

Magistrate Judge Donohue



08-MJ-00455-CMP

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

v.

PAUL THOMAS JOHNSTON and  
PARRISH L. JONES,  
Defendants.

MAGISTRATE'S DOCKET NO.  
CASE NO. **MJ08-455**  
COMPLAINT for VIOLATION

Title 18, United States Code,  
Sections 1343 and 2

BEFORE the Honorable James P. Donohue, United States Magistrate Judge, Seattle, Washington.

**COUNT 1**  
(Wire Fraud)

Between March of 2004 and on or about September 30, 2008, within the Western District of Washington and elsewhere, the defendants, PAUL THOMAS JOHNSTON and PARRISH L. JONES, did devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and to execute and attempt to execute such scheme and artifice, by means of wire communications in interstate and foreign commerce as follows

A. Introduction

1. Entellium Corporation is a Delaware Corporation which was incorporated on February 5, 2004. Entellium is a privately held corporation which sells customer relationship management software. Entellium is located at 1011 Western Avenue, Suite 800, Seattle, Washington. Entellium also has a business location in Malaysia.

*AUSA Paul Blackstone*

1 2. PAUL THOMAS JOHNSTON was one of the founders of Entellium and  
2 has served as the Chief Executive Officer from at least February 5, 2004, until his  
3 resignation on September 30, 2008

4 3. PARRISH L. JONES served as the Chief Financial Officer of Entellium  
5 from at least February 5, 2004 until his resignation on September 30, 2008.

6 B. The Scheme and Artifice to Defraud

7 4. It was a part of the scheme and artifice to defraud that JOHNSTON and  
8 JONES falsely inflated the revenue figures of Entellium to induce investors to invest  
9 funds into Entellium. Based partly on these false representations, investors invested over  
10 \$50 million into Entellium between March 2004 and September 2008.

11 5. It was a further part of the scheme and artifice to defraud that on or about  
12 March 21, 2008, JOHNSTON and JONES attended an Entellium Board of Directors  
13 meeting. One of the directors represented Ignition, an entity which had invested  
14 significant funds into Entellium and was contemplating making additional investments.  
15 During the board meeting, JOHNSTON and JONES falsely represented that Entellium had  
16 significantly more revenue than what was actually generated. JOHNSTON and JONES  
17 knew this representation was false and knew that they had overstated Entellium's revenue.

18 6. It was a further part of the scheme and artifice to defraud that on or about  
19 April 21, 2008, JOHNSTON made a presentation to Ignition in which he provided a  
20 "Business Update" which falsely represented that Entellium had revenues of \$6.3 million  
21 in 2007, when in fact JOHNSTON knew that the revenues were significantly less than  
22 that. During this meeting, JOHNSTON solicited an additional \$2 million investment from  
23 Ignition, in the form of a bridge note.

24 7. It was a further part of the scheme and artifice to defraud that on April 30,  
25 2008, Ignition entered into a Bridge Note Purchase Agreement with Entellium pursuant to  
26 which Ignition agreed to invest approximately \$2 million into Entellium in the form of a  
27 convertible promissory note.  
28

1 8. It was a further part of the scheme and artifice to defraud that between  
2 April 30, 2008, and May 9, 2008, Ignition caused \$1,999,895.12 to be wire transferred  
3 from Ignition's bank account to Entellium's bank account.

4 C. Execution of the Scheme and Artifice to Defraud

5 On or about May 9, 2008, within the Western District of Washington and  
6 elsewhere, PAUL THOMAS JOHNSTON and PARRISH L. JONES, having devised a  
7 scheme and artifice to defraud investors and to obtain money and property by false and  
8 fraudulent pretenses, representations, and promises for the purpose of executing such  
9 scheme and attempting to do so, did knowingly and willfully cause an employee of  
10 Ignition in Bellevue, Washington, to transmit and cause to be transmitted in interstate  
11 commerce writings, signs and signals to Square 1 Bank in Durham, North Carolina,  
12 instructing Square 1 Bank to transfer \$1,520,220.34 in funds to Entellium's bank account  
13 at Silicon Valley Bank in Santa Clara, California..

14 All in violation of Title 18, United States Code, Sections 1343 and 2.

15 The undersigned complainant, being duly sworn, states:

16 1. I, Patrick Garry, have been a Special Agent of the FBI for over two years. I  
17 am responsible for investigating violations of federal criminal statutes over which the FBI  
18 has investigative jurisdiction, including titles and sections regarding wire fraud and mail  
19 fraud.

20 2. I make this affidavit in support of a Complaint charging PAUL T.  
21 JOHNSTON and PARRISH L. JONES with Wire Fraud. The information contained in  
22 this affidavit is based on my personal knowledge, interviews with witnesses, and review of  
23 documents and other evidence.

24 **SUMMARY OF INVESTIGATION**

25 3. I believe that the investigation leading to the filing of this affidavit has  
26 established probable cause to believe that PAUL THOMAS JOHNSTON and PARRISH  
27 L. JONES have engaged in wire fraud.  
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**DETAILS OF INVESTIGATION**

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4. On October 3, 2008, a lawyer representing Entellium contacted the United States Attorney's Office in Seattle to report possible criminal activity by PAUL THOMAS JOHNSTON and PARRISH L. JONES. On that date, I began an investigation of the matter on behalf of the FBI.

5. The lawyer representing Entellium provided me with a copy of an e-mail sent on September 30, 2008, from PAUL JOHNSTON to two members of Entellium's Board of Directors. That e-mail stated as follows:

-----Original Message-----  
From: Paul Johnston [mailto:pj@entellium.com]  
Sent: Tuesday, September 30, 2008 11:08 AM Pacific Standard Time  
To: Pete Solvik; Jonathan D. Roberts  
Subject: Resignation

Jonathan and Pete

This is a very difficult email to write but effective immediately both Parrish and I are tendering our resignation.

We have both made a grave mistake to misrepresenting our revenue reporting to the board. Looking back at the time we thought we would be able to right the wrong and correct our representation, but we have not been able to do this. Revenues have been overstated since 2004 with a delta of approximately \$400k a month. All other representations are accurate and no one else in the company was aware of this.

Clearly this is devastating news and something we are both regret and are deeply sorry for. Our families are not aware of this and we are telling them now. Clearly this is going to be a very difficult period all around for everyone.

My recommendation is that payroll is funded and that you work with the management team in place to conduct a transition and continue to build the business. We will do what we can to ensure a level of continuity.

Parrish and I will work through the process to ensure that all investors can continue to protect downside and right the ship. As I said, all other representations are accurate and the business has traction.

For the next 24 hours we need to discuss the consequences of our actions with family members and ensure we do what we can to make the best of a terrible situation for everyone concerned.

Deeply shamed and sorry.

> PJ

1 Paul Johnston | President & CEO  
 D: 206.245.2388  
 2 pj@entellium.com  
 SMB Back Talk | <http://www.entellium.com/blog>

3  
 4 6. On October 6 and October 7, 2008, I interviewed Sonya Huntzinger, the  
 Controller of Entellium. Ms. Huntzinger provided the following information:

5 a. Huntzinger has been the controller since September of 2006 and  
 6 reported directly to Entellium's CFO, PARRISH L. JONES.

7 b. On or about September 26, 2008, Melisah Wojtacha, the VP of  
 8 Human Resources was cleaning out the desk of Entellium's former VP of Sales when she  
 9 discovered five Board Books. A Board Book consisted of financial information and other  
 10 documents compiled by JOHNSTON and JONES which was presented at Board of  
 11 Directors meetings. Wojtacha brought the books to the attention of Huntzinger.

12 c. Huntzinger reviewed the Board Books and discovered a discrepancy  
 13 between the revenue that was reported to the Board and the actual revenue.

14 d. Huntzinger reviewed Entellium's financial data and provided the  
 15 following summary of the difference between what was reported to the Board of Directors  
 16 and the actual revenue:

| 18 Revenue -<br>Entellium Corporation | Per Board<br>Books  | Actual<br>Revenue  | Variance            |
|---------------------------------------|---------------------|--------------------|---------------------|
| 19 2006                               | \$3,950,362         | \$582,079          | \$3,368,283         |
| 20 2007                               | \$6,291,705         | \$1,446,238        | \$4,845,467         |
| 21 2008 - YTD                         | \$5,218,865         | \$1,738,546        | \$3,480,319         |
| 22 <b>TOTAL</b>                       | <b>\$15,460,932</b> | <b>\$3,766,863</b> | <b>\$11,694,069</b> |

23 e. On or about September 29, 2008, Huntzinger notified one of the  
 24 members of the Board of her discovery. The Board then decided to accelerate the process  
 25 of having a contract CFO review Entellium's financial records.

26 f. It was Huntzinger's understanding that on September 30, 2008, the  
 27 board notified PAUL JOHNSTON that a contract CFO was going to come to Entellium to  
 28

1 "check some things out." Shortly after learning this information, PAUL JOHNSTON  
2 e-mailed his resignation letter, set forth in paragraph 5 above, to two board members.

3 g. On September 30, between 11:00 am and 11:30 am, Huntzinger spoke  
4 to JONES on the telephone after JONES' resignation. JONES told Huntzinger that he was  
5 glad that the issue of overstated revenues was out in the open. JONES said that he was  
6 grateful that he was not the one who had to bring it out in the open.

7 h. JOHNSTON and JONES put together the Board Books. Huntzinger  
8 advised that there was no basis for the inflated revenue numbers that were presented to the  
9 Board and that the numbers presented to the Board were not a mistake.

10 i. On a monthly basis, Huntzinger provided JONES with the true  
11 revenue figures. Huntzinger believes that JOHNSTON was also aware of those figures.

12 7. On October 6 and October 7, 2008, I interviewed Craig Sherman, outside  
13 counsel for Entellium Corporation since January 2007. Sherman provided the following  
14 information:

15 a. Entellium is a Delaware corporation, which was incorporated on  
16 February 5, 2004. Entellium's business is located at 1011 Western Avenue, Suite 800,  
17 Seattle, Washington.

18 b. JOHNSTON is one of the founders of Entellium and has acted as  
19 CEO from at least February 5, 2004, until his resignation on September 30, 2008.

20 c. JONES has acted as CFO of Entellium from at least February 5, 2004,  
21 until his resignation on September 30, 2008.

22 d. To date, Entellium has raised over \$50 million from private investors.  
23 The largest investor is Ignition, which is a venture capital group based in Bellevue,  
24 Washington. Ignition invested over \$19 million between March 2004 and September  
25 2008.

26 e. Two of the Ignition partners serve on the board of Entellium.

27 f. Since 2006, Entellium has held board meetings approximately every  
28 four to twelve weeks.

1 g. Sherman has attended a majority of the Entellium board meetings  
2 since January 2007. During the board meetings, JOHNSTON and JONES provided Board  
3 Books which contained revenue figures for Entellium.

4 h. At the board meetings, JOHNSTON made presentations to the Board.  
5 JONES also made presentations regarding Entellium's financial information, including the  
6 inflated revenue figures contained in the Board Books. During JONES' presentation of  
7 financial information, JOHNSTON would nod in agreement. Sherman has provided me  
8 with several Board Books and he has told me that the revenue figures in each of these  
9 books was falsely inflated.

10 i. Sherman attended a board meeting on March 21, 2008, and he has  
11 provided me with the Board Book from that meeting. JOHNSTON and JONES attended  
12 that meeting as did Jonathan Roberts, one of the Ignition general partners. The Board  
13 Book falsely reflected the revenue of Entellium for January and February of 2008.  
14 JONES, with JOHNSTON'S agreement, would have orally discussed these false revenue  
15 figures with the Board.

16 8. On October 6, 2008, I interviewed Jon Anderson, a General Partner of  
17 Ignition, an investor in Entellium Corporation. Anderson provided the following  
18 information:

19 a. Ignition has invested approximately \$19,721,521 in Entellium  
20 Corporation in the form of investments and bridge notes.

21 b. The general partners of Ignition relied on the financial information  
22 contained in the Board Books and on presentations by JOHNSTON and JONES when  
23 deciding whether to invest in Entellium Corporation.

24 c. Had the general partners of Ignition known the true revenue figures of  
25 Entellium, they would not have invested in the company.

26 9. On October 6 and October 7, 2008, I interviewed Jonathan Roberts, General  
27 Partner of Ignition, an investor in Entellium Corporation. Roberts provided the following  
28 information:

1 a. Roberts relied on the revenue information presented by JOHNSTON  
2 that was included in the Board Books.

3 b. Roberts would not have decided to invest in Entellium had he known  
4 the true revenue figures.

5 c. On April 21, 2008, JOHNSTON met with several Ignition general  
6 partners, including Jonathan Roberts. JOHNSTON provided the partners with a document  
7 entitled "Business Update." This document represented that Entellium had revenues of  
8 \$6.3 million in 2007. (As shown above in paragraph 6(d), the actual revenues for 2007  
9 were only \$1,446,238.) During this meeting JOHNSTON solicited an additional  
10 \$2 million investment from Ignition. Shortly thereafter, Ignition agreed to make this  
11 additional investment.

12 10. On October 7, 2008, I interviewed Jack Ferry, the Director of Finance for  
13 Ignition, and Steven Yentzer, an attorney representing Ignition. They provided the  
14 following information

15 a. On April 30, 2008, Ignition entered into a Bridge Note Purchase  
16 Agreement with Entellium pursuant to which Ignition agreed to invest approximately  
17 \$2 million into Entellium in the form of a convertible promissory note. The agreement, of  
18 which I have a copy, is signed by PAUL JOHNSTON on behalf of Entellium and Jonathan  
19 Roberts on behalf of Ignition.

20 b. Between April 30, 2008, and May 9, 2008, Ignition caused  
21 \$1,999,895.12 to be wire transferred from Ignition's bank accounts at Square 1 Bank in  
22 Durham, North Carolina and another account at Silicon Valley Bank in Santa Clara,  
23 California to Entellium's bank account at Silicon Valley Bank.

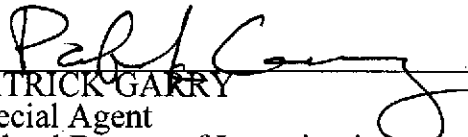
24 c. On May 9, 2008, an Ignition employee located in Bellevue,  
25 Washington, contacted Square 1 Bank in Durham, North Carolina via the internet to  
26 initiate a wire transfer of \$1,520,220.34 from Ignition's bank account to Entellium's bank  
27 account.

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CONCLUSION

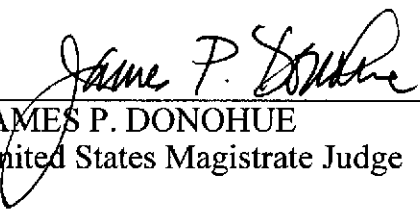
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11. The above facts are true and correct to the best of my knowledge and belief. Based on the above, I believe there is probable cause to believe that PAUL T. JOHNSTON and PARRISH L. JONES have committed acts in violation of Title 18, United States Code, Sections 1343 and 2 as alleged in this Complaint and Affidavit.

  
PATRICK GARRY  
Special Agent  
Federal Bureau of Investigation

Based on the Complaint and Affidavit sworn to before me, and subscribed in my presence, the Court hereby finds that there is probable cause to believe the defendants committed the offenses set forth in the Complaint.

Dated this TR day of October, 2008.

  
JAMES P. DONOHUE  
United States Magistrate Judge