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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	CV-2-
v.	)	
	)	
STEVEN M. DES CHAMPS and	)	
MARTHA W. VLCEK,	)	
Defendants.	)	

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**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) for its complaint alleges:

**I. SUMMARY**

1. Between 2003 and 2005, as officers of Bally Technologies, Inc. (“Bally”), a Las Vegas gaming company, Defendants Steven M. Des Champs and Martha W. Vlcek made material

misstatements in Bally's public filings as a result of an ongoing scheme to improperly recognize revenue. Des Champs served as Bally's Chief Accounting Officer ("CAO") and Chief Financial Officer ("CFO") throughout the relevant period. Vlcek served as Bally's director of finance and vice president of finance. Des Champs and Vlcek caused Bally to improperly recognize material amounts of revenue on a series of bill and hold transactions during 2003 and 2004 when the criteria to recognize revenue on a bill and hold basis were not met. The improper bill and hold transactions resulted in overstatements ranging from approximately \$8 million to \$10 million in Bally's reported net sales revenue from the fourth quarter 2003 through the second quarter 2004, and an overstatement of from 23% to 28% in reported income during those same periods.

2. In the second and third quarters of 2005, Des Champs also caused Bally to improperly recognize material amounts of revenue on shipments of games to an Oklahoma company, Integrity Gaming Nevada, LLC ("Integrity"), when Integrity lacked funds to pay for the games and could not generate revenue to pay for them. During the second and third quarters of 2005, the improper revenue recognition on the Integrity transactions resulted in overstatements of \$3.8 and \$6.3 million, or 3% and 5.5% respectively, of net revenue.

3. Des Champs and Vlcek knew or were reckless in not knowing that Bally's revenue recognition was improper. Additionally, Des Champs or Vlcek made false and misleading statement concerning the improper revenue recognition scheme to Bally's outside auditors.

4. As a result of Des Champs and Vlcek's actions, Bally materially misstated its revenue in its Form 10-K for the fiscal year ended June 30, 2003; its Forms 10-Q for the quarters ended September 30, 2003 and December 31, 2003; in Form S-8 registration statements filed May 7, 2004 and January 14, 2005; and in Forms 8-K filed August 5, 2003, October 15, 2003, and January 15, 2004. Also resulting from Des Champs and Vlcek's actions, Bally made materially

misleading disclosures and omissions in Bally's Forms 10-K for the years ended June 30, 2003, June 30, 2004, and June 30, 2005, and in Forms 10-Q for the quarters ended September 30, 2003 and December 31, 2003. As a result of the Integrity transactions, Des Champs caused Bally to materially misstate its reported revenue in its Forms 10-Q for the quarters ended December 31, 2004 and March 31, 2005 and in Forms 8-K filed February 1, 2005 and April 29, 2005. Des Champs also drafted, reviewed and approved Bally's false and misleading disclosure in its Form 8-K filed April 21, 2004 and in an analyst call on that same date.

5. During the year-end audit for 2005, Bally could not substantiate proper revenue recognition for transactions that included Integrity. Deloitte & Touche, LLP ("Deloitte"), Bally's auditors, recommended that an independent third party review Bally's revenue transactions to ensure that they were properly reported in the company's financial statements. That review led to the first of two restatements of Bally's prior reported financial results. Following Bally's public announcement that it would restate its prior reported financial results, Bally's stock price fell 10%. Bally's stock fell another 12% when it announced the unaudited restated results. In December of 2005, Bally restated results for the fourth quarter of 2003, each quarter in 2004, and for fiscal years 2003, 2004 and 2005. Bally's filed a second restatement, which resulted from the auditors' discovery of certain additional transactions on which Bally's had improperly recognized revenue. In November of 2006, Bally restated its financials for fiscal years 2003, 2004 and 2005 and the quarterly financials for 2004 and 2005.

## **II. JURISDICTION AND VENUE**

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)].

7. This court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa].

8. Certain of the transactions, acts, practices and courses of business constituting the violations of law alleged herein occurred within this judicial district. Moreover, both defendants reside in this judicial district.

9. In connection with the transactions, acts, practices, and courses of business described in this Complaint, defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, and/or of the means and instruments of transportation or communication in interstate commerce.

### **III. DEFENDANTS**

10. **Steven M. Des Champs**, age 42, of Las Vegas, Nevada, served as Bally's Chief Accounting Officer ("CAO") from August 2000 to March 2005, when he was appointed Chief Financial Officer ("CFO") of the company. Des Champs served as CFO until March 2006, when he stepped down to become vice president for business analysis. Des Champs left that position in November 2006. Des Champs received his Nevada certified public accountant ("CPA") license in 1990 and has maintained an active status on that license since 1993. At this time, Des Champs remains a certified public accountant in the state of Nevada.

11. **Martha W. Vlcek**, age 48, of Henderson, Nevada, began working for Bally in July 2002 as director of finance. She served in that position until April 2003, when she was promoted to vice president of finance, in which position she remained until she resigned in February 2005. Vlcek returned to Bally in August 2005 as a consultant to assist with the company's fiscal year

2005 audit and eventual restatements, and she remained as a consultant until April 2006. Vlcek maintained a license as a certified public accountant in California from November 1992 through May 2008, when it expired.

#### **IV. RELATED PARTY**

12. **Bally**, a Nevada corporation headquartered in Las Vegas, Nevada, has been in business since 1968 and operates on a fiscal year that ends on June 30. During the relevant time period, Bally designed, manufactured, and distributed gaming machines and monitoring systems for casinos and operated at least one casino. Bally's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. As a company registered with the Commission, the company is required to file with the Commission quarterly reports on Form 10-Q, annual reports on Form 10-K, and reports disclosing current material events on Form 8-K.

#### **V. SUMMARY OF VIOLATIONS**

13. Generally Accepted Accounting Principles ("GAAP") state that revenue should not be recognized until the seller has substantially accomplished what it must do pursuant to the terms of its arrangement with the buyer, which usually occurs upon delivery. One exception to the delivery requirement under GAAP is a bill and hold transaction. A bill and hold transaction is a sale where delivery to the customer has not occurred but the seller is allowed to recognize revenue if certain criteria are met. Accounting standards further state that revenue is generally realized when all of the following criteria exist: there is persuasive evidence of an arrangement, delivery has occurred, the price is fixed and determinable, and collectibility of the sales price is reasonably assured.

14. During 2003 and 2004, Des Champs and Vlcek caused Bally to improperly recognize revenue on bill and hold transactions which they knew or were reckless in not knowing would be included in the financial statements incorporated into the quarterly and annual filings Bally made with the Commission and disseminated to the investing public. Vlcek prepared the numbers for inclusion in the filings. Both Des Champs and Vlcek reviewed and approved the filings and communicated with Deloitte regarding the company's financial results. Des Champs and Vlcek together made determinations that Bally's recognition of the bill and hold revenue was proper and prepared documents supporting such recognition for Deloitte. In the second and third quarters of 2005, Des Champs also caused Bally to recognize revenue improperly on shipments to Integrity despite evidence that, among other things, collectibility of the sales price was not reasonably assured. Des Champs also signed and certified Bally's quarterly SEC filing for the third quarter of 2005, which included improper Integrity revenues. As a result of these actions, Des Champs and Vlcek participated in, and knew or were reckless in not knowing about, Bally's misstatements and omissions in violation of the antifraud provisions of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

15. As a result of Bally's improper revenue recognition on the bill and hold transactions and the Integrity shipments, and the misleading statements and material omissions made in connection with the revenue recognition disclosures for those transactions, Des Champs and Vlcek aided and abetted Bally's violations of the periodic and current reporting provisions of Sections 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] thereunder. By

falsely certifying Bally's Form 10-Q for the period ended March 31, 2005 and Form 10-K for the year ended June 30, 2005, Des Champs also violated Rule 13a-14 [17 C.F.R. § 240.13a-14].

16. By knowingly or recklessly failing to record revenue transactions accurately, failing to devise and maintain internal accounting controls, and failing to ensure that Bally adhered to an appropriate revenue recognition policy, Des Champs and Vlcek aided and abetted Bally's violations of the books and records and internal control provisions of 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)]. In causing Bally's accounting records to be falsified by improperly recognizing revenue, Des Champs and Vlcek also violated Rule 13b2-1 [17 C.F.R. § 240.13b2-1] thereunder.

17. By knowingly or recklessly recording revenue that was improper, Des Champs and Vlcek failed to implement a system of internal accounting controls and falsified Bally's books and records in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]. By making materially false and misleading statements supporting their decisions to recognize revenue to Deloitte in connection with an audit, review or examination of Bally's financial statements, Des Champs and Vlcek deceived the auditors in violation of Rule 13b2-2 [17 C.F.R. § 240.13b-2-2] thereunder.

18. Unless restrained and enjoined, Des Champs and Vlcek will continue to violate or aid and abet violations of such provisions.

## VI. FACTS

### A. IMPROPER REVENUE RECOGNITION

#### 1. Bally's Improper Bill and Hold Sales

19. From the fourth quarter of fiscal year 2003 through the second quarter of fiscal year 2004, Bally improperly recognized revenue on sales of gaming machines on transactions where delivery to the buyer had not occurred.

20. Specifically, Bally improperly recognized revenue on a bill and hold basis for two types of transactions: games sold to individual customers and games sold to New Jersey casinos that were stored at Bally's New Jersey warehouse pending receipt of required approval from state regulators. GAAP provides that revenue should not be recognized on a transaction until the seller has substantially accomplished what it must do pursuant to the terms of the arrangement, which usually occurs upon delivery to the customer. The exception is a bill and hold transaction. GAAP allows revenue to be recognized on a bill and hold basis only if the following seven bill and hold criteria are met: (1) risk of ownership has passed to the buyer; (2) the customer has made a fixed commitment to purchase the goods; (3) the buyer has requested that the transaction be on a bill and hold basis and has a substantial business purpose for doing so; (4) there is a fixed schedule for delivery of the goods; (5) the seller has not retained any specific performance obligations such that the earnings process is not complete; (6) the goods ordered are segregated from the seller's inventory and not used to fill other orders; and (7) the goods are complete and ready for shipment.

21. Bally's improper recognition of revenue on transactions which did not meet the above criteria under GAAP for treatment as bill and hold transactions resulted in the overstatement of



its total reported revenue by \$8.4 million in 2003 and by \$8.8 million and \$10.2 million in the first and second quarters of fiscal 2004, respectively. Bally should have reported net income from continuing operations for the fourth quarter of 2003 of \$12.2 million, rather than the \$15 million that it did report. In the first quarter of fiscal 2004, Bally should have reported a net loss from continuing operations of \$100,000 rather than income of \$2.6 million. In the second quarter of fiscal 2004, Bally should have reported net income from continuing operations of \$11.1 million rather than the \$14.2 million it did report. In addition, the improper bill and hold sales led to a 25% overstatement of Bally's reported earnings per share ("EPS") for the fourth quarter of fiscal 2003 and a 33% and 27% overstatement of Bally's reported quarterly EPS numbers in the first and second quarters of 2004, respectively.

22. Together, Des Champs and Vlcek made the decisions to recognize revenue on a bill and hold basis and prepared memoranda and other documentation for Deloitte that purported to show that the bill and hold transactions recorded by Bally met the requirements under GAAP set forth above. Certain material information they provided to Deloitte, however, was false. Des Champs and Vlcek knew or were reckless in not knowing that the bill and hold transactions did not meet the requirements under GAAP and that Deloitte was relying on their false information in reviewing and auditing the bill and hold transactions.

23. Des Champs and Vlcek profited from Bally's improper recognition of revenue on purported bill and hold transactions. From August 2003 to January 2004, Des Champs sold Bally stock for a net profit of approximately \$313,000. In 2003 and 2004, Des Champs received bonuses totaling approximately \$338,000 which were based in part upon Bally's reported revenue. From August 2003 to March 2004, Vlcek sold Bally stock for a net profit of

approximately \$30,000. Vlcek also received bonuses in 2003 and 2004 totaling approximately \$63,000 which again were based in part upon Bally's reported revenue.

24. Bally engaged in five bill and hold transactions with four individual customers between the fourth quarter of 2003 and the second quarter of 2004.

***a. Improper Revenue Recognition on the Multimedia Transaction  
In the Fourth Quarter of Fiscal 2003 [ending June 30, 2003]***

25. In the fourth quarter of 2003, Bally improperly recognized approximately \$787,500 in revenue on a bill and hold basis on a transaction with Multimedia Games, Inc. ("Multimedia"), a distributor for whom Bally manufactured games that Multimedia placed primarily in casinos owned and operated by Indian tribes on tribal lands. Bally failed to meet four of the requirements under GAAP to record this transaction on a bill and hold basis.

26. First, the customer did not request that the transaction be treated on a bill and hold basis. Bally, not the customer, drafted the purported customer request letter for this transaction. The customer request letter was prepared on Bally letterhead and signed by Bally before being sent to Multimedia for execution. Des Champs and Vlcek reviewed the customer request letter and knew that it was on Bally letterhead.

27. Second, there was no fixed schedule for delivery of the product purchased by Multimedia as required under GAAP. Bally agreed to hold the games in its warehouse "for up to 90 days." Des Champs and Vlcek knew, or were reckless in not knowing, that the information they relied on relating to the requirement of a fixed delivery schedule was insufficient under GAAP for revenue recognition.

28. Third, the earnings process as to Bally's transactions with Multimedia was not complete because Bally retained specific performance obligations for the machines. Bally and Multimedia agreed that Bally would manufacture game boxes for the games involved in the Multimedia

transaction and would store the boxes until Multimedia had identified a specific customer and, accordingly, a game theme to be reflected on the game boxes. Bally remained responsible for the final assembly of the games, which included installing the software, glass, and currency acceptor on the box. Bally also remained obligated to test the completed game and ship it directly to Multimedia's end-user customer. Thus, at the time it recognized revenue on the Multimedia transactions, Bally still had final assembly and testing obligations. Both Des Champs and Vlcek knew or were reckless in not knowing that the equipment was not complete and that Bally retained specific performance obligations. They both understood that Multimedia was a distributor of games to end users. They failed to take steps to determine if the games were complete at the time revenue was recognized. Despite this, they drafted a memorandum for Deloitte that misrepresented that the games were complete.

29. Fourth, Bally failed to segregate from its own inventory the games involved in the Multimedia transaction in the fourth quarter ended June 30, 2003. Vlcek knew or was reckless in not knowing the requirement for segregation under GAAP, and also knew that the games were not segregated at the end of the fiscal year end June 30, 2003. In early July 2003, Bally's warehouse manager told Vlcek in an email that the Multimedia games were not segregated in the warehouse at the end of the quarter. Des Champs also knew or was reckless in not knowing that segregation was a requirement for recognizing revenue on a bill and hold basis, but failed to take any steps to verify that the games had been segregated in accordance with the bill and hold revenue recognition criteria. Additionally, Des Champs and Vlcek made false and misleading statements to Deloitte when they stated in the Multimedia memorandum supporting the accounting that the games had been segregated.

***b. Improper Revenue Recognition  
in the First Quarter of Fiscal 2004 [ending September 30, 2003]***

30. In the first quarter of fiscal 2004, Bally improperly recognized revenue on three additional transactions on a bill and hold basis: approximately \$4.7 million on another transaction involving Multimedia; approximately \$3.2 million on a transaction involving Evangeline Downs Racetrack and Casino (“Evangeline Downs”), a newly constructed racetrack and casino located in Louisiana; and approximately \$480,000 on a transaction involving Belco GmbH (“Belco”), a Russian distributor.

***1. 2004 Multimedia Transaction***

31. The Multimedia transaction in the first quarter of 2004 failed to meet four of the bill and hold criteria under GAAP. First, Bally again drafted the language that was ultimately placed in the purported customer request letter, and Bally, not the customer, initiated the bill and hold treatment. Des Champs emailed proposed language to the Bally sales executive in charge of the sale, and this language ultimately appeared in the purported customer request letter.

32. Second, as in the fourth quarter 2003 transaction, there was no fixed delivery schedule. Bally agreed to hold the first quarter 2004 Multimedia bill and hold equipment for “up to” 90 days. Des Champs and Vlcek knew or were reckless in not knowing that this open-ended holding period was insufficient under the bill and hold requirements under GAAP.

33. Third, there is no evidence that the games involved in the first quarter 2004 Multimedia transaction were segregated from Bally’s own inventory. Des Champs and Vlcek failed to take any steps to ensure that the games were segregated.

34. Fourth, as with the fourth quarter 2003 Multimedia game transaction, the games were not complete and Bally retained performance obligations for the machines. Des Champs and Vlcek

represented to Deloitte that the games were complete but failed to take any steps to ensure this was the case.

## **2. *The Evangeline Downs Race Track and Casino Transaction***

35. The Evangeline Downs transaction in the first quarter of fiscal 2004 did not meet four of the criteria under GAAP for proper revenue recognition on a bill and hold basis.

36. First, the customer did not request that the transaction take place on a bill and hold basis. Again, Bally drafted the Evangeline Downs purported customer request letter.

37. Second, there was no fixed schedule for delivery. Delivery was conditioned upon regulator approval and was therefore open-ended.

38. Third, there is no evidence that the Evangeline Downs games were segregated from Bally's inventory as required under GAAP. Des Champs and Vlcek failed to take any steps to ensure that the games were segregated.

39. Fourth, risk of ownership had not passed to the customer. Des Champs and Vlcek knew that Bally paid for storage and insurance of the equipment. At the time revenue was recognized on the transaction, Des Champs questioned whether Bally's payment of storage and insurance costs would prevent Bally from properly recognizing revenue on a bill and hold basis.

Moreover, Evangeline Downs did not provide the purported written request for bill and hold treatment until ten days after the end of the quarter, thus further demonstrating that title had not transferred as of the end of the period in which Bally recognized revenue. Des Champs and Vlcek knew or were reckless in not knowing that a written customer request was required under GAAP and that no written request had been received until after the end of the quarter. Des Champs and Vlcek falsely claimed in memoranda provided to Deloitte that the risk of ownership had passed to the customer before quarter end, when Bally recognized revenue on the sale.

**3. *The Belco GmbH Transaction***

40. The Belco transaction in the first quarter of fiscal 2004 failed to meet four of the criteria under GAAP for revenue on the transaction to be properly recognized on a bill and hold basis: there is no evidence of a customer request for such treatment, no fixed schedule for delivery existed, the risk of ownership did not pass to the customer, and the gaming equipment relating to the transaction was not segregated from Bally's own inventory. In fact, no documentation of Bally's purported adherence to the bill and hold criteria on this transaction exists. Although Des Champs and Vlcek knew or were reckless in not knowing that there was not sufficient documentation supporting bill and hold treatment, they represented to Deloitte that the Belco transaction met the criteria under GAAP.

***c. Improper Revenue Recognition on the Casino Niagara Transaction:  
Second Quarter of Fiscal 2004 [ending December 30, 2004]***

41. In the second quarter of fiscal 2004, Bally improperly recognized approximately \$10.2 million on a bill and hold basis in a transaction with the Ontario Gaming and Asset Corporation and Niagara Fallsview Casino Resort ("Casino Niagara"), a Canadian casino that was undergoing a large expansion.

42. The Casino Niagara transaction for the second quarter of fiscal 2004 failed to meet three of the requirements under GAAP for revenue on this transaction to be properly recognized on a bill and hold basis. First, the customer did not request that the transaction be treated on a bill and hold basis. Rather, Des Champs and Vlcek emailed each other about the appropriate language for the ostensible customer request letter before a letter purporting to reflect the customer's request was finalized. Additionally, a Bally sales executive emailed Vlcek in October 2003 informing her that the casino did not want the games delivered until January 5, 2004, but that the casino would "take any ides/offers [sic] we have and present them to senior management," and

that Casino Niagara would attempt to find a way for Bally to “off-load these [games] the last two weeks in December.” Although Des Champs was not a direct recipient of these emails, it was Vlcek’s custom and practice to share all information regarding the bill and hold transactions with Des Champs.

43. Second, with respect to the Casino Niagara transaction, risk of ownership had not passed to the customers at the time revenue was recognized because Bally paid for storage of the equipment. Des Champs and Vlcek falsely claimed in memoranda provided to Deloitte that the risk of ownership had passed to the customer before Bally recognized revenue on the sale.

44. Third, there is no evidence that the machines involved in the transaction were segregated from Bally’s inventory.

***d. Improper Revenue Recognition on the New Jersey Warehouse Transactions:  
Fourth Quarter 2003[ending June 30, 2003]***

45. During the fourth quarter of 2003, Bally improperly recognized revenue on a bill and hold basis for games involved in transactions with various New Jersey customers. The games were manufactured in Nevada. Bally then shipped the games to its own New Jersey warehouse, where Bally paid for storage and insurance costs. New Jersey state law requires that state regulators approve games before they can be activated on a casino floor. Bally stored the games in its New Jersey warehouse pending receipt of state regulator approval of the games. When the games arrived at its warehouse, Bally typically asked its customers to sign a form that listed the serial numbers and other basic information about the games (“continuation form”). When games for New Jersey customers remained in the warehouse at quarter end, Bally recognized revenue on a bill and hold basis for those games even though the transaction failed to meet at least four of the required criteria: title had not transferred to the customer, there was no fixed schedule for

delivery, the customer did not request that the transaction be treated on a bill and hold basis, and there was no business purpose for the transaction to be recorded as a bill and hold sale.

46. Des Champs and Vlcek justified the treatment of the New Jersey transactions as bill and holds to Deloitte. In a memorandum to Deloitte at the end of fiscal 2003, Des Champs and Vlcek told Deloitte that Bally's revenue recognition on a bill and hold basis for the New Jersey transactions was based on the continuation form. Des Champs and Vlcek represented to Deloitte that the New Jersey customers had accepted ownership of the games in the warehouse when they signed the continuation form; that the continuation form documented the business purpose and acknowledged that ownership of the games had transferred to the customer; and that the delivery schedules were fixed and accurate. The continuation form, however, did not contain the critical information that Des Champs and Vlcek represented to Deloitte that it contained. The continuation form did not contain any acknowledgement by the customers that title had transferred, did not demonstrate a fixed schedule for delivery, did not indicate that the customer requested that the transaction be on a bill and hold basis, and did not identify any valid business purpose for treating the transaction on a bill and hold basis.

47. The continuation form was an insufficient basis for revenue recognition on a bill and hold basis under GAAP, and Des Champs and Vlcek knew or were reckless in not knowing this. Des Champs and Vlcek approved the bill and hold treatment for the New Jersey transactions. However, Des Champs and Vlcek did not analyze the New Jersey transactions individually for adherence to the bill and hold criteria under GAAP.

48. In discussions with Deloitte regarding the appropriate GAAP criteria to apply to the New Jersey transactions, Des Champs and Vlcek also represented to Deloitte that the number of games held in the New Jersey warehouse at the end of any particular quarter was "minimal" and



that there was no way to track the number of games in the warehouse. Deloitte understood the term “minimal” to mean 20-30 games. Des Champs and Vlcek knew or were reckless in not knowing that their statements to Deloitte were false and misleading. As of June 30, 2003, Bally had approximately 800 games in its New Jersey warehouse as to which revenue had been recognized on a bill and hold basis for the fourth quarter of fiscal 2003, which accounted for approximately 6.3% of the revenue recognized in the quarter. Vlcek knew or was reckless in not knowing that the number of games in the warehouse was not minimal. At the end of fiscal year 2003, a member of the sales team in New Jersey asked Vlcek in an email, “Do we really want to have people sign off on 791 games, knowing they will be sitting [sic] our warehouse for another 2-6 weeks?” When Vlcek responded, “[G]et them signed,” the salesman replied, “[W]ill you come visit me at the state pen?” Des Champs knew, or was reckless in not knowing, that his statement that Bally could not determine the number of games in the New Jersey warehouse at quarter end was false and misleading.

***e. Improper Disclosure Relating to Bill and Hold Transactions***

49. GAAP requires disclosure of accounting policies and accounting principles followed by the reporting company during the reporting period, including the methods applied that materially affect the determination of financial positions, particularly any unusual or innovative applications of GAAP. The Commission has defined bill and holds as unusual transactions.

50. Bally did not disclose its use of bill and hold practices in any of its public filings during 2003 and 2004. Instead, beginning in 2002, Bally’s revenue recognition disclosures, including Bally’s 2003 and 2004 Forms 10-K and Forms 10-Q for 2004, contained the disclosure that “[r]evenue from sales of gaming machines is generally recognized at the time products are

shipped and title has passed to the customer.” This disclosure failed to disclose that Bally recognized revenue on a bill and hold basis.

51. During its review work on Bally’s quarterly report for the third quarter of fiscal 2004, Deloitte became uncomfortable with the number of bill and hold transactions on which revenue had been recognized by Bally and the documentary support for five bill and hold transactions on which revenue had been recognized for that quarter. Bally reversed the transactions and they were not included in the financial statements included in Bally’s public filings. These reversals caused Bally to fail to meet its previously-announced earnings target for the quarter. In an earnings press release dated April 21, 2004 following the close of the quarter on March 31, 2004, and attached to a Form 8-K filed with the Commission that same day, Bally made public statements concerning the reasons for its failure to meet its earnings target which were false and misleading. Bally stated that “1,250 units to be delivered in the March 2004 quarter were delayed until the June quarter at the request of three customers, due primarily to the delay in the completion of their new or expanded gaming facilities being constructed.” Contrary to this statement, these units were not delayed due to construction. Instead, the revenue for these units was not recognized in the quarter because Bally, under the scrutiny of its auditors, had ceased its practice of recognizing revenue on a bill and hold basis. The company made a similar misleading statement in its earnings release call on April 21, 2004. Des Champs authored the disclosure regarding Bally’s delay of 1,250 game sales and also participated in the analyst call. Des Champs knew that construction delays were not the reason for the decrease in quarter sales.

52. Bally also made false and misleading statements regarding its first of its two restatements. In its Form 10-K for the year ended June 30, 2005, Bally stated that revenue recognition adjustments had been made to prior periods because “the [c]ompany identified

instances where the timing or amount of revenue recognized was not in accordance with SOP 97-2,” a GAAP provision for software revenue recognition which Bally had determined to use as the basis for its revenue recognition policy at the time of its first restatement in late 2005. In reality, Bally’s revenue recognition was improper under any GAAP, including the accounting policies that were in place at Bally at the time Des Champs and Vlcek first caused revenue to be recognized. Des Champs signed and certified Bally’s Form 10-K for the period ending June 30, 2005.

53. Des Champs and Vlcek prepared and reviewed the company’s public disclosures and knew or were reckless in not knowing that Bally’s revenue recognition practices were not disclosed.

## **2. Integrity Gaming Transaction**

54. GAAP states that revenue is generally realized when all of the following criteria exist: there is persuasive evidence of an arrangement, delivery has occurred, price is fixed and determinable and collectibility is reasonably assured. In or around November 2004, Bally entered into an agreement with a small Oklahoma company, Integrity Gaming Nevada LLC (“Integrity”), pursuant to which Integrity agreed to at least 1,500 video poker games from Bally over the course of three quarters, beginning with the second quarter of FY 2005 (ending December 31, 2004). The parties contemplated that, after purchasing the games from Bally, Integrity would place the games in Indian gaming facilities around the state on a revenue-sharing basis.

55. Between the second and third quarters of fiscal year 2005, at the direction of Des Champs, Bally recognized approximately \$10.6 million in revenue on three shipments to Integrity. Subsequently, in August 2005, Bally entered into an agreement allowing Integrity to

return 600 games. Ultimately, Bally was forced to reverse \$6.3 million of that revenue in its first restatement in December 2005.

56. As described below, Des Champs' decisions to recognize revenue on transactions involving Integrity were improper under GAAP at the time he made them during the second and third quarters of fiscal 2005, and Des Champs knew the facts surrounding the transactions that rendered his decisions improper. Moreover, when Bally's independent auditors began asking questions about Integrity during their fiscal 2005 year-end audit, Des Champs withheld and misrepresented information about the transactions in an apparent effort to avoid scrutiny of his decisions.

***a. Improper Revenue Recognition in the Second Quarter of Fiscal 2005  
[ending December 31, 2004]***

57. On December 30, 2004, Bally made its first shipment of 350 video poker machines to Integrity. At Des Champs' direction, Bally recognized \$3.8 million on this shipment (3.3% of the quarter's total revenues) and included that revenue in its earnings release for the second quarter of fiscal year 2005, issued February 1, 2005, and in its Form 10-Q for the quarter, filed with the Commission on February 9, 2005. Des Champs' decision to recognize revenue on this first shipment was improper for two reasons.

58. First, Des Champs lacked any basis for concluding that, as of the quarter end, Bally was reasonably assured of collecting payment from Integrity as required by GAAP. Des Champs served as Bally's point person for evaluating Integrity's credit worthiness and knew that Integrity was a small, thinly capitalized company, that it lacked the ability to pay for the games without a bank loan, and that it was still waiting for approval of its loan application as of December 31, 2004. In fact, not until January 25, 2005, at which point Integrity was already well behind on its payment obligations to Bally, did Des Champs receive word from Integrity's bank that it had

approved the requested loan. Even then, the bank made clear that actual funding would be contingent upon the drafting and execution of formal loan documents, including a yet-to-be-negotiated agreement with Bally regarding the bank's and Bally's respective rights and duties in the event of a loan default by Integrity.

59. Second, Des Champs knew that the games themselves were not yet ready for their intended use as of the quarter end as required by GAAP. The December 30, 2004 shipment of video poker games to Integrity represented Bally's first shipment of such games into the Oklahoma market. Under Oklahoma law, the games were required to be tested and approved by an independent testing agency before they could be operated in the state. Des Champs knew that obtaining such approval was Bally's responsibility and that, as of the quarter end, Bally had not fulfilled that responsibility. Indeed, on the same day that Bally shipped the games, Des Champs helped prepare a letter agreement seeking Integrity's acknowledgement that the games were not yet approved.

60. As of the end of the second quarter of fiscal year 2005, Integrity lacked the funds to pay for the December 30, 2004 shipment, and the games were not ready for legal operation in Oklahoma. It was therefore improper under GAAP for Des Champs to cause Bally to recognize \$3.8 million in revenue on the shipment, and his inclusion of that revenue in the company's earnings release and Form 10-Q for the quarter rendered those reports materially false and/or misleading.

61. In light of Des Champs' awareness of the facts surrounding this first shipment, his education and training as a CPA, and his responsibilities as Bally's CAO, he either knew or was reckless in not knowing that it was improper for Bally to recognize and report revenue from this first shipment to Integrity.

***b. Improper Revenue Recognition in the Third Quarter of Fiscal 2005  
[ending March 31, 2005]***

62. Bally made two more shipments to Integrity during the quarter ended March 31, 2005, one on February 24 and another on March 31. Des Champs concluded that Bally could recognize another \$6.8 million in revenue (6% of total revenues for the quarter) on those two shipments and included this revenue in the company's April 28, 2005 earnings release and in its Form 10-Q, filed May 10, 2005, which Des Champs signed, having been promoted to CFO. As in the second quarter, Des Champs was well aware of facts that rendered such revenue recognition improper.

63. First, in early April 2005, Des Champs learned that the March 31 shipment had not actually been delivered to Integrity, but, instead, had been diverted to a Bally warehouse in Oklahoma until Integrity could secure space to store the games. Des Champs knew that, per previous guidance provided by Deloitte, this failure to deliver would likely preclude revenue recognition. Nonetheless, Des Champs did not disclose the shipment to Bally storage to Deloitte. Des Champs further deleted before sending an email he drafted to Bally's Chief Executive Office ("CEO") disclosing the matter.

64. Second, within days of the end of the quarter, and well before Bally announced its earnings on April 28, Des Champs learned once again that Bally could not count on timely payment from Integrity for the third quarter shipments. On April 7, 2005, Des Champs emailed Integrity's president an invoice for an initial payment due on the March 31 shipment. Integrity's president responded that Integrity's bank, which had made a single \$4 million payment on March 17, 2005, would not fund *any* additional game purchases until Integrity had placed into casinos 90% of the 750 games Bally had shipped previously. He went on to say that Integrity's efforts to

deploy games in Indian casinos were going poorly due to persistent technical problems, a message that Des Champs had been hearing internally for the past two months.

65. Within another six days, on or about April 13, 2005, Des Champs was briefed on a meeting between Bally and Integrity representatives, in which the parties discussed ways to help Integrity place its games and ease its financial burdens, including a possible twelve-month financing arrangement for Integrity. On April 18, 2005, Bally's credit and collections manager asked Des Champs in an email how he wanted her to handle a \$3.7 million bill for Integrity "that is now due." Des Champs replied that "this is a bit of a sticky wicket" and asked her to come see him in person.

66. On April 27, 2005, the day before Des Champs announced Bally's purported results for the preceding quarter, Bally's vice president for customer service emailed Des Champs a set of potential financing terms for Integrity, including a proposed 12-month financing plan, under which Integrity would not make its first payment until after July 31, 2005. Des Champs responded, "At first I thought it was ok, then I started to think more about it. If he owes us say \$10m by the end of June . . . and we make the one year payments fully amortizing, his freakin monthly payment will be \$1m+ per month! He will die. The thing we probably need to do is set up a balloon payment of say \$6m at the end, so his payments can come down to say \$400k per month, which will still be a tall order."

67. Given the failure of delivery with respect to the March 31, 2005 shipment and Integrity's inability to make timely payments going forward, it was improper under GAAP for Des Champs to cause Bally to recognize an additional \$6.8 million in revenue on the two third quarter 2005 shipments. His inclusion of that revenue in Bally's April 28, 2005 earnings release and its May 10, 2005 Form 10-Q rendered those public reports false and/or misleading.

68. In light of Des Champs' awareness of the facts surrounding the March 31, 2005 shipment and Integrity's financing problems, his education and training as a CPA, and his responsibilities as Bally's CFO, Des Champs knew or was reckless in not knowing that it was improper to recognize and report additional revenue from the third quarter shipments to Integrity.

*c. Statements to Auditors Concerning Integrity Dealings*

69. In or around July 2005, as part of their audit of Bally's financial statements for the fiscal year ending June 30, 2005, Deloitte's year-end audit team began asking Des Champs questions about the Integrity transactions after it came to their attention that Bally's books still contained a \$6.2 million unpaid receivable for Integrity. Following some initial exchanges, the auditors asked Des Champs to prepare a detailed memo outlining the history of the Integrity transactions and the basis for the company's revenue recognition decisions. Over the course of the next several months, Des Champs prepared a number of different versions of the memo, and in so doing, he consistently left out and misrepresented material facts.

70. Des Champs stated in his memos to Deloitte that Bally's failure to collect additional payments following the single advance by Integrity's bank in March 2005 resulted from Bally's own failure to "follow up" with Integrity's bank. In fact, Des Champs himself had sent Integrity's president an invoice on April 7, 2005 to which Integrity's president responded that its bank *would not advance* additional funds until Integrity reached a game-deployment threshold that it was nowhere close to reaching. In the weeks that followed, Des Champs described the situation with Integrity to Bally's collections manager as a "sticky wicket" and began working with others at Bally to create an alternative long-term financing arrangement for Integrity, an arrangement necessitated by the collapse of Integrity's bank financing. Thus, contrary to Des Champs' representations to Deloitte, the failure to collect additional funds after March 2005



resulted not from any failure by Bally to “follow up” to collect, but from the simple fact that Integrity had no funds to make payment. Des Champs was aware of the true reason for the failure to collect.

71. Second, Des Champs consistently stated in his memos to Deloitte that the earliest indication he had of any problem collecting payments from Integrity was a June 10, 2005 letter from Integrity’s bank. However, Des Champs knew that payments from Integrity were in jeopardy as early as April 2005, well before he included Integrity-related revenues in Bally’s April 28, 2005 announced earnings for the third quarter of fiscal year 2005.

72. Third, Des Champs told Deloitte that he first learned about a 90% deployment contingency in Integrity’s bank loan agreement from the June 10, 2005 letter. This statement was again false and misleading, given that Des Champs knew of the contingency more than two months earlier than admitted and that the June 10, 2005 letter makes no mention of a deployment contingency.

73. Fourth, Des Champs repeatedly stated in his memos to Deloitte that he first began exploring alternative payment arrangements with Integrity in July 2005, after the close of the fiscal year. Des Champs did not tell Deloitte that he began considering extended payment terms for Integrity before Bally made its April 28, 2005 announcement of its earnings for the third quarter of fiscal year 2005. Nor did Des Champs tell Deloitte that even before Bally announced its third quarter earnings, he had concluded that even a plan that (a) would not go into effect until after July 31, 2005 and (b) would only require Integrity to make payments of \$400,000 per month would be a “tall order” for Integrity.

74. Fifth, Des Champs never told Deloitte that the 350 games sent to Integrity at the end of the second quarter of fiscal year 2005 lacked the regulatory approvals needed for them to be

placed into operation in Oklahoma, and that Bally therefore had continuing obligations as to the transaction. He further failed to disclose that Bally's March 31, 2005 shipment had been delivered to a Bally warehouse and not to the customer.

75. In making these misrepresentations and omissions, Des Champs suggested that red flags surrounding the Integrity transactions had only recently come to light when, in fact, he was confronted with and ignored multiple red flags *before* deciding to book the revenue that Bally ultimately was forced to reverse.

#### **B. IMPACT OF THE IMPROPER REVENUE RECOGNITION SCHEME**

76. In 2005 and 2006, Bally restated its financial results to reverse each of its bill and hold transactions. The improper recognition of revenue resulted in the overstatement of its total reported revenue by \$8.4 million (or 7.5 percent of revenue) for the fourth quarter of 2003 and by \$8.8 million (or 9 percent of revenue) and \$10.2 million (or 10.5 percent of revenue) in the first and second quarters of fiscal 2004, respectively.

77. For the second quarter of 2005, Bally recognized and reported \$3.8 million of revenue on its shipment of games to Integrity. This was a \$3.8 million overstatement of net revenue (or 3%), because, as of the quarter end, timely payment from Integrity was not reasonably assured, and the games had not received requisite regulatory approvals. For the third quarter of 2005, Bally went on to recognize and report another \$6.8 million of revenue on two shipments to Integrity. This constituted a \$6.3 million overstatement of net revenue (or 5.5%). As of the end of the third quarter, Bally had already reported \$3.8 million in Integrity-related revenue, had only received \$4.3 million in payments from Integrity and its bank, and had no expectation of receiving future payments on a timely basis. At most, therefore, Bally could report \$500,000 in

Integrity revenue for the third quarter to account for the cash it had received to date. It had no basis for reporting an additional \$6.8 million at that point in time.

**C. MISREPRESENTATIONS TO AUDITORS**

78. During 2003 and 2004, Des Champs and Vlcek misrepresented and failed to disclose material facts to Deloitte in connection with their quarterly reviews and year end audits of Bally. Des Champs and Vlcek jointly provided purported justification for their use of bill and hold transactions when they knew or were reckless in not knowing that not one of the transactions met all seven requirements under GAAP. Des Champs and Vlcek made these misrepresentations and omissions when they knew Deloitte was relying on their disclosures to determine whether Bally's recognition of revenue on the bill and hold transactions was proper under GAAP.

79. For each reporting period during 2003 through 2005, Des Champs signed Management Representation letters to Deloitte. In these letters, Des Champs made representations to Deloitte including that: the financial statements were prepared in accordance with GAAP; management was not aware of any specific instances of fraud; there were no side letters modifying terms of a sale; and that all necessary disclosures had been made. As a result of his actions in connection with the improper revenue recognition scheme, Des Champs knew or was reckless in not knowing that the management representation letters he signed were false and misleading.

80. During the 2005 year end audit, Des Champs signed off on the improper accounting for the Integrity transactions. He misrepresented and omitted material facts about the transactions in communications with Deloitte during their fiscal 2005 year end audit. In responding to Deloitte's inquiries regarding Integrity's outstanding balance with Bally, Des Champs misrepresented the time at which he knew facts suggesting that collectibility of the purchase

price by Bally's was not reasonably assured and that revenue recognition on the transactions was therefore improper.

**D. FAILURE TO DEVISE AND MAINTAIN INTERNAL CONTROLS**

81. Due to Des Champs and Vlcek's actions, Bally failed to record revenue in accordance with GAAP. As the senior accounting officers of the company, Des Champs and Vlcek were responsible for ensuring that Bally devised and maintained an appropriate revenue recognition policy. Des Champs and Vlcek made the determination to treat transactions on a bill and hold basis when they knew or were reckless in not knowing that the requirements for such treatment under GAAP had not been met. Des Champs caused Bally to record revenue on the Integrity transactions despite his awareness of facts demonstrating that Bally was unlikely to collect the purchase price.

**E. FALSE BOOKS AND RECORDS**

82. Des Champs and Vlcek caused Bally to improperly recorded revenue for the bill and hold transactions. Des Champs caused Bally to improperly record revenue on the Integrity transactions. Both knew or should have known facts that indicated the revenue was being improperly recorded.

**F. AIDING AND ABETTING REPORTING PROVISIONS**

83. During all relevant periods, Bally's filed quarterly and annual reports with the Commission which included misstated revenues and net income as a result of the transactions described above. Through their actions in causing Bally's to improperly recognize revenue, Des Champs and Vlcek knowingly provided substantial assistance to Bally in filing misleading annual, quarterly, and current reports with the Commission.

**FIRST CLAIM FOR RELIEF**  
**(Violations of Section 17(a)(1) of the**  
**Securities Act [15 U.S.C. § 77q(a)(1)])**

84. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.

85. As a result of the foregoing, Des Champs and Vlcek directly and indirectly, with scienter, in the offer or sale of Bally securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, has employed a device, scheme, or artifice to defraud.

86. Des Champs and Vlcek thereby violated, and unless restrained and enjoined, will violate Section 17(a)(1) of the Securities Act.

**SECOND CLAIM FOR RELIEF**  
**(Violation of Sections 17(a)(2) and 17(a)(3)**  
**of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)])**

87. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.

88. Des Champs and Vlcek directly and indirectly, with scienter, in the offer or sale of Bally securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, has obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of Bally securities.

89. Des Champs and Vlcek violated, and unless restrained and enjoined, will violate Section 17(a)(2) and 17(a)(3) of the Securities Act.

**THIRD CLAIM FOR RELIEF**  
**(Violation of Section 10(b) of the Exchange Act and**  
**Rule 10(b)(5) thereunder [15 U.S.C. §§ 78j(b) and §240.10b-5])**

90. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.

91. Des Champs and Vlcek directly and indirectly, with scienter, in connection with the purchase or sale of Bally securities, by use of the means or instrumentalities of interstate commerce or by use of the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which had been and are operating as a fraud or deceit upon the purchasers or sellers of such securities.

92. Des Champs and Vlcek violated, and unless restrained and enjoined, will violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**FOURTH CLAIM FOR RELIEF**  
**(Violation of 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])**

93. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.

94. Des Champs and Vlcek knowingly failed to implement a system of internal accounting controls, and directly or indirectly falsified or caused to be falsified books, records or accounts described in Section 13(b)(2)(A) of the Exchange Act.

95. Des Champs and Vlcek violated, and unless restrained and enjoined, will violate 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].

**FIFTH CLAIM FOR RELIEF**

**(Aiding and Abetting Bally's Violations of 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, 240.13a-11, and 240.13a-13]).**

96. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.
97. Bally, an issuer of a security registered pursuant to Section 12(b) of the Exchange Act, filed misleading annual, quarterly, and current reports with the Commission.
98. By reason of the foregoing, Bally 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-11, and 240.13a-13].
99. Des Champs and Vlcek knowingly provided substantial assistance to Bally's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.
100. By engaging in the conduct described above, Des Champs and Vlcek aided and abetted Bally's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and unless restrained and enjoined will continue to aid and abet these provisions.

**SIXTH CLAIM FOR RELIEF**

**(Aiding and Abetting Bally's Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)])**

101. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.
102. Bally violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], by failing to make or keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets.
103. Des Champs and Vlcek knowingly provided substantial assistance to Bally's violations of Section 13(b)(2)(A).

104. By engaging in the conduct described above, Des Champs and Vlcek aided and abetted Bally's violations of Section 13(b)(2)(A) of the Exchange Act, and unless restrained and enjoined, will continue to aid and abet violations of this provision.

**SEVENTH CLAIM FOR RELIEF**  
**(Aiding and Abetting Bally's Violations of Section 13(b)(2)(B) of the**  
**Exchange Act [15 U.S.C. § 78m(b)(2)(B)]**

105. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.

106. Bally violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements.

107. Des Champs and Vlcek knowingly provided substantial assistance to Bally's violations of Section 13(b)(2)(B) of the Exchange Act.

108. By engaging in the conduct described above, Des Champs and Vlcek aided and abetted Bally's violations and unless restrained and enjoined will continue to aid and abet violations of this provisions.

**EIGHTH CLAIM FOR RELIEF**  
**(Violations of Exchange Act Rule 13a-14 [17 C.F.R. §240.13a-14])**

109. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.

110. Des Champs certified in the annual report filed by Bally for the year ended June 30, 2005 and the quarterly report filed by Bally for the period ended March 31, 2005 that, among other things, he reviewed each of these reports and, based on his knowledge, these reports (i) did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not



misleading and (ii) included financial statement and other financial information that fairly presented, in all material respects, Bally's financial condition, results of operations, and cash flows.

111. By engaging in the conduct described above, Des Champs violated, and unless restrained and enjoined, will continue to violate Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

**NINTH CLAIM FOR RELIEF**  
**(Violations of Exchange Act Rule 13b2-2 [17 C.F.R. §240.13b2-2])**

112. Paragraphs 1 through 83 are hereby realleged and incorporated by reference.

113. Des Champs and Vlcek made materially false or misleading statements, or omitted 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 Bally's independent auditors in connection with an audit or examination of Bally's financial statements or in the preparation or filing of Bally's documents or reports filed with the Commission.

114. By engaging in the conduct described above, Des Champs and Vlcek violated, and unless restrained and enjoined, will continue to violate Exchange Act Rule 13b2-2 [17 C.F.R. §240.13b2-2].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

**I.**

Find that Des Champs and Vlcek committed the violations alleged.

**II.**

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Des Champs and Vlcek from violating, directly or indirectly, the provisions of law and rules alleged in this complaint.

**III.**

Order Des Champs and Vlcek to disgorge all ill-gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint, plus pre-judgment and post-judgment interest.

**IV.**

Order Des Champs and Vlcek to pay third tier civil penalties, including post-judgment interest, 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)].

**V.**

Order pursuant to Exchange Act Section 21(d)(2), as amended by Section 305 of the Sarbanes-Oxley Act [15 U.S.C. § 78u(d)(2)], or pursuant to the equitable authority of the court, that Des Champs and Vlcek be permanently barred from serving as officers or directors of any public company.

**VI.**

Order such other relief as is necessary and appropriate.

**ADMISSION TO PRACTICE IN PARTICULAR CASE**

Pursuant to LR IA 10-2, attorneys for Plaintiff will comply within 10 days.

DATED: September 24, 2008.

/s/ Julie K. Lutz

Elizabeth E. Krupa (Colo. Attorney Reg. No. 26028)

Julie K. Lutz (Calif. Attorney Reg. No. 77246)

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