved by an executive officer of SB who knew that those statements were  
16 false when made.

17 **FIRST CLAIM FOR RELIEF**  
18 **(Violation of Section 10(B) of the Exchange Act and**  
19 **Rule 10b-5 of the Securities and Exchange Commission)**

20 48. TECO repeats and realleges the allegations of paragraphs "1" through  
21 "47" above, as if fully set forth herein.

22 49. This claim for relief is asserted against SB and is based upon Section  
23 10(b) of the Exchange Act (15 U.S.C. § 78j(b)), and Rule 10b-5 (17 C.F.R. § 240.10b-  
24 5) promulgated thereunder.

25 50. During the relevant period, SB engaged in a common plan, scheme, and  
26 unlawful course of conduct, pursuant to which it knowingly and recklessly engaged in  
27 acts, transactions, practices, and courses of business which operated as a fraud and  
28 deceit upon TECO, and made various deceptive and untrue statements of material facts  
and omitted to state material facts in order to make the statements made, in light of the

1 circumstances under which they were made, not misleading to TECO. The purpose  
2 and effect of said scheme, plan, and unlawful course of conduct was, among other  
3 things, to induce TECO to enter into the Agreement and pay SB \$20 million.

4 51. During the relevant period, SB, pursuant to said scheme, plan, and  
5 unlawful course of conduct, knowingly and recklessly issued, caused to be issued, and  
6 participated in the issuance of, the preparation and issuance of deceptive and  
7 materially false and misleading statements to TECO and the investing public.

8 52. As a result of the dissemination of the false and misleading statements  
9 set forth above, the market price of SB's common stock was artificially inflated at the  
10 time TECO purchased said stock pursuant to the Agreement.

11 53. TECO relied, to its detriment, on the integrity of the market price of the  
12 stock when entering into the Agreement. Had TECO known the truth, it would not  
13 have entered into the Agreement and purchased 3.1 million shares of SB's stock at an  
14 inflated price.

15 54. TECO has suffered substantial damages as a result of the wrongs alleged  
16 herein.

17 55. By reason of the foregoing, SB directly violated Section 10(b) of the  
18 Exchange Act and Rule 10b-5 promulgated thereunder in that it: (a) employed devices,  
19 schemes, and artifices to defraud; (b) made untrue statements of material facts or  
20 omitted facts or omitted to state material facts in order to make the statements made, in  
21 light of the circumstances under which they were made, not misleading; or (c) engaged  
22 in acts, practices, and a course of business which operated as a fraud and deceit upon  
23 TECO in connection with its purchase of SB's common stock pursuant to the  
24 Agreement.

25 **SECOND CLAIM FOR RELIEF**  
26 **(Violation of A.R.S. Section 44-1991)**

27 56. TECO repeats and realleges the allegations of paragraphs "1" through  
28 "55" above, as if fully set forth herein.



1 connection with the purchase or sale of a security. Delaware Code § 7303(2) provides  
2 that it is a fraudulent practice to offer or sell securities by making “any untrue  
3 statement of fact” or “omit[ting] to state any material fact necessary in order to make  
4 the statements made, in light of the circumstances under which they were made, not  
5 misleading.” Delaware Code § 7303(3) makes it unlawful to “engage in any  
6 transaction, practice or course of business which operates or would operate as a fraud  
7 or deceit.”

8 64. Delaware Code § 7323(a)(2) provides that “[a]ny person who ... [o]ffers,  
9 sells or purchases a security by means of any untrue statement of a material fact or any  
10 omission to state a material fact necessary in order to make the statement made, in the  
11 light of the circumstances under which they are made, not misleading ... is liable to  
12 the person buying or selling the security from or to him or her, who may sue either at  
13 law or in equity to recover the consideration paid for the security, together with the  
14 interest at the legal rate from the date of payment costs, and reasonable attorneys’ fees  
15 ....”

16 65. The SB common stock TECO purchased pursuant to the Agreement  
17 constitutes a “security” under Delaware Code § 7302(17).

18 66. The conduct of SB as alleged herein constitutes a violation of Delaware  
19 Code § 7303.

20 67. As a result of SB’s violation of Delaware Code § 7303, TECO has been  
21 damaged and is, pursuant to Delaware Code § 7323, entitled to complete rescission of  
22 the Agreement and the return of its \$20 million investment, plus interest, attorneys’  
23 fees and costs, or, alternatively, TECO seeks to recover damages against SB, plus  
24 interest, attorneys’ fees and costs.

25 **FOURTH CLAIM FOR RELIEF**  
26 **(Violation of 4 Cal. Code Section 25401)**

27 68. TECO repeats and realleges the allegations of paragraphs “1” through  
28 “67” above, as if fully set forth herein.







- 1 D. on its Fourth Claim for Relief, (1) (a) rescinding the Agreement, (b)  
2 ordering Defendant to disgorge TECO's \$20 million payment, and (c) awarding  
3 TECO the sum of \$20 million, plus interest thereon, or, alternatively, (2)  
4 awarding TECO compensatory damages against Defendant in an amount not  
5 less than \$20 million, plus interest thereon;
- 6 E. on its Fifth Claim for Relief, awarding TECO compensatory damages against  
7 Defendant in an amount not less than \$20 million, plus interest thereon;
- 8 F. on its Sixth Claim for Relief, (1) (a) rescinding the Agreement, (b) ordering  
9 Defendant to disgorge TECO's \$20 million payment, and (c) awarding TECO  
10 the sum of \$20 million, plus interest thereon, or, alternatively, (2) awarding  
11 TECO compensatory damages against Defendant in an amount not less than  
12 \$20 million, plus interest thereon;
- 13 G. on its Seventh Claim for Relief, awarding TECO compensatory damages  
14 against Defendant in an amount not less than \$20 million, plus interest thereon;
- 15 H. reimbursement of the costs and expenses of this action, including reasonable  
16 attorneys' fees; and
- 17 I. for such other and further relief as the Court deems just and proper.

18 DATED this 13th day of June, 2008.

19 HAHN & HESSEN LLP  
20 John P. Amato  
21 Robert J. Malatak

22 and

23 LEWIS AND ROCA LLP

24 By s/ Richard A. Halloran  
25 Richard A. Halloran  
26 Shane E. Olafson  
27 Attorneys for Plaintiff  
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