

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

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| <b>SECURITIES AND EXCHANGE COMMISSION,</b> | : |                             |
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| <b>Plaintiff,</b>                          | : |                             |
| vs.  | : | <b>Case No: 08 CV 13139</b> |
|  | : |                             |
| <b>SCOTT HIRTH, and</b>                    | : |                             |
| <b>PROQUEST COMPANY, now known as</b>      | : |                             |
| <b>VOYAGER LEARNING COMPANY</b>            | : |                             |
|  | : | <b>JURY TRIAL REQUESTED</b> |
| <b>Defendants.</b>                         | : |                             |

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**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (the “Commission”), for its Complaint against Scott Hirth (“Hirth”) and ProQuest Company, now known as Voyager Learning Company (collectively “ProQuest”), alleges as follows:

**INTRODUCTION**

1. This case concerns an accounting fraud scheme at ProQuest perpetrated by Defendant Hirth, the former Chief Financial Officer of ProQuest’s Information and Learning Division (“PQIL”). At the end of monthly and quarterly reporting periods, from at least 2001 through 2005, Hirth made fraudulent manual journal entries in order to favorably alter ProQuest’s financial results. These manual journal entries were adjustments to the balances in certain ProQuest accounts and were designed to increase revenue and decrease expenses at ProQuest. These entries, which had no basis and were unsupported, were made in four key areas of PQIL’s accounting – prepaid royalty, deferred revenue, prepaid commissions and accrued royalty payable. Through these false accounting entries, Hirth materially inflated ProQuest’s reported Earnings Before Interest and Taxes (“pre-tax earnings”) for 2001 through 2004 and the

first three quarters of 2005. This false, pre-tax earnings information was disclosed to the investing public in ProQuest's financial reports and filings such as its Form 10-K and 10-Q filings with the Commission.

2. As part of his scheme, Hirth created false documentation to purportedly support the balances in the manipulated accounts. For example, Hirth's account reconciliation spreadsheets contained "hidden rows" so that false account entries were hidden when printed in hardcopy. Hirth also used "white font" in these spreadsheets, which placed false information in white-color text so that they were invisible. Hirth's deceptive intent in carrying out his fraudulent accounting scheme is further evident in a number of notes he authored. These notes contained references to being "caught" with accounting issues, "cooking the books," the possibility of going to "jail," and references to accounting scandals at "Enron and Worldcom."

3. Hirth's motivation for the fraudulent scheme was his desire to be promoted to a senior management position at ProQuest and also monetary gain as his compensation was tied to PQIL's financial performance.

4. After ProQuest disclosed the accounting scheme in its public filings, it lost over \$437 million in market capitalization. ProQuest's stock price dropped from \$29.41 to \$12.31 per share between February and April 2006. On August 31, 2007, ProQuest restated its results for 2001 through 2004 and the first three quarters of 2005. In this restatement, ProQuest reduced pre-tax earnings by \$129.9 million in areas where Hirth engaged in his scheme. Put another way, Hirth's scheme overstated pre-tax earnings by 31% between 2001 and the first three quarters of 2005. As of July 21, 2008, ProQuest was quoted at \$4.95 a share on the Pink Sheets OTC Electronic Markets and is only a fraction of the company that it used to be before Hirth's scheme.

5. Between 2001 and 2005, ProQuest failed to devise and maintain a system of internal accounting controls that could have prevented Hirth from falsifying hundreds of journal entries to ProQuest's general ledger. ProQuest had inadequate controls over the posting of manual journal entries and little or no internal controls to determine whether these journal entries were supportable and necessary. This failure, among others, allowed Hirth to carry out his scheme without detection for almost five years.

6. ProQuest also failed to properly apply basic accounting principles during this period. Specifically, in August 2007, ProQuest corrected for accounting errors it discovered during its restatement analysis, and reduced pre-tax earnings by \$113.2 million for 2001 through 2005. Some of ProQuest's significant errors occurred in its accounting for internally-developed software costs, product masters costs, and lease accounting, which overstated pre-tax earnings by a total of \$38.5 million. Moreover, as a result of Hirth's scheme and these accounting errors, ProQuest failed to keep books and records that accurately reflected its financial results.

7. Defendant Hirth has engaged in and, unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1, 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2], and for aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and (B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

8. Defendant ProQuest has engaged in and, unless restrained and enjoined by the Court, will continue to engage in acts and practices which constitute and will constitute violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and (B)], and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13].

### **JURISDICTION AND VENUE**

9. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)].

10. The Court has jurisdiction of this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. § 77t(b) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

11. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [17 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. ProQuest was headquartered in Ann Arbor, Michigan between 2001 and 2005 and many of the acts, practices, transactions and courses of business alleged herein occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan. Hirth was a former employee of ProQuest and he is also a resident of Carleton, Michigan, which is within this district.

12. Defendants, directly or indirectly, have made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein in this Complaint.

## **DEFENDANTS**

13. Scott Hirth, age 41, is a resident of Carleton, Michigan. Hirth was the Vice-President of Finance and Chief Financial Officer of ProQuest's Information and Learning Division from 1999 through 2005. On May 25, 2006, ProQuest terminated his employment after determining that Hirth orchestrated an accounting fraud scheme at ProQuest.

14. ProQuest was a Delaware corporation with its headquarters located in Ann Arbor, Michigan between 2001 and 2005. ProQuest was formerly known as Bell & Howell Company from 1907 to 2001. Before March 28, 2007, ProQuest was a publicly traded corporation on the New York Stock Exchange and its securities were registered pursuant to Section 12(b) of the Exchange Act. On March 28, 2007, the NYSE suspended trading in ProQuest's shares because it failed to timely file its December 31, 2005 Form 10-K and certain of its 2006 fiscal Form 10-Q and 10-K. On June 30, 2007, ProQuest changed its name to Voyager Learning Company, which currently trades its securities on the Pink Sheets Electronic OTC Markets.

## **FACTS**

### **A. Background**

15. ProQuest was a company that specialized in aggregating, organizing and packaging data from various publishers to provide information-service products to its customers. From 2001 through 2004, ProQuest consisted of two primary business segments: ProQuest Business Solutions and PQIL. During that time-period, PQIL accounted for approximately 60% of ProQuest's revenue and ProQuest Business Solutions accounted for the remainder.

16. PQIL provided published materials to schools, academic institutions, and libraries worldwide. PQIL licensed content from publishers, converted this published information to microfilm, print and electronic form, and often collected this information into an electronically

accessible database. PQIL added value by providing proprietary abstracts, indices, database navigation tools, and other convenient user-interface elements. PQIL had several product lines, including electronic published products, traditional products (such as newspapers and microfilm) and classroom products (such as course materials and textbook supplements).

17. From 1999 through 2005, Scott Hirth was PQIL's Vice-President of Finance and Chief Financial Officer and responsible for PQIL's accounting and financial reporting. Hirth joined ProQuest in 1994 as a financial analyst and rapidly moved up the ranks by serving in different managerial positions in the finance department until he became the CFO of PQIL in 1999.

#### **B. Hirth's Fraudulent Scheme at ProQuest**

18. From at least 2001 through 2005, Hirth perpetrated a fraudulent scheme to falsely inflate PQIL's pre-tax earnings through unsupportable manual journal entries in PQIL asset and liability accounts. These false manual journal entries resulted in increases in revenue and decreases in expenses for PQIL, which materially increased ProQuest's reported pre-tax earnings.

#### **Hirth's Manual Journal Entries**

19. A manual journal entry at PQIL was a manual adjustment to an account balance that was posted to ProQuest's general ledger. Information from ProQuest's general ledger was used to prepare ProQuest's financial reports, such as its Form 10-K and 10-Q filings, that were filed with the Commission. Hirth directed the entry of unsupportable manual journal entries at the end of months and quarters in four key areas of PQIL's accounting – prepaid royalty, deferred revenue, prepaid commissions and accrued royalty payable.

20. In his scheme, Hirth ignored ProQuest's policy for the posting of manual journal entries. This policy required that supporting documentation be provided for each manual journal entry. In contravention of this policy, Hirth did not provide appropriate, or in many cases, *any* backup support for his manual journal entries. Rather, over the course of five years, Hirth merely filled out a manual journal entry request form identifying the account number and the adjustment amount. He submitted this form for posting without appropriate supporting information.

21. As the CFO of PQIL, Hirth knew that his subordinates would not question his authority to direct the entry of his manual journal entries. In fact, these subordinates did not prevent Hirth from directing the entry of manual journal entries without backup support. In essence, Hirth's power to make these unsupported entries was absolute and unchecked.

22. Hirth's manual journal entries were often large (in the millions) and consisted of round-dollar entries. Hirth made these unsupported entries when PQIL closed its books for the month or quarter. This allowed Hirth to make his unsupported adjustments when he had a better understanding of how PQIL had performed for the previous period.

23. Hirth knew that the unsupported manual journal entries he posted would significantly alter the balances in the PQIL general ledger. Hirth knew that the PQIL financial information he submitted for each month, quarter and annual period would be consolidated into ProQuest's overall financial statements and disclosed to the investing public in ProQuest's financial reports that were filed with the Commission. Hirth also knew that PQIL's financial results would be separately listed in ProQuest's filings with the Commission, such as its Form 10-K and Form 10-Q filings.

24. Hirth was provided drafts of ProQuest's Form 10-Qs and 10-Ks for review before they were filed. In particular, from 2003 through 2005, after reviewing the proposed filings, Hirth signed internal certifications wherein he certified that the information contained in these periodic reports was correct and accurately reflected PQIL's financial position. His certifications were false.

### **Hirth's Control over the PQIL Finance Department**

25. Hirth maintained exclusive control over key PQIL accounts, which allowed him to carry out his scheme. Specifically, he had sole responsibility for reconciling the prepaid royalty, prepaid commission and deferred revenue accounts. In other words, Hirth independently determined the balances in these accounts for each period and submitted manual journal entries to adjust these accounts. He also had significant input into the final balance of the PQIL accrued royalty accounts.

26. Hirth maintained total control over the month-end and quarter-end closing process at PQIL, which involved an internal reporting of PQIL's revenue and expenses for the particular period. Hirth's control over the closing process also helped him to carry out his accounting scheme.

### **Hirth's Cover-up of the Accounting Scheme**

27. Hirth took steps to cover up his fraudulent scheme. Hirth created and maintained Microsoft Excel spreadsheets for the prepaid royalty and prepaid commission accounts. These spreadsheets identified each line item that served as justification for the total balance in these accounts. Hirth ensured that the actual balance in these two accounts matched the total on his spreadsheet by means of a manual journal entry he submitted for posting to ProQuest's general ledger. These reconciliation spreadsheets were then maintained in hard copy at ProQuest and



served as supporting documentation for the balances in these accounts. In addition, these documents were reviewed in ProQuest's audit work pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404") and by ProQuest's outside auditor during its periodic audits.

28. Since at least 2004, Hirth concealed some of his false entries within the prepaid royalty spreadsheets. The line items in these spreadsheets generally consisted of the catalogue number that identified the publisher, the amount of deferred revenue on that product, and the royalty rate charged by the publisher. The prepaid royalty was determined by multiplying the deferred revenue by the royalty rate.

29. Hirth's 2005 spreadsheets for the prepaid royalty account contained rows that were hidden using a "Hide" function in a spreadsheet program. When printed, these hidden rows were invisible. The hidden rows contained fictitious values that had no basis or support. Within the hidden rows were large, round-dollar entries. Often, these entries were identified with catalogue numbers that did not exist at PQIL.

30. For example, Hirth's prepaid royalty spreadsheet for the fourth quarter of 2005 contained hidden rows totaling \$11.4 million, which constituted 45.3% of the total balance for this period. One of these hidden rows included an entry of \$1.19 million for catalogue number 78520. This catalogue number did not exist at PQIL. Moreover, three hidden rows included balances for catalogue numbers that should not have any prepaid balances attributable to those numbers because there was no revenue earned on those publishers' content. These line items totaled \$6.4 million.

31. Since at least 2005, Hirth also concealed some of his false entries in the prepaid commission spreadsheets. These spreadsheets identified the total amount of commissions paid to its sales force and the commissions to be recognized as an expense *pro rata*. The

commissions to be recognized as an expense were subtracted from the total commissions paid to give the total prepaid commission account balance as of that balance sheet date. For example, in Hirth's fourth quarter 2005 prepaid commission spreadsheet, one cell entry was located far away from the main body of the spreadsheet where prepaid commission entries were made. This cell entry contained an amount of \$4.1 million in "white font", *i.e.* font in the color white such that it is invisible when printed in hard copy. By a formula, this entry was added to the total prepaid commission balance in the main part of the spreadsheet and constituted 42.5% of that balance. There was no basis for this entry.

### **Hirth's Handwritten Notes Shows His Deceptive Intent**

32. Hirth reflected his intent in conducting and concealing his accounting scheme in numerous handwritten notes he authored from 2003 through 2005. For example, Hirth stated:

- "how can we be audit proof and make fin. #s this year. ENRON and Worldcom"
- "Once past audit prob [problem or probably] no sweat on jail"
- "Can't make #s and co [company] going under anyway"
- "If dig real deep. Def [deferred] problem"
- "We need lots of revenue. Max the real rev [revenue] so I can fix"
- "What if caught – Blame the query and old systems and get fired. Key is all else clean."

33. Hirth's notes also reminded him to "destroy" and "get rid of" manual journal entries. Hard copies of a number of key manual journal entry forms are missing from ProQuest's records. Additionally, Hirth stated unequivocally in one entry: "Doc trail needs to support messed up systems[,] not cooking the books."

### **Hirth's Motive for the Scheme**

34. Hirth's motivation for the fraudulent scheme was his desire to progress through the managerial ranks at ProQuest. Hirth desired to become the President of PQIL and, eventually, the Chief Executive Officer of ProQuest. Hirth was identified by senior management as a future leader of the company and even served as acting President of PQIL during the summer of 2005. Consistent with this desire, Hirth was fearful that his ambitions would not be realized if he reported PQIL's true financial position. He expressed in his notes: "We have a number I fear we can't make" and "I could miss Q2 [second quarter] and come clean in June. Probably get fired for that."

35. Hirth was also motivated by monetary gain to carry out his scheme. Hirth's total annual compensation between 2000 and 2005 steadily increased from approximately \$200,000 to \$300,000 including bonuses. Hirth's receipt of bonuses was directly tied to PQIL's financial performance.

### **Lying to Auditors**

36. In furtherance of his scheme, Hirth provided false information to ProQuest's outside auditors from 2001 through 2005. Specifically, Hirth's manipulation of PQIL's accounting resulted in false financial information being provided to ProQuest's outside auditors in connection with its audit.

37. Hirth also provided account reconciliation documents, such as hard copies of his spreadsheets to ProQuest's outside auditors, which contained false information about the proper balance of the prepaid royalty, prepaid commission, and deferred revenue accounts.

### C. The Impact of Hirth's Fraudulent Scheme

38. As a result of Hirth's scheme, PQIL overstated its revenue and understated its expenses between 2001 and 2005, which favorably impacted PQIL's pre-tax earnings. PQIL's financial reporting, which included the artificially inflated pre-tax earnings numbers, was consolidated into the company's overall financial reporting. PQIL's financial results and/or ProQuest's consolidated financial information were disclosed to the investing public in ProQuest's Forms 10-K, 10-Q, 8-K and S-3 filings for 2001 through 2005. In total, ProQuest overstated pre-tax earnings by approximately \$129.9 million in the areas where Hirth engaged in manipulation from 2001 through the first three quarters of 2005.

39. The table below demonstrates the effect of Hirth's fraud on pre-tax earnings that was disclosed in ProQuest's periodic filings with the Commission:

| <b>(In millions)</b>  | <b>2001</b> | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>Q1 05</b> | <b>Q2 05</b> | <b>Q3 05</b> | <b>Total</b> |
|---|-------------|-------------|-------------|-------------|--------------|--------------|--------------|--------------|
| <b>Previously reported pre-tax earnings in Forms 10-K and 10-Q</b>                  | 66.4        | 85.3        | 89.2        | 96.2        | 18.8         | 27.4         | 35.3         | 418.6        |
| <b>Overstatement of pre-tax earnings attributable to Hirth's Fraud Areas</b>        | 16.4        | 11.5        | 20.8        | 41.8        | 8.4          | 7.3          | 23.7         | 129.9        |
| <b>Overstatement attributable to Hirth's Fraud Areas as a % of pre-tax earnings</b> | 24.7%       | 13.5%       | 23.3%       | 43.5%       | 44.7%        | 26.6%        | 67.1%        | 31.0%        |

40. ProQuest's disclosure of Hirth's accounting scheme in its Form 8-K filings and press releases between February and April 2006 resulted in a reduction of \$437 million in market capitalization. ProQuest's stock price dropped from \$29.41 to \$12.31 per share during this period. As of July 21, 2008, ProQuest (now Voyager Learning Company) was quoted at \$4.95 a

share on the Pink Sheets OTC Electronic Bulletin and has significantly fewer assets than before Hirth's scheme.

**D. Material Misstatements in ProQuest's Financial Statements Filed with the Commission**

41. As explained above, from 2001 to 2005, Hirth's scheme resulted in an overstatement of \$129.9 million in pre-tax earnings. This overstatement was included in four Form 10-K filings, fifteen Form 10-Q filings, eleven Form 8-K filings, and nine Form S-3 filings that were filed with the Commission by ProQuest between 2001 and 2005. The specific filings containing the financial misstatements are detailed below.

42. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form 10-K filings that were filed on March 29, 2002, March 27, 2003, March 18, 2004, and March 17, 2005.

43. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form 10-Q filings that were filed on May 15, 2001, August 13, 2001, November 13, 2001, May 14, 2002, August 13, 2002, November 12, 2002, May 13, 2003, August 11, 2003, November 10, 2003, May 13, 2004, August 12, 2004, November 12, 2004, May 12, 2005, August 10, 2005 and November 10, 2005.

44. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form 8-K filings that were filed on April 29, 2003, July 29, 2003, October 28, 2003, February 26, 2004, April 27, 2004, July 28, 2004, October 27, 2004, November 2, 2005, May 4, 2005, August 3, 2005, and November 2, 2005.

45. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form S-3 filings that were filed on June 22, 2001, July 10, 2001, September 24, 2001, April 17, 2002, June 3, 2002, June 11, 2002, June 12, 2002, June 14, 2002 and June 17, 2002. These

filings either expressly contained or incorporated by reference PQIL's and/or ProQuest's misstated pre-tax earnings information.

46. Hirth's accounting scheme and his material misstatements of ProQuest's pre-tax earnings deceived the investing public about ProQuest's true financial situation for over five years.

**E. ProQuest's Internal Controls Deficiencies And Other Accounting Errors  
Internal Controls**

47. Between 2001 and 2005, ProQuest had numerous, significant deficiencies in its internal controls that allowed Hirth to carry out his scheme.

48. PQIL's inadequate procedures allowed Hirth to act independently in requesting, approving, and ordering the entry of manual journal entries. ProQuest's policy of requiring backup documentation for manual journal entries was ineffective because there was no individual with authority to enforce this requirement against Hirth. The task was left to one of Hirth's subordinates, who was not in a position to mount a serious challenge to Hirth's practices.

49. Hirth maintained sole control of key accounts at ProQuest, which included reconciling the accounts at the end of monthly and quarterly periods. No one else at ProQuest had input into or reviewed Hirth's determinations of the final balance of these accounts. The only support for these balances was Hirth's spreadsheets that were maintained solely by Hirth.

50. ProQuest had weak accounting systems that were not integrated. Financial data did not automatically flow from through the various accounting systems to the general ledger but were often transferred to the general ledger through manual journal entries. This situation further allowed Hirth to manipulate the accounts without detection because the posting of manual journal entries was a routine event at ProQuest.

51. In its Form 10-K issued on August 31, 2007, which included its financial restatement, ProQuest admitted that it had material weaknesses in its internal controls. The internal control deficiencies identified included weakness in its accounting systems, controls used to select and modify accounting policies, controls in its financial statement and reporting process, controls in the account reconciliation process, and controls in the manual journal entry process.

### **Accounting Errors**

52. During its analysis to restate its pre-tax earnings, ProQuest discovered numerous accounting errors. The errors were significant and widespread throughout its many businesses. The errors, in large part, stemmed from ProQuest's inability to properly apply basic accounting principles. These accounting errors resulted in material misstatements in ProQuest's Forms 10-Q, 10-K, 8-K and S-3 public filings. ProQuest corrected for accounting errors it discovered during the restatement analysis, which amounted to a \$113.2 million reduction in pre-tax earnings from 2001 through 2005.

53. Some of the most significant accounting errors occurred in the PQIL businesses in capitalized software and product masters costs and lease accounting, which had the effect of overstating pre-tax earnings by a total of \$38.5 million between 2001 and 2005. These errors are further discussed below.

54. PQIL generally capitalized direct and indirect overhead costs incurred in creating electronic and microfilm document copies, which are called "product masters." These product masters were essentially PQIL's value-added to information obtained from publishers and includes functions such as search capabilities for the end-user or customer. Capitalization of the cost of manufacturing product masters was permissible because ProQuest's value added to the

product masters constituted an asset under Generally Accepted Accounting Principles (“GAAP”). GAAP defines assets as “probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events.” (FASB Concept No. 6: Elements of Financial Statements). ProQuest’s product masters had the ability to generate future economic benefit from the sale of such content or access to such content which results in net cash inflows to the company. The costs associated with manufacturing product masters were amortized over the useful life of the product.

55. During the restatement process, ProQuest discovered that PQIL was incorrectly accounting for costs relating to product masters. PQIL was using a higher percentage of the costs of manufacturing product masters than is allowed under GAAP and was improperly including costs associated with employees who were not directly involved in producing the product masters. As a result, ProQuest improperly deferred recognition of those expenses.

56. PQIL also capitalized costs associated with software developed for internal use and applied guidance from the American Institute of Certified Public Accountants (“AICPA”) Statement of Position 98-1 (“SOP 98-1”), Accounting for the Costs of Computer Software Developed or Obtained for Internal Use. SOP 98-1 provided that costs associated with developing software for internal use should be capitalized and then expensed over the useful life of the software. In particular, SOP 98-1 required companies to properly capture internal and external costs involved with the various stages of software development.

57. As a result of the restatement analysis, ProQuest concluded that PQIL did not properly apply guidance from SOP 98-1 because it did not record labor time and costs for those individuals that specifically worked on internally-developed software and did not exclude individuals within these groups that were uninvolved in internally-developed software



production. In addition, ProQuest did not differentiate between the three stages of software development and capture costs associated only with the software application development stage.

58. Additionally, PQIL did not properly classify the leases it entered into for property and equipment between 2001 and for the first three quarters of 2005. Statement of Financial Accounting Standards No. 13 (“FAS 13”), Accounting for Leases, classifies leases as either capital leases or operating leases. Capital leases are recorded as an asset and amortized. Rent obligations on operating leases are expensed as incurred on a straight-line basis. Leases are classified as capital leases if they meet one of the four criteria outlined in FAS 13. One of those criteria classifies leases as capital leases when the present value of all future rent payments equals or exceeds 90% of the fair market value of the asset.

59. PQIL incorrectly determined the present value of the future rental payments on the majority of the leases it entered into between at least 2001 and 2005. The present value of those payments was regularly understated, which resulted in improperly classifying these leases as operating leases rather than capital leases under FAS 13.

60. The above errors, and others that were discovered during the restatement analysis, resulted in material misstatements in ProQuest’s reported pre-tax earnings that were included in its periodic filings with the Commission between 2001 and 2005.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Defendant Hirth Violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder**

61. Plaintiff repeats and realleges paragraphs 1 through 60 above.

62. As a result of the activities described above, Defendant Hirth, in connection with the purchase or sale of ProQuest securities, by the use of means or instruments of transportation

or communication in interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

63. Defendant Hirth intentionally, or with recklessness, engaged in the conduct described above. In engaging in such conduct, Defendant Hirth acted with scienter, that is, with an intent to deceive, manipulate, and defraud or with a reckless disregard for the truth.

64. By reason of the foregoing, Defendant Hirth violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## **COUNT II**

### **Defendant Hirth Violated Section 17(a) of the Securities Act**

65. Plaintiff repeats and realleges paragraphs 1 through 60 above.

66. As a result of the activities described above, Defendant Hirth, in the offer or sale of ProQuest securities, by the use of means or instruments of transportation or communication in interstate commerce or of the mails, directly and indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of facts or omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, and courses of business which operated and would operate as a fraud or deceit upon the purchasers of ProQuest securities.

67. Defendant Hirth intentionally, or with recklessness, engaged in the conduct described above. In engaging in such conduct, Defendant Hirth acted with scienter, that is, with an intent to deceive, manipulate, and defraud or with a reckless disregard for the truth.

68. By reason of the activities described above, Defendant Hirth violated Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

### **COUNT III**

#### **Defendant Hirth Violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder**

69. Plaintiff repeats and realleges paragraphs 1 through 60 above.

70. Defendant Hirth knowingly circumvented and knowingly failed to implement a system of internal accounting controls and knowingly falsified books, records or accounts subject to Section 13(b)(2) of the Exchange Act.

71. Defendant Hirth directly or indirectly falsified or caused to be falsified books records or accounts subject to subject to Section 13(b)(2) of the Exchange Act.

72. By reason of the activities described above, Defendant Hirth violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

### **COUNT IV**

#### **Defendant Hirth Violated Rule 13b2-2 under the Exchange Act**

73. Plaintiff repeats and realleges paragraphs 1 through 60 above.

74. Defendant Hirth directly or directly: (i) made or caused to be made materially false or misleading statements and (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review or

examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

75. By reason of the activities described above, Defendant Hirth violated Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2].

## COUNT V

### **Defendant ProQuest Violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder and Defendant Hirth Aided and Abetted these Violations.**

76. Plaintiff repeats and realleges paragraphs 1 through 60 above.

77. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder, require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports (Form 10-K and Form 10-Q) and certain current information with the Commission (Form 8-K). Rule 12b-20 further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

78. By reason of the activities described above, ProQuest violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 13a-11, 13a-13].

79. By reason of the activities described above, Defendant Hirth, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], knowingly provided substantial assistance to and thereby aided and abetted ProQuest in its violations of the Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

## COUNT VI

### **Defendant ProQuest Violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Defendant Hirth Aided and Abetted those Violations**

80. Plaintiff repeats and realleges paragraphs 1 through 60 above.

81. Section 13(b)(2)(A) requires issuers to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets. Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with U.S. Generally Accepted Accounting Principles and to maintain accountability for the issuer's assets.

82. By reason of the activities described above, Defendant ProQuest violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)].

83. By reason of the activities described above, Defendant Hirth, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)], knowingly provided substantial assistance to and thereby aided and abetted ProQuest in its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)].

### **RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court:

#### **I.**

Enter a Final Judgment and Order of Permanent Injunction restraining and enjoining Defendant Hirth and his agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with it who receive actual notice of the injunction by personal service or

otherwise, and each of them, from violating Section 17(a) of the Securities Act, Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934, and Rule 10b-5, 13b2-1, 13b2-2 thereunder, and for aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

**II.**

Pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], prohibit Defendant Hirth from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

**III.**

Order Defendant Hirth to disgorge all ill-gotten gains that he has received as a result of the acts complained of herein, with prejudgment interest thereon.

**IV.**

Pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], order Defendant Hirth to pay civil penalties.

**V.**

Enter a Final Judgment and Order of Permanent Injunction restraining and enjoining Defendant ProQuest, and its agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with it who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

**VI.**

Grant any equitable relief that may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. §78u(d)(2)];

**VII.**

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VIII.**

Grant Orders for such further relief as the court may deem just and appropriate.

Dated: July 22, 2008

Respectfully Submitted,

/s/ Sunil R. Harjani

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that a copy of the attached was filed electronically on July 22, 2008. Notice of this filing will be sent by operation of the Court's electronic filing system, or if not possible, via Federal Express to at least one attorney for each defendant:

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Counsel for Defendant Scott Hirth

/s/ Sunil R. Harjani

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Sunil R. Harjani  
U.S. Securities and Exchange Commission  
Chicago Regional Office  
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Chicago, IL 60064

Date: July 22, 2008