

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)

SUIT NO: _____ OF 2011

BETWEEN

SECURITIES COMMISSION ... PLAINTIFF

AND

1. WIMEMS CORPORATION BERHAD (in liquidation)
2. FLEX-P INDUSTRIES SDN BHD (in liquidation)
3. FONG PIAU (Malaysian NRIC No.: 610524-07-5635)

... DEFENDANTS

STATEMENT OF CLAIM

A. THE PARTIES

1. The Plaintiff (“the SC”) is established pursuant to Section 3 of the *Securities Commission Act 1993* (“the SC Act”), and is empowered to act pursuant to powers conferred upon it *inter alia* by or under the following Acts of Parliament:

- (i) *Capital Markets Services Act 2007* (“the CMSA”);
- (ii) *Securities Commission Act 1993* (“the SCA”);

- (iii) Futures Industry Act 1993;
- (iv) Securities Industry (Central Depositories) Act 1991; and
- (v) Securities Industry Act 1983 (“**the SIA**”).

(collectively referred to as “**the Securities Law**”).

2. The functions of the SC specified in Section 15 (1) of the SCA, insofar as they are relevant to this Suit, include:-

- a) To regulate all matters relating to securities and futures contracts;
- b) To ensure that the provisions of the Securities Laws are complied with;
- c) To take all reasonable measures to maintain the confidence of investors in the securities and futures market by ensuring adequate protection for such investors; and
- d) To suppress illegal, dishonourable and improper practices in dealing in securities and trading in future contracts, and the provision of investment advice or other services relating to securities or futures contract.

3. The 1st Defendant, Wimems Corporation Berhad (“Wimems”), is a company incorporated under the laws of Malaysia on 4-2-2004 as a public limited company with its registered address at 51-21-A, Menara BHL Bank, Jalan Sultan Ahmad Shah, Penang. At all material times, its principal business was investment holding.
4. Wimems was listed on the MESDAQ Market of Bursa Malaysia on 20-1-2006. On or about 10-7-2009, Wimems was delisted from Bursa Malaysia.
5. On or about 22-2-2010, Wimems was ordered to be wound up and the Official Receiver was appointed as its Official Liquidator.
6. At all material times, Wimems’ income was solely generated from the 2nd Defendant, Flex-P Industries Sdn Bhd (“Flex-P”), which is Wimems’ wholly-owned subsidiary company incorporated under the laws of Malaysia on 12-4-1999 with its registered address at 51-21-A Menara BHL Bank, Jalan Sultan Ahmad Shah, 10500 Pulau Pinang, and whose principal business is the design and development of semi-conductors, electrical and electronic components and related products. Flex-P was founded by Fong Piau, the 3rd Defendant.

7. On or about 23-10-2009, Flex-P was also ordered to be wound up and the Official Receiver was appointed as its Official Liquidator.
8. Flex-P Inc. ("**Flex-P Inc.**"), a wholly-owned subsidiary of Flex-P, is incorporated in the United States of America. Flex-P Inc.'s principal activities are the distribution of semi-conductors, electrical and electric components and related products.
9. Wimems, Flex-P and Flex P Inc. are members of the Wimems group of companies ("**the Wimems Group**").
10. Fong Piau, the 3rd Defendant, is a citizen of Malaysia. To the knowledge of the SC, he is ordinarily resident in Malaysia having a last known address at 1D-04-03, Jalan Batu Uban, 11700 Gelugor, Penang. At all material times, Fong Piau was *inter alia* the registered holder of 20,001,567 shares, out of the total authorised share capital of 500,000,000 shares issued by Wimems.
11. At all material times, Fong Piau was the Executive Chairman and Director of Wimems and its controlling will and mind of the Wimems Group. Fong Piau was the promoter for the Initial Public Offering ("**IPO**") exercise of Wimems and a substantial shareholder of Wimems.

Fong Piau is, and was at all material times the *alter ego* of the Wimems Group.

B. FALSE STATEMENTS TO THE PUBLIC

12. Fong Piau caused Wimems to make and/or publish the following material statements, promises and/or forecasts issued by or on behalf of Wimems (“**the False Statements**”) that they knew to be misleading, false and deceptive and/or to induce members of the Malaysian public to invest in Wimems, purchase shares in and/or deal in securities in Wimems. The False Statements are as follows:-

Prospectus

- (i) That the total revenue of the Wimems Group from 1-1-2005 to 30-6-2005 (“**the 1st period in 2005**”) was **RM25,569,000-00** (“**Wimems Group Revenue in the Prospectus**”) at page 98 in Wimems’ Prospectus (“**Prospectus**”) dated 30-12-2005; and

Annual Report

- (ii) That the total revenue of the Wimems Group from 19-8-2005 to 31-12-2005 (“**the 2nd period in 2005**”) was **RM33,494,491-00**

(“Wimems Group Revenue in the Annual Report”) at page 33 in Wimems’ 2005 Annual Report (“Annual Report”).

PARTICULARS OF THE FALSE STATEMENTS

13. The False Statements of Wimems Group Revenue in the Prospectus and the Annual Report, respectively were based *inter alia* upon records of sales to 3 of Wimems’ main customers namely; Wujaya Holdings Sdn Bhd (“Wujaya”), Unity Sales International, USA (“Unity”) and Arlec Australia Limited (“Arlec”), in the Debtor Ledger of Flex-P (“Debtor Ledger”) for the financial period of 1-1-2005 to 31-12-2005, which sales were in fact fictitious and/or false in whole or in part, grossly inflated and/or unsupported by genuine exchange of actual products to the said invoiced values, or at all (“the Fictitious Sales”):-

- (i) Approximately **RM12,552,920** of the reported revenue of Wimems for the 1st period in 2005 of **RM25,569,000** in the Prospectus is in fact, inaccurate and/or false and based upon fictitious and/or non-existent sales purportedly by Flex-P and/or the Wimems Group; and
- (ii) Approximately **RM16,491,080** of the reported revenue of Wimems for the 2nd period in 2005 of **RM33,494,491** in the

Annual Report is in fact, inaccurate and/or based upon fictitious and/or non-existent sales purportedly by Flex-P and/or the Wimems Group.

14. The Fictitious Sales are tabulated and summarized as follows:-

Combined Summary of Fictitious Sales for the 1st and 2nd periods in 2005 in Prospectus (P) and Annual Report (AR)

	Recorded Sales in Debtor Ledger (RM)			Genuine Recorded Sales (RM)			Fictitious Sales (RM)
	P	AR	Total	P	AR	Total	Total
Wujaya	1,037,400	2,710,000	3,747,400	Nil	Nil	Nil	<u>3,747,400</u>
Unity	6,613,900	9,066,040	15,679,940	Nil	Nil	Nil	<u>15,679,940</u>
Arlec	6,155,620	4,715,040	10,870,660	1,254,000	Nil	1,254,000	<u>9,616,660</u>
TOTAL	13,806,920	16,491,080	30,298,000	1,254,000	Nil	1,254,000	<u>29,044,000</u>

(i) **THE SALES TO WUJAYA**

15. The Fictitious Sales to Wujaya (“Sales to Wujaya”) as recorded in the Debtor Ledger of Flex-P for the 1st and 2nd periods in 2005, amounted to RM3,747,400-00, particulars of which sales transactions are as below:-

No.	Date	Invoice Reference No.	Amount (RM)
1.	17-5-2005	I05050007	1,037,400
2.	30-11-2005	I0511013	1,300,000
3.	30-11-2005	I0511014	1,410,000
TOTAL FICTITIOUS SALES TO WUJAYA			3,747,400

16. In furtherance of and to facilitate the making and recording of the above false sales transactions between the Wimems Group and Wujaya, Fong Piau made payments to Wujaya directly amounting to at least **RM2,653,500-00**, purportedly in settlement of the Sales to Wujaya, only for the said sum of RM2,653,500.00 to be transmitted back to Flex-P immediately thereafter.

PARTICULARS

- a) On or about 27-4-2006, Fong Piau remitted a sum of **RM2,653,500-00** to Wujaya; and
- b) On or about 28-4-2006, Wujaya transmitted to Flex-P the sum of **RM2,653,503-20**.

(ii) THE SALES TO UNITY

17. The Fictitious Sales to Unity ("Sales to Unity") for the 1st and 2nd periods in 2005 is recorded by the Defendants to amount to RM15,679,940-00 in the Debtor Ledger and comprise as follows:-

No.	Date	Invoice Reference No.	Amount (RM)
1.	28-01-2005	I05010004	841,320-00
2.	23-2-2005	I05020006	988,000-00
3.	16-3-2005	I05030005	779,000-00
4.	22-3-2005	I05030006	1,151,780-00
5.	22-4-2005	I05040004	1,147,600-00
6.	28-6-2005	I05060005	931,000-00
7.	30-6-2005	I05060006	775,200-00
8.	1-9-2005	I05090002	409,640-00
9.	12-9-2005	I05090004	1,390,800-00
10.	19-9-2005	I05090007	646,000-00
11.	17-10-2005	I0510004	782,040-00
12.	21-10-2005	I0510005	707,560-00
13.	30-11-2005	I0511012	2,565,000-00
14.	19-12-2005	I0512007	2,565,000-00
		TOTAL FICTITIOUS SALES TO UNITY	15,679,940-00