

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

18. The SC's investigations, with the assistance of *inter alia*, the Securities and Exchange Commission of the United States of America ("SEC"), reveal that none of the above transactions are genuine.
19. Although Flex-P's records purportedly show that in respect of the aforementioned invoices, a total amount of RM2,741,320 was paid by Unity and RM12,938,620 was settled by way of payment in kind, Unity has denied either issuing the aforesaid 14 invoices or made any payment in respect of the same, either by cash or in kind.

(iii) THE SALES TO ARLEC

20. Out of the sales to Arlec ("Sales to Arlec") for the 1st and 2nd periods in 2005 recorded by the Defendants amounting to **RM10,870,660.00** in the Debtor Ledger, the fictitious sales to Arlec amounts to RM9,616,660.00 and comprise as follows:-

FICTITIOUS SALES TO ARLEC		
Date	Invoice Reference No.	Amount (RM)
26-01-2005	I05010003 A	841,320-00
15-02-2005	I05020003	1,265,400-00

03-03-2005	I05030001	533,140-00
11-04-2005	I05040002	848,160-00
23-05-2005	I05050008	1,413,600-00
29-11-2005	I0511008	1,064,000-00
30-11-2005	I0511009	1,523,040-00
13-12-2005	I0512002	1,064,000-00
16-12-2005	I0512004	1,064,000-00
	TOTAL FICTITIOUS SALES TO ARLEC	9,616,660-00
GENUINE RECORDED SALES TO ARLEC		
30-06-2005	*I05060007	1,254,000-00
	TOTAL SALES	10,870,660.00

21. The SC's investigations, with the assistance of *inter alia*, the Australian Securities and Investments Commission ("ASIC"), reveal that save for the transaction under Flex-P's Invoice No. I05060007 dated 30-6-2005 in the sum of **RM1,254,000-00** (equivalent to USD330,000 at the then

prevailing exchange rate of USD1=RM3.80), none of the transactions listed above are genuine.

22. In fact, all other transactions of Sales to Arlec recorded and stored in the Debtor Ledger were sham transactions without any *bona fide* exchange of goods.
23. The sham Sales to Arlec were part of a scheme to defraud, deceive and mislead investors and shareholders of Wimems whereby the Defendants falsely made or published or caused to be made or published the Wimems Group Revenue by the inflated sums of **RM6,155,620-00** and **RM4,715,040-00** (as set out in the Prospectus and the Annual Report respectively), totaling the sum of RM10,870,660.00 for the 1st and 2nd Periods in 2005, despite knowing that the genuine sales only amount to RM1,254,000.00.
24. The SC's investigations also disclose that by a scheme designed by the Defendants, no less than **RM2,639,860-00** ("the Arlec Recycled Funds") of receipts recorded in the General Ledger of Flex-P by the Wimems Group as purported settlement of invoiced sales to Arlec were in fact, "recycled funds" originating from Flex-P.

25. The SC's investigations further show that Flex-P's modus operandi to create "recycled funds" is as set out below:-

- (a) on separate occasions, Flex-P would make payment to a company known as Global Memory Solutions Ltd ("GMS"), a company based in Hong Kong and a major supplier of Flex-P, purportedly in respect of sales to Flex-P. At the material time, Fong Piau was a 51% beneficial shareholder in GMS;
- (b) thereafter, GMS would issue payment of a similar sum to a company known as Applan Investments Pty Ltd ("Applan"), based in Australia, purportedly in respect of sales to GMS and/or as a loan advance;
- (c) Applan would then make payment to Flex-P, to settle sums due under various purported invoices issued to Arlec by Flex-P.

C. IPO PROCEEDS

26. Based on the False Statements as set out in the Prospectus and Annual Report published or caused to be published by the Defendants, the Wimems IPO listing exercise generated a sum of RM22,302,960-85 by way of investments in shares in Wimems.

27. In this regard, the Defendants could not have generated a sum in excess of RM22 million for its IPO listing exercise, if not because of the issuance of the false statements. In particular, if not for the false statements, both the prospectus and annual report would have reflected a substantial loss after taxation in the 1st and 2nd periods, as particularized hereinunder.

	Prospectus (for period 1/1/2005- 30/6/2005)	Annual Report (for period 19/8/2005 – 31/12/2005)
Declared profit after taxation	RM 1,676,000	RM 4,541,408
<u>Less Fictitious Transactions</u>	(RM12,552,920)	(RM16,491,080)
Actual Loss after Taxation	RM10,876,920	RM11,949,672

28. By reason of the aforesaid, the SC contends that the Defendants had no intention of utilizing the IPO proceeds in the manner as disclosed in the prospectus. Instead, the Defendants had issued the false statements with the specific intention of diverting the IPO proceeds to repay Wimems' bank borrowings.

D. THE BREACHES

29. By reason of the matters pleaded above, each of the Defendant abovenamed authorized and/or caused the issue of the Wimems Prospectus dated 30-12-2005 which contained the False Statements and/or information that was false and in breach of Sections 44 and 45 read together with Sections 57 and 155 of the SCA 1993.
30. Additionally, by reason of the matters pleaded above, each of the Defendant abovenamed knowingly authorized and/or permitted the making or furnishing of the False Statements to the SC and/or to Bursa Malaysia in the dealing in securities and/or the affairs of Wimems in breach of Section 122B of the SLA.
31. Further and/or alternatively, by reason of the matters pleaded above, each of the Defendant directly or indirectly in connection with the purchase or sale of Wimems shares to the general investing public individually or collectively conspired and/or engaged in an act by way of a scheme to defraud and/or deceive the investors of Wimems and/or made untrue statement of a material fact including the False Statements

in the Prospectus and/or the Annual Report in breach of Sections 87 and 87A of the SIA.

32. The wrongful breaches by Wimems and Flex-P of the material Securities Law herein are breaches by Fong Piau by operation of Section 122 of the SIA and Section 138(2) of the SCA.
33. In addition, Fong Piau, as the Executive Chairman and Director of Wimems and Flex-P, is in breach of, inter alia, section 55 SCA, section 122B SIA and section 87A SIA, by reason of the matters pleaded above, and because Fong Piau had dishonestly and/or fraudulently committed the following:-
 - (a) created fictitious sales transactions to Wujaya, Unity and Arlec, knowing the same to be untrue;
 - (b) signed the directors responsibility statement in the prospectus and the statutory declaration in the Annual Report, confirming the accuracy of the information contained therein, knowing that the declared revenue was untrue and/or falsified;

- (c) designed and/or created a scheme to recycle Flex-P's funds, to coordinate the fictitious transactions in the manner as pleaded in paragraphs 16, 24 and 25 above; and
- (d) diverted the utilization of the IPO proceeds in the manner as described in paragraphs 27 and 28 above.

E. CONSTRUCTIVE TRUSTS

- 34. As its controlling and directing mind, Fong Piau caused Wimems and the Wimems Group to dishonestly and/or fraudulently solicit and receive payments (including from Malaysian investors) for the Wimems IPO exercise in the manners pleaded above.
- 35. In consequence, all the knowledge of Fong Piau acquired in dishonestly and/or fraudulently directing the affairs of Wimems and the Wimems Group are attributed to Wimems and the Wimems Group, which accordingly received all monies from the investors in circumstances of actual and/or constructive knowledge of the dishonesty and/or fraudulent conduct of Fong Piau.

36. In consequence, Fong Piau, Wimems, Flex-P and Flex-P Inc., are holding the monies received from the investors (and any assets or properties that were purchased from the application of such monies) in constructive trust for the benefit of and on behalf of the investors in Wimems.

37. In consequences, the Defendants are:-

- (i) liable to account to the material investors taking up Wimems shares through the Prospectus;
- (ii) liable to account to the material investors taking up Wimems shares based on the information set out in the Annual Report;
- (iii) liable to pay such monies which they have wrongfully and unlawfully gained; and
- (iv) liable to pay damages for breach of Securities Law.

38. The breaches by the Defendants are actionable in law. The SC institutes this Suit *inter alia*, pursuant to its powers conferred under Sections 87, 87A, 90, 100 and 122B of the SLA and Sections 44, 45, 57 and 155 of the SCA.

39. Accordingly, the SC prays for the following relief:-

- a) a Declaration that the Statement of Wimems Group 2005 Revenue of **RM33,494,491-00** at page 33 in Wimems' 2005 Annual Report ("**Annual Report**") is false;
- b) a Declaration that the Statement of Wimems Group 2005 Revenue of **RM25,569,000-00** at page 98 in Wimems' Prospectus dated 30-12-2005 ("**Prospectus**") is false;
- c) a Declaration that the Defendants conspired to defraud the general investing public and investors of Wimems by making or publishing statements pertaining to the revenue of the Wimems Group for the financial year ending 31-12-2005 that they knew or ought reasonably to have known to be false or misleading in the Prospectus and/or Annual Report, within the meaning of Sections 44 and 45 read together with Sections 57 and 155 of the Securities Commission Act 1993 and Sections 122B and/or 87A of the Securities Industry Act 1983;
- d) a Declaration that all profits earned by the Defendants by reason of their making, publishing of misleading statements and information with regard to the revenue of the Wimems Group for

the financial year ending 31-12-2005 in the Prospectus and Annual Report are held in constructive trust for the benefit of affected investors (acting through the Securities Commission in these proceedings);

- e) an Order that all the assets and properties of the Defendants be traced and/or followed, and thereafter paid over to the Securities Commission for the purpose of compensating materially affected investors of Wimems shares whether by way of restitution or otherwise. In the alternative, they may be applied at the discretion of the Securities Commission;
- f) an order that Fong Piau be removed and barred from becoming a director of any other public listed company for a period of 5 years or for such other period and upon such other conditions as may be deemed fit by this Honourable Court;
- g) general and/or Aggravated/ Exemplary Damages against the Defendants;
- h) interest on all sums ordered to be paid at such rate and for such period as this Honourable Court deems fit;

- i) costs; and
- j) such further and/or other relief deemed fit by this Honourable Court.

Dated this day of **28 FEB 2011** 2011.



M/s. Shook Lin & Bok
Solicitors for the Plaintiff

And RM125.00 (or such a sum as may be allowed on taxation) for costs, and also, if the Plaintiff obtains order for substituted service, the further sum of RM60.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff or his solicitors within eight (8) days after service hereof (inclusive of the day of service), further proceedings will be stayed, but if it appears from the indorsement on the writ that the Plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act, 1953, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into court within the said time and notice of such payment in is given to the Plaintiff or his solicitor.

This **Writ of Summons and Statement of Claim** is issued by Messrs. Shook Lin & Bok of 20th Floor, AmBank Group Building, 55, Jalan Raja Chulan, 50200 Kuala Lumpur, Solicitors for the said Plaintiff.

(TEL NO: (03)20311788

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NPK/ST/17523/10/SC/WCB/08 (MN: 1782398) (ATG/A13)

Indorsement as to service

This Writ was served by
by way of personal service on the Defendant (who is known to me) (or who
was pointed out to me by) at
.....
on the day of 2011.

Indorsed the day of 2011

Process Server