

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
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12 UNITED STATES OF AMERICA,	)	No.
13 Plaintiff,	)	
14 v.	)	VIOLATIONS: 18 U.S.C. § 1343 – Wire
15 YERVANT DAVID LEPEJIAN,	)	Fraud
16 Defendant.	)	SAN FRANCISCO VENUE

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18 INFORMATION

19 The United States Attorney charges:

20 BACKGROUND

21 1. HPL Technologies, Inc. (“HPL”) is a Delaware corporation with its principal  
22 place of business in San Jose, California. HPL provides yield-optimization and productivity  
23 improvement solutions for the semi-conductor industry and for flat panel display producers to  
24 enhance the efficiency of the technology development, design, test, and fabrication process.  
25 HPL’s core product is software.

26 2. At all times relevant to the charge herein, defendant YERVANT DAVID  
27 LEPEJIAN was HPL’s President, Chief Executive Officer (“CEO”), and a Director. HPL is a  
28 publicly held corporation, whose shares were registered with and traded under the symbol

1 “HPLA” on the National Association of Securities Dealers Automated Quotation system  
2 (“NASDAQ”). NASDAQ is an efficient national securities market that uses computers,  
3 telephones, the mails and other instrumentalities of interstate commerce.

4 3. HPL’s direct sales efforts have focused primarily on licensing its software to  
5 integrated device manufacturers (“IDMs”) as well as semi-conductor original equipment  
6 manufacturers (“OEMs”), who bundle HPL software with their hardware. HPL derived revenues  
7 primarily by licensing its software to customers.

8 4. In March of 2000, HPL entered into a distribution agreement with Canon Sales  
9 Co. (“Canon”), under which Canon was appointed as HPL’s exclusive distributor of certain HPL  
10 products in Japan. The term of the distribution agreement is through March 2003.

11 5. In July 2001, HPL had its initial public offering of common stock, in which it sold  
12 a total of 6,900,000 shares of common stock for aggregate gross offering proceeds of \$75.9  
13 million.

14 6. In approximately October 2001, HPL established a subsidiary in Tokyo, Japan  
15 (“HPL Japan”).

16 7. Since July 2001, as a public company, HPL was required to file quarterly reports  
17 (on Form 10-Q) and annual reports (on Form 10-K) with the United States Securities and  
18 Exchange Commission (the “SEC”). The Form 10-Q included unaudited financial statements  
19 and the Form 10-K included audited financial statements.

20 8. In 2001 and 2002, Pricewaterhouse Coopers, LLP (“PwC”), a public accounting  
21 firm, acted as the outside auditors of HPL’s financial statements.

22 9. For fiscal year 2002, ending on March 31, 2002, HPL reported worldwide  
23 revenues of \$37,154,000 and net income of \$6,744,000 million. On or about July 19, 2002, HPL  
24 announced that it had discovered accounting irregularities, and NASDAQ halted trading of HPL  
25 stock at \$14.10 per share. On or about July 22, 2002, HPL announced that because of  
26 irregularities in recognizing revenue, it would restate its 2002, and possibly 2001, financial  
27 results. The following chart summarizes the percentages by which HPL overstated its revenues  
28 and net income to the investing public as a result of the defendant’s fraudulent conduct, which is

INFORMATION

1 further described herein:

	<b>Reported Revenue</b>	<b>Fake Canon Sales</b>	<b>Fake ST Micro Sales</b>	<b>Fake Sales as % of Reported Revenue</b>
<b>Q4 01</b>	\$4.4M	\$1.6M	--	36%
<b>FY 2001</b>	\$13.4M	\$1.6M	--	12%
<b>Q1 02</b>	\$5.6M	\$3.5M	\$0.9M	79%
<b>Q2 02</b>	\$7.0M	\$5.3M	\$1.1M	91%
<b>Q3 02</b>	\$10.9M	\$6.6M	\$0.08M	61%
<b>Q4 02</b>	\$13.7M	\$11.3M	\$0.03M	83%
<b>FY 2002</b>	\$37.2M	\$26.7M	\$2.1M	77%

16 **II. THE SCHEME TO DEFRAUD**

17 10. Beginning by at least March 2001 and continuing through in or about July 2002,  
18 within the Northern District of California, and elsewhere, the defendant YERVANT DAVID  
19 LEPEJIAN did knowingly devise and attempt to devise a scheme and artifice to defraud HPL  
20 Technologies, the shareholders of HPL Technologies, the investing public, and the SEC, and to  
21 deprive HPL Technologies of the intangible right to his honest and faithful services, in violation  
22 of Title 18, United States Code, Sections 1343 and 2.

23 11. It was part of the scheme and artifice to defraud that the defendant LEPEJIAN  
24 directly and indirectly, would and did:

25 a. cause false and illusory sales to be recorded as revenue by HPL in  
26 violation of Generally Accepted Accounting Principles (“GAAP”) and HPL’s own internal  
27 revenue recognition policies;  
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INFORMATION

1           b.       make and cause to be made material false statements to HPL's auditors  
2 and to the SEC and the public regarding HPL's revenue and profits.

3           c.       deprive his employer HPL Technologies of the intangible right to his  
4 honest and faithful services by creating false sales, causing those false sales to be recognized as  
5 revenue, and making and causing to be made material false statements to HPL, its auditors, the  
6 SEC, and the public.

7           12.      The purpose of the scheme and artifice to defraud was to falsely inflate HPL's  
8 revenue and profits, to meet or exceed HPL's and stock analysts' forecasts for HPL's financial  
9 performance, to inflate and sustain HPL's stock price, and to artificially sustain the growth of the  
10 company LEPEJIAN founded.

11           A. False Transactions and Accounting Entries

12           13.      As part of the scheme and artifice to defraud, the defendant did knowingly and  
13 willfully commit the following fraudulent acts, among others:

14           1. The ST Micro False Sales

15           14.      In or about June, 2001, the defendant created a false purchase order purporting to  
16 be from ST Microelectronics for the purchase of \$1,035,000 of HPL software during that quarter,  
17 and fraudulently provided that purchase order to HPL, its CFO, and PwC so that the amount of  
18 the false purchase order would be recorded as revenue by HPL.

19           15.      To make it appear as though ST Microelectronics paid the \$1,035,000, the  
20 defendant borrowed money from a friend, deposited \$1,035,000 into HPL's bank account and  
21 falsely informed HPL's CFO that the money deposited was a payment from ST Microelectronics  
22 for the purchase of HPL software.

23           16.      On or about September 13, 2001, the defendant created a false confirmation from  
24 ST Microelectronics that purported to confirm the existence of the \$1,035,000 purchase of HPL  
25 software and faxed that confirmation to HPL and PwC.

26           17.      On or about June 28, 2002, the defendant deposited \$1,300,000 into HPL's bank  
27 account and falsely informed HPL's CFO that the money deposited was a payment from ST  
28 Microelectronics for the purchase of HPL software. In fact, the money deposited was a personal

INFORMATION

1 loan from UBS PaineWeber deposited for the purpose of making it appear as if ST  
2 Microelectronics was paying for previously purchased HPL software.

3 2. The Canon Roundtrip Transaction

4 18. Between on or about October 3 and October 9, 2001, the defendant caused HPL to  
5 engage in a roundtrip transaction to make it appear as though Canon was paying approximately  
6 \$3,200,000 for four purchase orders and related invoices for the purchase of HPL software. In  
7 fact, the Canon purchase orders were false purchase orders created by the defendant, HPL had  
8 not sold \$3,200,000 of product to Canon, the payment allegedly from Canon was in reality a  
9 payment from HPL, through HPL Japan, to itself, and the \$3,200,000 was used to pay invoices  
10 that had previously been improperly recorded as revenue by HPL.

11 3. The False Canon Purchase Orders and Confirmations

12 19. Beginning as early as March 2001, the defendant began to create false and  
13 fraudulent purchase orders from Canon to HPL in order to falsely inflate HPL's revenues.  
14 Between approximately March 2001 and June 2002, the defendant created and provided to HPL,  
15 its CFO, and its auditors over 30 false purchase orders and/or confirmations.

16 20. Between on or about May 7 and 9, 2002, the defendant provided to the CFO of  
17 HPL a confirmation allegedly from Canon purporting to confirm \$11,826,730 of total billings by  
18 HPL to Canon for the period January 1 to March 31, 2002. In fact, HPL had billed Canon only  
19 \$620,601.14 during that period, and the majority of the purchase orders from Canon between  
20 January 1 and March 31, 2002 were false purchase orders created by the defendant and provided  
21 to HPL and its CFO. The confirmation was falsely and fraudulently created by the defendant and  
22 provided to HPL, its CFO, and PwC so that the entire \$11,826,730 could be recorded as revenue.

23 21. On or about June 18, 2002, at the request of PwC, the defendant arranged a  
24 conference call between himself, an auditor and a person allegedly from Canon so that the Canon  
25 representative could orally confirm for the auditors that the sales by HPL to Canon between  
26 January 1 and March 31, 2002 totaled \$11,826,730. In fact, however, the defendant arranged the  
27 call with a person who was not a Canon representative, falsely represented to the auditor that the  
28 person was a Canon representative, and caused the person to falsely represent that Canon had

INFORMATION

1 purchased the product stated in the false confirmation created by the defendant.

2 4. The False Canon Payment

3 22. In or about January 2002, the defendant caused the transfer of approximately  
4 \$2,000,000 to HPL's account that was purportedly a payment from Canon for previously  
5 purchased HPL software. In fact, the previous purchase orders were false purchase orders  
6 created by the defendant, and the \$2,000,000 was a personal loan that the defendant had received  
7 in approximately December 2001 from UBS Warburg. To conceal the source of the funds, the  
8 defendant falsified a copy of HPL's bank statement and provided that statement to HPL's CFO.

9 5. The False Japanese Bank Statement and Confirmation

10 23. In or about January 2002, the defendant falsely and fraudulently altered the  
11 Japanese bank statements for HPL Japan to make it appear as though payments for false Canon  
12 purchase orders created by the defendant had been made to the HPL Japan bank account.  
13 Thereafter the defendant fraudulently provided the altered bank statements to HPL and PwC.

14 24. On or about May 7, 2002, the defendant falsely created and submitted to HPL and  
15 PwC a confirmation purporting to be from HPL Japan's bank, Mizuho Bank, and purporting to  
16 confirm an account balance of 1,739,209,577 yen, which total was based upon the false and  
17 altered bank statements submitted to HPL and PwC purporting to reflect payment for the false  
18 Canon purchase orders.

19 B. False Statements to the SEC and the Investing Public

20 25. As part of the scheme and artifice to defraud, the defendant YERVANT DAVID  
21 LEPEJIAN did knowingly and willfully make and cause HPL to make the following false  
22 statements, among others, to the investing public and to the SEC.

23 26. On or about September 13, 2001, HPL filed with the SEC its Form 10-Q for the  
24 quarter ending June 30, 2001, which was signed by the defendant and which, as the defendant  
25 knew, was materially false in that it reported revenue that was based upon false and fraudulent  
26 purchase orders created by the defendant.

27 27. On or about November 14, 2001, HPL filed with the SEC its Form 10-Q for the  
28 quarter ending September 30, 2001, which was signed by the defendant and which, as the

INFORMATION

1 defendant knew, was materially false in that it reported revenue that was based upon false and  
2 fraudulent purchase orders created by the defendant.

3 28. On or about February 14, 2002, HPL filed with the SEC its Form 10-Q for the  
4 quarter ending December 31, 2001, which was signed by the defendant and which, as the  
5 defendant knew, was materially false in that it reported revenue that was based upon false and  
6 fraudulent purchase orders created by the defendant.

7 29. On or about June 24, 2002, HPL filed with the SEC its Form 10-K for the fiscal  
8 year ending March 31, 2002, which was signed by the defendant and which, as the defendant  
9 knew, was materially false in that it reported revenue that was based upon false and fraudulent  
10 purchase orders created by the defendant.

11 COUNT ONE: (18 U.S.C. § 1343 – Wire Fraud)

12 30. Paragraphs 1 through 29 are incorporated here by reference.

13 31. On or about June 24, 2002, in the Northern District of California and elsewhere,  
14 the defendant

15 YERVANT DAVID LEPEJIAN

16 for the purpose of executing the scheme and artifice to defraud set forth above, did knowingly  
17 transmit and cause to be transmitted by means of wire communication in interstate and foreign  
18 commerce, SEC Form 10-K for HPL Technologies for the fiscal year ending March 31, 2002.

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

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21 DATED: KEVIN V. RYAN  
22 United States Attorney

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CHARLES B. BURCH  
Chief, Criminal Division

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(Approved as to form: \_\_\_\_\_)  
AUSA: Boersch

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