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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

PETER O. MARION, :

Defendant. :

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Civil Action No.

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint against Defendant Peter O. Marion ("Marion") alleges as follows:

1. This case arises out of insider trading in the securities of U.S. Foodservice, Inc. ("USF") by Marion in February and March of 2000 after he acquired material, nonpublic information concerning a proposed tender offer for USF by Royal Ahold (Koninklijke Ahold, N.V.) ("Ahold").

2. During the period February 15, 2000 through March 1, 2000, after learning of Ahold's intention to acquire USF at a price of \$24 to \$26 per share, Marion purchased 36,000 shares of USF common stock at an average price of \$14.92 per share. Marion was tipped about the pending acquisition by a USF executive, Timothy J. Lee. On March 7, 2000, Ahold and USF publicly announced Ahold's tender offer for USF at \$26 per share. Marion sold his shares at an average price of \$25.02 shortly after the tender offer was announced. As a result of his trading, Marion made illegal profits of approximately \$363,894. When he purchased the USF shares, Marion knew, had reason to know, or acted in reckless disregard of the fact that the information he possessed concerning the then contemplated tender offer for USF was material nonpublic information that had been communicated to him directly or indirectly in breach of a duty of trust and confidence by an insider of USF.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction and venue over this action pursuant to Sections 21(e), 21A(a)(1) and 27 of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(e), 78u-1(a)(1) and 78aa]. All of the securities transactions at issue herein were effected in this District through a broker-dealer registered with the Commission and this Court properly has venue over this action.

4. Defendant Marion engaged in acts, practices and courses of business that violate Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(e)], and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§240.10b-5 and 240.14e-3], through the means or instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange.

5. The Commission seeks a judgment permanently enjoining Marion from future violations and directing disgorgement of his illegal profits, pursuant to Sections 21(d)(1) and (e) of the Exchange Act [15 U.S.C. §§78u(d)(1) and (e)]. Unless enjoined, Marion will continue to engage in transactions, acts, practices, and courses of business that violate the provisions of the Exchange Act at issue. The Commission also brings this action for an award of civil penalties, pursuant to Section 21A of the Exchange Act [15 U.S.C. §§78u-1].

#### **THE DEFENDANT**

6. Peter O. Marion, age 56, resides in East Greenwich, Rhode Island. During the relevant period, Marion was president of a seafood processing and supply company, Maritime Seafood Processors, Inc., whose primary customers were USF and USF controlled entities.

#### **RELATED ENTITIES**

7. U.S. Foodservice, Inc. was, prior to its acquisition by Ahold, a publicly traded company engaged in the food distribution business. USF was headquartered in Columbia, Maryland. The common stock of USF was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed for trading on the New York Stock Exchange.

8. Ahold, an international retail and wholesale food provider, is a publicly-held company organized in The Netherlands with securities registered with the Commission pursuant to Section 12(b) of the Exchange Act. Ahold's securities trade on the New York Stock Exchange and are evidenced by American Depositary Receipts.

#### **FACTS**

##### **BACKGROUND OF AHOLD'S TENDER OFFER FOR USF STOCK**

9. On September 7, 1999, the Chief Executive Officers of USF and Ahold met at a social outing and discussed potential business opportunities involving the two companies.

10. On December 14, 1999, following additional discussions between the two companies and their representatives, USF's management informed the Board of Directors of the possibility of a business combination involving USF. That same day, USF's Board of Directors authorized the company's management to engage financial and legal advisors to assist the company in pursuing a possible business combination.

11. On February 7, 2000, after various discussions among the parties, Ahold presented a preliminary proposal to USF whereby Ahold would acquire USF at a price of \$26 per share. On that date, the price of USF stock closed at \$12 3/8.

12. On March 6, 2000, following additional discussions and related activity, USF's Board of Directors unanimously approved the terms and conditions of a merger agreement with Ahold and on March 7, 2000, the two companies publicly announced Ahold's tender offer for the outstanding shares of USF at \$26 a share.

13. Throughout the discussions and negotiations concerning the contemplated acquisition, Ahold and USF took steps to ensure that the contemplated acquisition remained confidential.

**MARION LEARNS OF THE CONTEMPLATED TENDER  
OFFER AND BUYS USF SHARES**

14. On or before February 15, 2000, Defendant Marion met with Timothy J. Lee, a friend who was an executive in USF's purchasing department. Lee was Marion's primary contact at USF. Prior to the meeting, Lee had learned, directly or indirectly from USF, that USF was the target of a contemplated but unannounced acquisition and that the acquisition price for USF stock would be \$24 to \$26 per share. This information was material and nonpublic and Lee directly or indirectly owed a duty of trust and confidence to USF not to disclose it. During the meeting with Marion or shortly thereafter, in breach of his duty of trust and confidence, Lee told

Marion that USF was the target of a contemplated but unannounced acquisition and that the acquisition price for USF stock would be in the mid-twenties.

15. On February 15, 2000, after learning from Lee that USF was the target of a proposed acquisition and that the acquisition valued USF at \$24 to \$26 per share, Defendant Marion commenced purchasing USF common stock.

16. During the period February 15, 2000 through March 1, 2000, Defendant Marion purchased, in an account in his name and in another account he owned and controlled in the name of Canadian Scallop Corp., a total of 36,000 shares of USF common stock at an average price of \$14.92 per share. The accounts were maintained at a broker dealer registered with the Commission.

17. Marion's trading included the following purchases:

<b>Trading by Peter Marion</b>					
<b>Date</b>	<b>Order</b>	<b>Account Name</b>	<b>Shares</b>	<b>Price</b>	<b>Amount</b>
02/15/00	Buy	PETER O MARION	2,500	11.9375	-29,843.75
02/15/00	Buy	PETER O MARION	2,500	11.9375	-29,843.75
02/16/00	Buy	PETER O MARION	200	11.6250	-2,325.00
02/16/00	Buy	PETER O MARION	4,800	11.6875	-56,100.00
02/16/00	Buy	CANADIAN SCALLOP CORP	1,500	11.6875	-17,531.25
02/17/00	Buy	CANADIAN SCALLOP CORP	4,000	11.9375	-47,750.00
02/24/00	Buy	PETER O MARION	3,400	13.9375	-47,387.50
03/01/00	Buy	CANADIAN SCALLOP CORP	5,000	17.7500	-88,750.00
03/01/00	Buy	CANADIAN SCALLOP CORP	500	17.7500	-8,875.00
03/01/00	Buy	CANADIAN SCALLOP CORP	100	17.9375	-1,793.75
03/01/00	Buy	CANADIAN SCALLOP CORP	2,400	18.0000	-43,200.00
03/01/00	Buy	CANADIAN SCALLOP CORP	4,100	17.9375	-73,543.75
03/01/00	Buy	CANADIAN SCALLOP CORP	900	18.0000	-16,200.00
03/01/00	Buy	CANADIAN SCALLOP CORP	4,100	18.0000	-73,800.00
<b>Total Purchased</b>			<b>36,000</b>	<b>Total Cost</b>	<b>-536,943.75</b>

18. Prior to Marion's purchases, the information concerning the tender offer for USF shares has not been publicly disclosed.

**THE TENDER OFFER IS ANNOUNCED AND MARION SELLS HIS  
USF STOCK FOR ILLEGAL PROFITS OF APPROXIMATELY \$363,894**

19. On March 7, 2000, before the market opened, Ahold and USF publicly announced Ahold's tender offer for USF at \$26 per share.

20. On March 7, 2000, following the public announcement, Marion sold his 36,000 shares of USF stock at an average price of \$25.02 per share as follows:

<b>Trading by Peter Marion</b>					
<u>Date</u>	<u>Order</u>	<u>Account Name</u>	<u>Shares</u>	<u>Price</u>	<u>Amount</u>
03/07/00	Sell	PETER O MARION	-13,400	25.0625	335,837.50
03/07/00	Sell	CANADIAN SCALLOP CORP	-22,600	25.00	565,000.00
<b>Total Sold</b>			<b>-36,000</b>	<b>Total Proceeds</b>	<b>900,837.50</b>

21. Marion made illegal profits of approximately \$363,894 by his trading in USF stock.

**FIRST CLAIM FOR RELIEF**

**Violations of 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**

22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. As set forth above, Marion purchased 36,000 shares of USF common stock after learning from Lee that USF was the target of a proposed acquisition that valued USF at \$24 to \$26 a share. When he purchased these shares, Marion knew, or was reckless in not knowing, that the information he possessed concerning the proposed acquisition of USF was material and nonpublic and that it had been communicated to him directly or indirectly in breach of a duty of trust and confidence.

24. By reason of the foregoing, Marion, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase of securities: (a) employed devices, schemes or

artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon other persons.

25. By reason of the foregoing, Marion 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].

### **SECOND CLAIM FOR RELIEF**

#### **Violations of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. 240.14e-3] Thereunder**

26. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

27. As set forth above, by February 15, 2000, Ahold had taken substantial steps towards commencing its tender offer for the securities of USF by, among other things, holding several confidential meetings and discussions with representatives of USF and by communicating to USF prices at which it was prepared to acquire USF.

28. Marion purchased USF stock, as described above, while he possessed material information relating to a tender offer for USF stock by Ahold. At the time that he purchased the USF stock, Marion knew, was reckless in not knowing, or had reason to know, that the information he possessed concerning the tender offer was nonpublic and had been acquired directly or indirectly from USF.

29. By reason of the foregoing, Marion violated Section 14(e) of the Exchange Act [15 U.S.C. § 78(e)], and Rule 14e-3 [17 C.F.R. §240.14e-3], promulgated thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

- a. Permanently enjoin Marion from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.
- b. Order Marion to disgorge all illegal gains from his unlawful conduct, gained directly or indirectly from the transactions complained of herein, together with prejudgment interest thereon.
- c. Order Marion to pay a civil money penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].
- d. 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.
- e. Grant such other and further relief as this Court may determine to be just and necessary.

Dated: July \_\_\_\_\_, 2004

Respectfully submitted,

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