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SECURITIES AND EXCHANGE COMMISSION

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

CV. _____

Plaintiff,

COMPLAINT

vs.

DEMAND FOR JURY TRAIL

JAMES T. DOOLEY and JAMES E.
LORENZ, III,

Defendants.

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

SUMMARY OF THE ACTION

1. This matter involves financial reporting fraud by former executives of Electro Scientific Industries, Inc. (“ESI” or “Company”), a high technology manufacturer based in Portland, Oregon. The fraud, which ran from at least August 2002 through December 2002, was carried out by James T. Dooley (“Dooley”), who served first as ESI’s Chief Financial Officer and Acting Chief Operating Officer, and then as Chief Executive Officer, and James E. Lorenz, III (“Lorenz”), ESI’s then Corporate Controller.

2. Faced with a shortfall in earnings for the quarter ended August 31, 2002, Lorenz searched for ways to reduce ESI's expenses and, thus, increase the Company's net income. In what he later called a "sleazy" "hunt for credits," Lorenz improperly eliminated more than \$1.4 million in expenses from ESI's financial records, which artificially boosted the Company's earnings by the same amount.

3. Despite this, following the last minute discovery of a significant accounting error, ESI found itself short of its quarterly earnings goal. As a result, Dooley and Lorenz improperly reduced ESI's expenses and increased its earnings by another \$1 million by purporting unilaterally to eliminate vested retirement and severance benefits for ESI's employees in Asia. ESI did not inform the employees of this action beforehand, and made no effort to obtain legal advice or comply with Asian law governing the elimination of such benefits. The purported unilateral elimination of the Asian employees' retirement and severance benefits allowed ESI to falsely announce that it had met its earnings target for the quarter.

4. Defendants continued their fraud in the following quarter, ended November 30, 2002, as Dooley and Lorenz again used fraudulent accounting devices to improperly reduce ESI's expenses and increase its income, this time by more than \$1.9 million.

5. In furtherance of the fraud, Dooley falsely told ESI's Board of Directors and independent auditors that he had legal approval for the elimination of the Asian retirement and severance benefits when he did not. In addition, Dooley submitted false Sarbanes-Oxley Act certifications asserting that earnings reports ESI filed with the Commission for the relevant quarters were truthful. Dooley and Lorenz also made numerous other misrepresentations or omissions to ESI's independent auditors, circumvented ESI's internal accounting controls, and falsified its books and records.

6. The Commission seeks a court order barring Dooley and Lorenz from serving as officers or directors of any public company; ordering them to disgorge all

benefits received as a result of their violations of the securities laws; imposing civil monetary penalties; and enjoining them from future securities laws violations.

JURISDICTION

7. This Court has jurisdiction over this action pursuant to Sections 20(c) and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(c) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce or of the mails or of the facilities of a national securities exchange in connection with the acts, transactions, practices, and courses of business alleged in this Complaint.

AUTHORITY TO BRING THIS ACTION

8. The Commission brings this action pursuant to Sections 20(b) and 20(c) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(c)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

DEFENDANTS

9. Dooley, age 50, resides in Cape Coral, Florida. He was ESI’s Chief Executive Officer (“CEO”) from December 16, 2002 until April 15, 2003. Prior to that, Dooley was ESI’s Chief Financial Officer (“CFO”) from June 2000 to December 2002, and also its Senior Vice President and Acting Chief Operating Officer from April 2002 to December 2002. On April 15, 2003, ESI’s Board of Directors placed Dooley on administrative leave. ESI terminated Dooley’s employment on June 9, 2003.

10. Lorenz, age 41, resides in Portland, Oregon. He was ESI’s Corporate Controller from November 2001 until February 2003. After that, he served as ESI’s Director of Materials until he was fired in March 2003.

OTHER RELEVANT ENTITY

11. ESI is an Oregon corporation with its principal place of business in Portland. The Company makes manufacturing equipment for electronics and other high

technology companies. ESI common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and trades on the Nasdaq National Market. ESI's fiscal year 2003 ran from June 2, 2002, to May 31, 2003, with the four quarters ending on August 31, November 30, March 1, and May 31, respectively.

FACTUAL ALLEGATIONS

I. Pressure to Achieve Earnings Goals Provided a Motive for Dooley and Lorenz to Commit Fraud

12. In the year prior to Defendants' fraud, ESI's financial results had declined sharply. After posting record revenue of \$471 million in fiscal 2001, ESI reported only \$166 million in revenue in fiscal 2002, which ended June 1, 2002. ESI reported losses in each quarter of fiscal 2002.

13. In early August 2002, Dooley provided optimistic estimates of ESI's earnings for the quarter to institutional investors, Wall Street analysts, and ESI's Board of Directors. The projections showed that, after four consecutive losing quarters, ESI expected to report earnings of \$0.01 to \$0.03 per share for ESI's first quarter of fiscal 2003, ending August 31, 2002.

14. Dooley stood to advance at ESI based on the Company's successful financial performance. After the unanticipated retirement of its CEO, ESI operated under an Acting CEO from April 2002 to December 2002 while the Board of Directors searched for a full-time replacement. Dooley, who was then CFO and Acting COO, was a candidate for the CEO position. Lorenz also had the opportunity to become CFO in the event Dooley was promoted.

II. Fraudulent Conduct by Dooley and Lorenz for the Quarter Ended August 31, 2002

15. As ESI's first quarter of fiscal 2003 (ended August 31, 2002) progressed, Dooley and Lorenz received internal revenue and expense forecasts showing that ESI would report a loss for the quarter, not the profit the Company had projected. In

response, Lorenz searched for accounting entries that could be made to ESI's books and records to improve ESI's results simply by changing the Company's past accounting policies. Lorenz later described the effort as "sleazy"—a so-called "hunt for credits" to insure that ESI achieved its projected quarterly income. This process ultimately resulted in ESI recording fraudulent entries in its accounting records that improperly reduced its operating expenses for the first quarter by more than \$1.4 million, and increased its income for the quarter by the same amount. As discussed in parts (a) and (b) below, these included entries relating to the value of ESI's inventory and its allowance for doubtful accounts receivable.

16. Despite these efforts, a further last-minute problem threatened to prevent ESI from reporting a first quarter profit. On September 12, 2002, after the end of the first quarter but before ESI had announced its financial results to the public, Dooley and Lorenz learned that the discovery by ESI's independent auditors of a significant accounting error would cause ESI to fall short of its projected quarterly income. In a late-night meeting with ESI finance personnel, Dooley and Lorenz decided to reduce ESI's expenses and increase its bottom line even further by unilaterally eliminating nearly \$1 million in vested retirement and severance benefits for ESI employees in Asia, without prior notice to the employees and in violation of applicable Asian laws. As discussed further in part (c) below, this fraudulent transaction enabled ESI to avoid a loss and report a profit in line with expectations.

a. Improper Increase in the Value of ESI's Inventory

17. As part of its business, ESI has to account for the value of inventory that is defective. At all relevant times, under ESI's policy the Company valued defective parts inventory at zero until such time as the Company evaluated the parts, determined that they were repairable, and shipped them for repair. Only after performing this analysis and shipping the parts for repair was it appropriate for ESI to increase the value of

inventory listed as defective. As ESI's Corporate Controller, Lorenz was aware of ESI's valuation policy for defective parts inventory.

18. On or about September 4, 2002, Lorenz directed ESI personnel to change the Company's accounting records for the quarter ended August 31, 2002 to increase the value of ESI's defective parts inventory by \$1.3 million. This change, which occurred after the end of ESI's first fiscal quarter, had the effect of reducing ESI's expenses for the first quarter by \$1.3 million and increasing its quarterly net income by the same amount.

19. There was no basis for Lorenz to increase the value of the defective parts inventory. At the time, ESI had not determined that this inventory was repairable and had not shipped it for repair.

20. Lorenz knew, or was reckless in not knowing, that the increase in inventory value violated ESI's accounting policy. In addition, Lorenz knew, or was reckless in not knowing, that the increase violated generally accepted accounting principles ("GAAP") because it was not consistent with how ESI had previously valued such inventory, and because the change in methodology was not disclosed in ESI's Form 10-Q for the first quarter of fiscal 2003, which ESI filed with the Commission on or about October 15, 2002.

b. Reversal of Allowances for Doubtful Accounts Receivable

21. When a customer owes ESI money, the Company establishes in its financial records an item called an account receivable. Over time, if ESI determines that the customer will not be able to pay the amount owed, the receivable becomes "doubtful," and ESI's accounting policy requires it to establish an allowance, or offset, against the receivable. When ESI establishes an allowance for a doubtful account receivable, it increases ESI's expenses and decreases its income in the period in which the allowance is made.

22. Pursuant to this policy, on August 27, 2002, ESI's credit manager recorded allowances of \$129,544 for doubtful accounts receivable from three customers. When the credit manager made this accounting entry, it increased ESI's expenses and decreased its income for the first quarter of fiscal 2003.

23. However, also on August 27, 2002, in contravention of ESI's policy, Lorenz directed that the allowances that the credit manager had recorded be reversed in their entirety. Lorenz directed the reversal in order to improve ESI's quarterly performance, and without any basis for believing that the accounts receivable would be collected.

24. Lorenz knew, or was reckless in not knowing, that the reversal of the allowances for doubtful accounts violated ESI's established accounting policy and GAAP because it was not based on any reasonable analysis of the collectibility of the accounts.

c. Elimination of Asian Retirement and Severance Benefits

25. On or about September 12, 2002, ESI's independent auditors notified Dooley and Lorenz of an error in ESI's books, the correction of which resulted in an increase in ESI's expenses of \$2.4 million. This increase in expenses prevented ESI from reaching its earnings target for the quarter (even with the improper accounting adjustments alleged above).

26. Dooley and Lorenz immediately called a meeting of ESI Finance Department personnel, which lasted through the night of September 12 and into the early morning hours of September 13. Dooley and Lorenz instructed Finance personnel to search ESI's books for additional credits that could be used to offset the unexpected \$2.4 million in expenses.

27. As part of this effort, later that night Dooley announced to Finance personnel that ESI would unilaterally eliminate all retirement and severance benefits for employees in its Asian offices (which included Japan, Taiwan, and Korea), and also

eliminate an accrued liability that ESI had established in its accounting records to reflect the estimated costs of providing such benefits. Eliminating the accrued liability had the effect of reducing ESI's expenses and increasing its income for the first quarter by nearly \$1 million. Of this total, more than \$800,000 related to ESI's Japanese employees.

28. On or about September 13, 2002, Dooley and Lorenz spoke with ESI's independent auditors. During this discussion Dooley falsely told the auditors that he had obtained legal approval for the elimination of benefits for ESI's Asian employees. In fact, at the time Dooley had not obtained any advice from legal counsel on this issue.

29. Also during this discussion, Dooley told the auditors that ESI had reached the decision to eliminate the benefits prior to the end of the first quarter. This was also false, because ESI did not move to eliminate the benefits until on or about September 12, 2002.

30. On or about September 17, 2002, ESI's Audit Committee (a subset of its Board of Directors) met to review ESI's financial results for the quarter. Certain ESI officers and employees, including Dooley and Lorenz, and ESI's independent auditors attended the meeting. ESI's Audit Committee questioned management about the support for the decision to eliminate the retirement and severance benefits. Again, Dooley falsely stated that the decision had been approved by legal counsel.

31. Dooley (but not Lorenz) also attended a meeting of ESI's Board of Directors the next day, September 18, 2002. During this meeting, Dooley again falsely stated that he had verified the propriety of eliminating the Asian benefits accrual with the Company's lawyers.

32. On October 7, 2002, Dooley (along with ESI's outside auditors and others) attended a meeting of ESI's Disclosure Committee, which the Company had established pursuant to the Sarbanes-Oxley Act to ensure it complied with its financial reporting requirements. During the meeting, another ESI employee initiated a discussion concerning whether ESI had the authority to unilaterally eliminate benefits for its

Japanese employees. Dooley interrupted the employee, and continued to assert that ESI had properly eliminated the benefits.

33. Following this meeting, on October 7, the ESI employee gave Dooley a memo from ESI's outside legal counsel in Japan. The memo specified that ESI could not change the terms of the retirement benefits it provided for its Japanese workers without their consent unless the changes were "reasonable." The memo further indicated that simply eliminating a retirement benefits program was not reasonable. Because ESI could not unilaterally eliminate the Japanese employees' retirement benefits, the import of the memo was that ESI had not lawfully done so. As a result, the Company's reversal of the related accrual for those benefits in the first quarter violated GAAP. Dooley did not disclose this legal advice to ESI's Audit Committee, Board of Directors, or its independent auditors.

34. Dooley signed a management representation letter to ESI's auditors dated October 9, 2002, in connection with their review of ESI's first quarter financial statements. In the letter, Dooley falsely represented that information in the quarterly financial statements to be filed in ESI's Form 10-Q was presented consistently with GAAP. In addition, pursuant to the auditors' specific request, Dooley addressed the reversal of the accrual for Asian benefits, representing that "[m]anagement, with the appropriate authority, had resolved to terminate the supplemental retirement plan for its Japanese employees as of August 31, 2002." These statements were false because, among other reasons, the decision to terminate the Asian benefits occurred after August 31, 2002, and Dooley concealed the legal advice, which unequivocally demonstrated that ESI lacked a legal basis to unilaterally eliminate the benefits and the associated accrued liabilities.

d. As a Result of Fraud by Dooley and Lorenz, ESI Issued False Financial Results for the First Quarter of Fiscal 2003

35. On or about October 15, 2002, ESI filed with the Commission a quarterly report on Form 10-Q for the first quarter ended August 31, 2002. Lorenz reviewed the Form 10-Q prior to its filing, and Dooley signed it. In the Form 10-Q, ESI reported net income of \$158,000, and earnings per share of \$0.01. The Form 10-Q followed a press release issued by ESI on September 17, 2002 (the “September 17 press release”), which contained the same information concerning ESI’s net income and earnings per share for the first quarter. ESI’s Form 10-Q for the quarter was also incorporated by reference in two previously filed registration statements on Form S-8, filed on February 6, 2001, and August 13, 2001, to register ESI’s offering of securities under an employee benefit plan. (So long as such S-8 statements are in effect, they incorporate any subsequently filed financial statements by the issuer.)

36. The Form 10-Q included a certification signed by Dooley as required by Section 302 of the Sarbanes-Oxley Act, 18 U.S.C. § 7241. Among other things, Dooley certified that the report did not contain any untrue statement or omission of material fact; the financial statements, and other financial information included in the report, fairly presented in all material respects ESI’s financial condition, results of operations, and cash flows; and he had disclosed to ESI’s independent auditors and ESI’s Audit Committee all significant deficiencies in the design or operation of ESI’s internal controls and any fraud that involved management or other employees who had a significant role in ESI’s internal controls.

37. The Form 10-Q, the September 17 press release, Dooley’s Sarbanes-Oxley certification, and the Form S-8 filings were all false. In fact, ESI had materially overstated its income for the first quarter of fiscal 2003 as a result, in part, of the illegal accounting adjustments described above that Dooley and Lorenz directed.

38. On or about March 20, 2003, ESI announced that it would restate its financial results for the first quarter of fiscal 2003. The restatement revealed that ESI had not achieved a \$158,000 quarterly profit, but rather suffered a loss of \$3.4 million. As part of the restatement, ESI reversed in their entirety the improper accounting entries described above concerning ESI's defective parts inventory, its allowances for doubtful accounts receivable, and expenses relating to vested retirement and severance benefits for ESI's employees in Asia.

III. Fraudulent Conduct by Dooley and Lorenz for the Quarter Ended November 30, 2002

39. During the second quarter of fiscal 2003, ended November 30, 2002, Dooley and Lorenz continued their fraudulent scheme to reduce ESI's expenses, and thus increase the Company's earnings. As described below, Defendants caused ESI to improperly eliminate more than \$1.9 million in expenses for the quarter, and increase ESI's earnings by the same amount, with fraudulent adjustments to ESI's accounting for warranty expense and consignment inventory.

40. In addition, Dooley and Lorenz caused ESI to continue to account improperly for its obligations to provide retirement and severance benefits for its employees in Asia. By at least the end of the second quarter of fiscal 2003, Lorenz learned of the legal advice that Dooley had received indicating that ESI had improperly eliminated the liability for benefits in the first quarter. Neither Dooley nor Lorenz disclosed this advice to ESI's auditors, Audit Committee, or Board of Directors, and ESI did not include in its accounting records any liability for its obligation to provide such benefits.

a. Improper Decrease in Warranty Expense

41. As part of its business, ESI provided warranties to its customers to replace certain worn out or defective equipment. In the second quarter of fiscal 2003, ESI

incurred \$2.6 million in expenses to provide new parts or equipment to fulfill its warranty obligations.

42. On December 9, 2002, after the end of ESI's second quarter but before the Company had announced its results to the public, Lorenz directed that accounting entries be made that slashed ESI's recorded warranty expense by \$1.3 million, or approximately 50%.

43. These entries violated GAAP because Lorenz had no reasonable basis to believe that such a substantial decrease in the amount of warranty expense was appropriate. To the contrary, several ESI employees told Lorenz that there was no evidence that warranty expense was, in fact, lower than what had been recorded, and that reducing the expense absent such evidence was wrong.

44. Dooley knew, or was reckless in not knowing, of Lorenz's fraudulent reduction in ESI's warranty expense. Dooley was advised of the reduction during a review of ESI's preliminary financial results, and knew that there was no support for it.

b. Undisclosed Change in Valuation of Consignment Inventory

45. In order to further boost ESI's earnings, Lorenz directed that the Company change the way it accounted for consignment inventory—product that ESI had provided to a customer for a trial or demonstration period. As a result of this change, which was not disclosed, Lorenz fraudulently reduced ESI's expenses for the second quarter by approximately \$650,000, and increased its earnings by the same amount.

46. Since at least 1999, when ESI shipped product to a customer on consignment, it recognized an expense equal to the value of the inventory. That is, it reduced the value of its inventory and increased its expenses. By the second quarter of fiscal 2003, ESI had incurred approximately \$650,000 in expenses through shipments of consignment inventory.

47. During the second quarter, Lorenz caused ESI to change its accounting for consignment inventory. Lorenz directed that approximately \$650,000 in previously recognized consignment inventory expenses be reversed, and that ESI record an asset on its balance sheet for the same amount. ESI would then recognize the related expenses only when the inventory was ultimately sold to the customer. As a result of this change, during the second quarter ESI eliminated approximately \$650,000 in previously recognized consignment inventory expense. This had the effect of decreasing ESI's expenses and increasing its earnings for the period.

48. Lorenz knew or was reckless in not knowing that this change in accounting policy violated GAAP because it was not disclosed in ESI's Form 10-Q for the second quarter, which ESI filed on or about January 13, 2003.

c. As a Result of Fraud by Dooley and Lorenz, ESI Issued False Financial Results for the Second Quarter of Fiscal 2003

49. In light of ESI's positive results for its first quarter of fiscal 2003, Dooley was promoted to CEO on December 16, 2002. On December 18, 2002, ESI issued a press release announcing its operating results for the three and six months ended November 30, 2002 (the "December 18 press release"). The December 18 press release also repeated the false and misleading financial results reported for the first quarter of fiscal 2003. In the release, ESI reported a net loss for the second quarter of \$9.5 million, or a loss per share of \$0.34. ESI attributed much of the loss to special charges (i.e., expenses that would not occur regularly in the future); excluding such charges, ESI stated, it would have earned a profit of \$0.8 million or \$0.03 per share.

50. On January 13, 2003, ESI filed with the Commission a quarterly report on Form 10-Q for the second quarter ended November 30, 2002. The Form 10-Q included financial results identical to the December 18 press release. Dooley and Lorenz reviewed the December 18 press release prior to its release and the Form 10-Q prior to its filing. ESI's Form 10-Q for the quarter was also incorporated by reference in two previously

filed registration statements on Form S-8, filed on February 6, 2001, and August 13, 2001, to register ESI's offering of securities under an employee benefit plan. (So long as such S-8 statements are in effect, they incorporate any subsequently filed financial statements by the issuer.)

51. In addition, in the Form 10-Q Dooley provided a certification, pursuant to Section 302 of the Sarbanes-Oxley Act. Among other things, Dooley certified that the report did not contain any untrue statement or omission of material fact; the financial statements, and other financial information included in the report, fairly presented in all material respects ESI's financial condition, results of operations, and cash flows; and he had disclosed to ESI's independent auditors and ESI's Audit Committee all significant deficiencies in the design or operation of ESI's internal controls and any fraud that involved management or other employees who had a significant role in ESI's internal controls.

52. The Form 10-Q, the December 18 press release, Dooley's Sarbanes-Oxley certification, and the Form S-8 filings were all false. In fact, ESI had materially understated its net loss for the second quarter of fiscal 2003 as a result, in part, of the illegal accounting adjustments described above that Dooley and Lorenz directed.

53. On or about March 20, 2003, ESI announced that it would restate its financial results for the second quarter of fiscal 2003. The restatement revealed that ESI had not achieved a quarterly loss of \$9.5 million, but rather had incurred a loss of \$12.9 million. As part of the restatement, ESI reversed in their entirety the improper accounting entries described above decreasing the Company's warranty expense and its accounting for consignment inventory, and also restored to ESI's books the Company's liability relating to retirement and severance benefits for ESI's employees in Asia.

d. False Representations to Auditors by Dooley and Lorenz

54. In connection with the auditors' review of ESI's financial statements for the quarter ended November 30, 2002, Dooley signed a management representation letter

dated December 18, 2002. In the letter, Dooley falsely represented that information in the quarterly financial statements to be filed in ESI's Form 10-Q was presented consistently with GAAP. Dooley knew or was reckless in not knowing that these statements were false because, among other reasons, the financial statements improperly reflected the first quarter reversal of ESI's liability to provide retirement and severance benefits for its employees in Asia and the second quarter unsupported reduction to warranty expense.

55. As part of its review procedures for the second quarter, ESI's auditors required Lorenz and others to complete a questionnaire making certain representations. In the questionnaire, dated December 9, 2002, Lorenz represented to ESI's auditors that there were no extraordinary, unrecorded, or infrequently occurring transactions in excess of \$250,000 during the second quarter other than a restructuring charge. This representation was false because Lorenz did not disclose the reduction to warranty expense he had made. Lorenz also falsely represented that the financial statements for the second quarter were prepared in conformity with GAAP applied on a consistent basis with the June 1, 2002 financial statements. However, as Lorenz knew, the financial statements for the second quarter, among other things, accounted for consignment inventory differently than the June 1, 2002 financial statements.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act Against All Defendants

56. The Commission incorporates by reference Paragraphs 1 through 55.

57. By engaging in the conduct described above, Dooley and Lorenz, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails:

- (a) with scienter, employed devices, schemes, or artifices to defraud;
- (b) obtained money or property by means of untrue statements of a material fact or omissions to state a material fact 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 transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

58. By reason of the foregoing, Dooley and Lorenz have violated and, unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder Against All Defendants

59. The Commission incorporates by reference Paragraphs 1 through 55.

60. By engaging in the conduct described above, Dooley and Lorenz, with scienter, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, or of facilities of a national securities exchange:

- (a) employed devices, schemes, or artifices to defraud;
- (b) made untrue statements of a material fact or omitted to state a material fact 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 other persons, including purchasers and sellers of securities.

61. By reason of the foregoing, Dooley and Lorenz have violated and aided and abetted 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]. Unless restrained and enjoined, Dooley and Lorenz will continue to commit and aid and abet such violations.

THIRD CLAIM FOR RELIEF

False Statements and Omissions to Accountants – Violations of Rule 13b2-2 Under the Exchange Act Against All Defendants

62. The Commission incorporates by reference Paragraphs 1 through 55.

63. By engaging in the conduct described above, Dooley and Lorenz, directly or indirectly, made or caused to be made a materially false or misleading statement and omitted to state, or caused another person to omit to state, a material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with an audit or examination of the financial statements of ESI required to be made and the preparation and filing of documents and reports required to be filed with the Commission.

64. By reason of the foregoing, Dooley and Lorenz have violated and, unless restrained and enjoined, will continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

FOURTH CLAIM FOR RELIEF

Circumventing Internal Accounting Controls – Violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 Thereunder Against All Defendants

65. The Commission incorporates by reference Paragraphs 1 through 55.

66. By engaging in the conduct described above, Dooley and Lorenz knowingly circumvented or knowingly failed to implement a system of internal accounting controls relating to ESI or knowingly falsified any book, record, or account of ESI.

67. By reason of the foregoing, Dooley and Lorenz have violated and, unless restrained and enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

FIFTH CLAIM FOR RELIEF

False Quarterly Reports – Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 Thereunder Against All Defendants

68. The Commission incorporates by reference Paragraphs 1 through 55.

69. Based on the conduct alleged above, ESI violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13], which obligate issuers of securities registered pursuant to Section 12 [15 U.S.C. § 78l] of the Exchange Act to file with the Commission accurate quarterly reports.

70. By engaging in the conduct described above, Dooley and Lorenz knowingly provided substantial assistance to ESI's filing of materially false and misleading reports and filings with the Commission.

71. By reason of the foregoing, Dooley and Lorenz have aided and abetted violations by ESI of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13] and, unless restrained and enjoined, will continue to aid and abet such violations.

SIXTH CLAIM FOR RELIEF

Inaccurate Books and Records – Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act Against All Defendants

72. The Commission incorporates by reference Paragraphs 1 through 55.

73. Based on the conduct alleged above, ESI violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

74. By engaging in the conduct described above, Dooley and Lorenz knowingly provided substantial assistance to ESI's failure to make and keep books,

records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of ESI.

75. By reason of the foregoing, Dooley and Lorenz have aided and abetted violations by ESI of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and, unless restrained and enjoined, will continue to aid and abet such violations.

SEVENTH CLAIM FOR RELIEF

Inadequate Internal Accounting Controls – Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act Against All Defendants

76. The Commission incorporates by reference Paragraphs 1 through 55.

77. Based on the conduct alleged above, ESI violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient system of internal accounting controls.

78. By engaging in the conduct described above, Dooley and Lorenz knowingly provided substantial assistance to ESI's failure to devise and maintain a sufficient system of internal accounting controls.

79. By reason of the foregoing, Dooley and Lorenz have aided and abetted violations by ESI of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] and, unless restrained and enjoined, will continue to aid and abet such violations.

EIGHTH CLAIM FOR RELIEF

False Sarbanes-Oxley Certifications – Violation of Rule 13a-14 Under the Exchange Act Against Dooley

80. The Commission incorporates by reference Paragraphs 1 through 55.

81. As ESI's CFO and later its CEO, Dooley signed false certifications pursuant to Rule 13a-14 of the Exchange Act that were included in ESI's quarterly reports on Form 10-Q for the quarters ended August 31, 2002, and November 30, 2002.

In such certifications, Dooley falsely stated, among other things, that: (a) the report 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; (b) the financial statements, and other financial information included in the report, fairly presented in all material respects the financial condition, results of operations, and cash flows of ESI as of, and for, the period presented in the report; and (c) he had disclosed to ESI's auditors and ESI's Audit Committee all significant deficiencies in the design or operation of ESI's internal controls and any fraud, whether or not material, that involved management or other employees who had a significant role in ESI's internal controls.

82. By reason of the foregoing, Dooley has 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

Dooley's Liability Under Exchange Act Section 20(a) for ESI's Violations

83. The Commission incorporates by reference Paragraphs 1 through 55.

84. Between approximately June 1, 2002, and June 9, 2003, Dooley was, directly or indirectly, a control person of ESI for purposes of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

85. Between approximately June 1, 2002, and June 9, 2003, ESI 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], as well as 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 78m(b)(2)(B)] and Rules 13a-13 and 12b-20 thereunder [17 C.F.R. §§ 240.13a-13 and 240.12b-20].

86. As a control person of ESI between approximately June 1, 2002, and June 9, 2003, Dooley is jointly and severally liable with and to the same extent as ESI for ESI's violations of the Exchange Act and rules thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

1. Permanently enjoin Dooley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise from directly or indirectly violating, or aiding and abetting violations of, Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-13, 13a-14, 13b2-1, and 13b2-2 thereunder;

2. Permanently enjoin Lorenz and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise from directly or indirectly violating, or aiding and abetting violations of, Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-13, 13b2-1, and 13b2-2 thereunder;

3. Permanently enjoin Defendants from serving as an officer or director of any entity having a class of securities registered with the Commission 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)];

4. Order Defendants to disgorge all wrongfully obtained benefits, plus prejudgment interest;

5. Order Defendants to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)];

6. 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; and

7. Grant such other and further relief as the Court may deem just, equitable, and appropriate.

Dated: September 23, 2004

Respectfully submitted,

By: _____
Helane L. Morrison
Robert L. Mitchell
Patrick T. Murphy
Robert S. Leach

Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: September 23, 2004

By: _____
Helane L. Morrison
Robert L. Mitchell
Patrick T. Murphy
Robert S. Leach

Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION