

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FILED

MAR 11 2009

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

Civil Action No.:

**POWERCOLD CORPORATION,
FRANCIS L. SIMOLA,
JOSEPH C. CAHILL and
GRAYLING R. HOFER,**

Defendants.

SA09CA0185FB

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission") files suit against Defendants PowerCold Corporation, Francis L. Simola, Joseph C. Cahill and Grayling R. Hofer and would respectfully show the Court as follows:

SUMMARY

1. From 2003 through the third quarter 2005, PowerCold Corporation, a Texas-based Pink Sheet company that designs and sells heating, ventilation, and air-conditioning ("HVAC") systems, materially overstated its financial results by recognizing revenue from fictitious contracts, and inflating and prematurely recognizing revenue from actual contracts. As a result, PowerCold materially overstated its revenues during the period.

2. Francis L. Simola, PowerCold's chairman and chief executive officer, participated in the scheme, which hid the company's poor operating results and sought to artificially inflate its stock price. Grayling R. Hofer, who served for a period as the company's chief accounting officer, also participated in the scheme by, among other things, making or failing to correct false accounting entries that reflected the misstated revenues. PowerCold's chief financial officer at the time – Joseph C. Cahill – was also aware, or should have been aware, of the scheme, yet prepared, approved, and signed periodic reports and earnings releases containing the misstated financial information.

3. The Commission, in the interest of protecting the public from any further illegal activity, brings this action against Defendants seeking permanent injunctive relief, officer and director bars against Simola, Cahill and Hofer and civil monetary penalties.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant § 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78(aa)] and Title 28 U.S.C. § 1331. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this Complaint. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Western District of Texas.

PARTIES

5. **PowerCold Corporation**, a Nevada corporation headquartered in LaVernia, Texas, designs and builds HVAC systems. PowerCold's common stock is registered with the

Commission pursuant to Section 12(g) of the Exchange Act, and is quoted on Pink OTC Markets under the symbol "PWCL."

6. **Francis L. Simola**, 69, has been PowerCold's chairman, president, chief executive officer, and a director since 1993. Simola resides in Pennsylvania.

7. **Joseph C. Cahill**, 54, was PowerCold's vice president of Administration and Finance from January 2002 to January 2004, and its chief financial officer, secretary, and a director from January 2004 to January 2006. Cahill resides in New Jersey.

8. **Grayling R. Hofer**, 51, has served as PowerCold's chief accounting officer, corporate controller, treasurer, and/or a director since March 2002. He currently serves as Vice President of Operations. Hofer was also PowerCold's CFO from January 2006 to November 2006. Hofer resides in Texas, and performs his PowerCold duties from its headquarters in LaVernia, Texas.

FACTUAL BACKGROUND

9. The defendants participated in a revenue recognition scheme which created the illusion that PowerCold was a growing, vibrant company.

10. In July 2004, PowerCold (the "Company") entered into a \$5 million convertible-debt transaction. The loan terms allowed PowerCold to repay the loan with stock, should the stock reach \$1.87 per share. On August 5, 2004, a week after closing the convertible-debt transaction, Simola e-mailed PowerCold employees that the company needed to show an operating profit that quarter and thereafter, and that the company's most important asset was its stock price. Simola followed with a September 2, 2004 e-mail to Cahill and Hofer, advising that

PowerCold had started paying interest on its loan and that, in February 2005, PowerCold would have to start paying principal and interest.

11. The accounting improprieties of the defendants, took two basic forms: 1) recognizing revenue from contracts that did not exist; and, 2) overstating or prematurely recognizing revenue from actual contracts.

12. From the first quarter 2003 through the third quarter 2005, PowerCold recognized \$8,017,624 of revenues from contracts that did not exist, the majority of which flowed through its Florida-based subsidiary PowerCold Comfort Air Solutions, Inc., (formerly known as Ultimate Comfort Systems, Inc.)("Comfort Air"). For example, on June 30, 2003, revenue of \$281,224 was recognized from the supposed sale and installation of HVAC equipment at a St. Augustine, Florida hotel. PowerCold, however, never received a contract or performed any work in connection with this project. PowerCold recorded revenue and accrued costs for this fictitious project on the last day of the quarter, but reversed the costs the next day. However, the revenue entry was not reversed.

13. Similarly, the Company recorded \$1,134,317 in revenues on September 30, 2003, on a variety of projects and also accrued \$807,059 in allegedly associated expenses. The day after the third quarter closed, however, the expense accruals were reversed, but again the revenue entries were not.

14. PowerCold's two largest fictitious revenue items pertained to purported hotel projects in Henderson, Nevada and New Orleans, Louisiana. On March 31, 2004, through Comfort Air, PowerCold recorded revenue of \$715,000 for the Henderson hotel. The Company, however, had no contract for this project.

15. On June 29, 2004, the Company recorded revenue of \$1,485,754 for the New Orleans hotel and an invoice was generated in the same amount for "hotel equipment." Ultimately, PowerCold did not win the contract and never rendered services or delivered equipment for this project.

16. Through Comfort Air, PowerCold continued to record revenue from non-existent contracts in 2005. For instance, in April 2005, Comfort Air recorded revenue of \$568,500 from purported projects in Fairfield, Iowa and Hernando County, Florida. Comfort Air also recorded expenses for these projects, to make them appear more legitimate. In truth, however, PowerCold and ComfortAir had no contracts for these projects and never provided any goods or services in connection with these projects.

17. In late September 2005, Hofer e-mailed Simola and Comfort Air employees that they needed to "bill something" to support PowerCold's revenues for the quarter. Comfort Air then booked \$826,875 of revenues for a supposed hotel project in Las Vegas, Nevada. Neither PowerCold nor ComfortAir, however, had a contract, or ever provided goods or services, for this project.

18. PowerCold recorded revenue from several other fictitious contracts during the period. These transactions were of a much smaller magnitude (involving revenues generally ranging from \$30,000 to \$389,513), but they followed patterns similar to those described above – the recording of revenue on projects that PowerCold had not yet been awarded (and sometimes was never awarded), and generating false supporting documents.

19. From 2003 through 2005, Cahill was responsible for obtaining and reviewing insurance and bonds for PowerCold's projects. To fulfill this responsibility, Cahill should have

reviewed all PowerCold contracts. PowerCold did not have contracts or obtain insurance or bonds on non-existent projects. Yet, Cahill signed and certified PowerCold's periodic SEC reports containing the falsified figures.

20. PowerCold's revenue recognition from the fictitious transactions violated GAAP and was contrary to representations about revenue recognition in its SEC filings. Under GAAP, revenue cannot be recognized until it is (a) realized or realizable, and (b) earned. *See* Statement of Financial Accounting Concepts ("CON") No. 5, ¶ 83. Revenues are considered to have been earned when the entity has accomplished substantially what it must do to be entitled to the benefits represented by the revenues. *Id.*, ¶ 83(b). In the case of goods, revenues typically are deemed "earned" when the goods are delivered, whereas, in the case of services, revenues ordinarily are "earned" when the services are provided. *Id.*, ¶ 84.

21. Reflecting these principles, the notes to PowerCold's financial statements during the relevant period described the company's revenue recognition policies in the following way:

The Company recognizes revenue from product sales upon shipment to the customer. Service revenue is recognized when services are performed and billable.... The Company accounts for long-term contracts on the percentage-of-completion method, and revenue is recognized as work on contracts progresses . .

PowerCold failed to follow GAAP or its stated revenue recognition policies. Rather, it simply recorded revenue from made-up transactions, substantially inflating its reported results.

22. Through its Florida subsidiary, PowerCold also inflated and prematurely recognized revenue from legitimate jobs. For example, in the first quarter 2003, PowerCold

contracted to install an HVAC system at a St. Augustine, Florida hotel. Under GAAP, PowerCold could not recognize any revenue from this contract until, at the earliest, it had delivered the HVAC equipment, and could not recognize all of the revenue until it had installed the system in accordance with the contract. See AICPA Statement of Position 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts* ("SOP 81-1"), ¶ 22; CON No. 5, ¶¶ 83-84. The Company, however, did not deliver equipment to the project until the third quarter of 2004, and did not complete installation until the first quarter of 2005. Nonetheless, the Company improperly recorded 100% of the total contract revenue of \$354,793 in the first quarter of 2003.

23. The Company overstated revenue on another legitimate transaction in June 2003, when Comfort Air sold HVAC equipment to a Wellington, Colorado hotel. To obtain his commission on the sale, the PowerCold salesman on the project forwarded an invoice showing the total due to PowerCold as \$200,225. The Company paid the salesman's commission based on this amount, but recorded the sale in PowerCold's accounting system as \$800,000.

24. Cahill should have known that PowerCold did not earn the additional revenue on the Wellington transaction, because he was not able to obtain bonding to install the equipment. Thus, Cahill knew or should have known that this was only an equipment sale. Simola acknowledged that this was not a legitimate receivable.

25. During 2005, PowerCold also improperly accelerated revenue recognition from contracts through a process referred to as "pre-billing." Quite simply, pre-billing involved creating invoices for bids – and recognizing revenue – before PowerCold was selected to provide goods and services. In some cases, however, PowerCold was not selected for the project (or if it

was initially selected, the contract was later cancelled), meaning that the revenue was never earned. On August 16, 2005, Simola, Hofer and Cahill were expressly advised about the cancelled contracts, and later, that the third quarter would be a disaster, since Comfort Air could not proceed with various "pre-billed" projects that had been cancelled. On October 5, 2005, Simola received a Comfort Air memo (which he forwarded to Hofer) identifying contracts with revenues totaling \$269,574 that had been cancelled, but upon which PowerCold previously had recognized revenue. Nonetheless, they were included them in PowerCold's third quarter 2005 Form 10-Q financial statements.

26. As with its revenue recognition from fictitious contracts, PowerCold's premature revenue recognition and revenue inflation from legitimate contracts violated GAAP. PowerCold had not earned the revenue it recorded on these deals because it had not yet delivered goods or provided services on them when it recognized the revenue. Consequently, PowerCold's accounting for these transactions was improper. *See* SOP 81-1, ¶ 22; CON No. 5, ¶¶ 83-84. It also contradicted the company's publicly stated revenue recognition policies described above.

27. On December 13, 2004, the Division of Corporation Finance ("Corp Fin") sent PowerCold a comment letter regarding the registration statement relating to the convertible-debt transaction. Corp Fin noted that a substantial amount of PowerCold's accounts receivable were over a year past due. Two days later, PowerCold's auditors wrote Simola about the comment letter, stating, "When reviewing accounts receivable at September 30, 2004, contracts in the amount of \$1,271,184 remain outstanding from December 31, 2003. This is a major problem which suggests that the Company's accounting is not reliable."

28. After receiving copies of these letters, Simola e-mailed Cahill, on January 2, 2005, stating that the New Orleans and Henderson project receivables were past due because those projects had not yet started. He also said that the Wellington, Colorado project, for which PowerCold had recognized \$800,000 of revenue in the first quarter of 2003, was still outstanding because the project was cancelled. A few days later, on January 7, 2005, Simola e-mailed Cahill (with a copy to Hofer) about PowerCold's "pre-billing" practices, suggesting that this, too, played a role in the aged receivables.

29. Coupled with his knowledge of what transactions had or had not been insured and bonded, the combination of Corp Fin's comment letter, the auditor's letter, and Simola's e-mail Cahill knew or should have known that PowerCold's revenue recognition from these projects had been, at a minimum, premature. Taking all of these facts together, Cahill was at least severely reckless in not taking steps to correct the improper recognition of this revenue, and ascertaining what other problems existed.

30. Moreover, from 2003 through 2005, Simola, Cahill, and Hofer signed management representation letters and fraud questionnaires, which indicated that the information PowerCold provided to the auditors was truthful and accurate and that PowerCold's financial statements were fairly stated in accordance with GAAP in all material respects.

31. On March 14, 2006, PowerCold filed a Form 8-K, signed by Simola, reporting that revenues for the first nine months of 2005 were overstated by \$3,958,420, or 49%. PowerCold also announced that revenues for each of the first three quarters of 2005 were overstated by 39%, 44%, and 69%, respectively.

32. On July 6, 2006, the Company's audit firm notified PowerCold that it was withdrawing its 2004 and 2005 audit reports. PowerCold announced this on July 11, 2006 in a Form 8-K signed by Simola. The audit firm ultimately resigned in November 2006.

33. The defendants' wrongdoing materially overstated PowerCold's earnings. Specifically, PowerCold materially overstated its quarterly revenues from the first quarter 2003 through the third quarter 2005, and its annual revenues for 2003 and 2004. PowerCold included these material misstatements in its Forms 10-K for 2003 and 2004, its Forms 10-Q for the first three quarters of 2003, 2004, and 2005, and registration statements filed on Forms S-1 in 2004. Simola signed each of these filings, and the Sarbanes-Oxley certificates accompanying each Form 10-Q and 10-K. Hofer signed each of the Forms 10-K, and certified the 2005 Form 10-K. Cahill signed and certified each of the Forms 10-K, and certified each of the years 2004 and 2005 Forms 10-Q. He also assisted Simola with drafting and approving PowerCold's press releases from the first quarter of 2004 through 2005. PowerCold routinely issued earnings releases shortly after each quarter and year closed. These earnings releases parroted the overstated revenues included in the company's SEC filings.

CLAIMS

FIRST CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

34. Plaintiff Commission repeats and incorporates paragraphs 1 through 33 of this Complaint by reference as if set forth *verbatim*.

35. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails has: (a) employed devices, schemes and artifices to defraud;

SEC v. PowerCold Corporation, et al.

Complaint

Page-10

(b) made untrue statements of material facts and 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; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

36. As a part of and in furtherance of this scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, including, but not limited to, those set forth in paragraphs 1 through 33 above.

37. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth.

38. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate the provisions of 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
Violations of Section 13(a) of the Exchange Act
and Rules 12b-20, 13a-1, 13a-11 and 13a-13

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 33 of this Complaint by reference as if set forth *verbatim*.

40. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] requires issuers to file such annual and quarterly reports as the Commission may prescribe and in conformity with such

rules as the Commission may promulgate. Exchange Act Rule 13a-1 [17 C.F.R. § 240.13a-1] requires the filing of accurate annual reports, Rule 13a-11 requires filing accurate current reports [17 C.F.R. § 240.13a-11] and Exchange Act Rule 13a-13 [17 C.F.R. § 240.13a-13] requires the filing of accurate quarterly reports. Rule 12b-20 [17 C.F.R. § 240.12b-20] requires an issuer to include material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

41. PowerCold filed periodic reports with the Commission that were not prepared in accordance with Rules promulgated by the Commission.

42. By reason of the foregoing, PowerCold violated and, unless enjoined, will continue to violate 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].

THIRD CLAIM

Violations of Sections 13(b)(2)(A) and 13b(2)(B) of the Exchange Act

43. Plaintiff Commission repeats and incorporates paragraphs 1 through 33 of this Complaint by reference as if set forth *verbatim*.

44. Defendant PowerCold, having a class of securities registered pursuant to Section 12 of the Exchange Act, in the manner set forth above, failed to:

- (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets;
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that —

- (i) transactions are executed in accordance with management's general or specific authorization;
- (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
- (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
- (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

45. By reason of the foregoing, Defendant PowerCold violated and, unless enjoined, will continue to violate Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)].

FOURTH CLAIM
Violations of Section 13(b)(5) of the Exchange Act

46. Plaintiff Commission repeats and incorporates paragraphs 1 through 33 of this Complaint by reference as if set forth *verbatim*.

47. Defendants Simola, Cahill and Hofer violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying PowerCold's books, records or accounts.

48. By reason of the foregoing, Simola, Cahill and Hofer violated and, unless enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

FIFTH CLAIM
Violations of Exchange Act Rules 13b2-1 and 13b2-2

49. Plaintiff Commission repeats and incorporates paragraphs 1 through 40 of this Complaint by reference as if set forth *verbatim*.

50. Defendants Simola, Cahill and Hofer violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified, the books, records or accounts of PowerCold subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. Furthermore, Simola, Cahill and Hofer violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] by making, or causing to be made, materially false or misleading statements or omissions to an accountant or auditor.

51. Defendants Simola, Cahill and Hofer engaged in the above-referenced conduct in an intentional or negligent manner.

52. By reason of the foregoing, Simola, Cahill and Hofer violated and, unless enjoined, will continue to violate Exchange Act Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2].

SIXTH CLAIM
Aiding and Abetting Violations of Section 13(a) of the Exchange Act
and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder

53. Plaintiff Commission repeats and incorporates paragraphs 1 through 33 of this Complaint by reference as if set forth *verbatim*.

54. PowerCold as a public company, whose common stock is registered with the Commission is required to file annual, quarterly and current reports in accordance with Section

SEC v. PowerCold Corporation, et al.

Complaint

Page-14

13(a) of the Exchange Act and Rules 13a-1, 13a-11 and 13a-13 thereunder. Exchange Act Rule 12b-20 requires that reports contain, in addition to disclosures expressly required by statute and rules, such other information as is necessary to ensure that the statements made are not, under the circumstances, misleading.

55. PowerCold fraudulently filed, and Defendants Simola, Cahill and Hofer aided and abetted PowerCold's false and misleading filing of, current, periodic and annual reports. Simola, Cahill and Hofer knew, or were reckless in not knowing, that these filings contained false and misleading statements yet caused the company to file the misleading reports with the Commission and make them available to the investing public.

56. By reason of his acts and practices, Defendant Simola, with general awareness and through substantial assistance, aided and abetted PowerCold's violations, and unless enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act [15 U.S.C. §§ 78m(a)], and Commission 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 reason of their acts and practices, Defendants Cahill and Hofer, with general awareness and through substantial assistance, aided and abetted PowerCold's violations, and unless enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act [15 U.S.C. §§ 78m(a)], and Commission Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13] thereunder.

SEVENTH CLAIM
Violations of Rule 13a-14 of the Exchange Act

57. Plaintiff repeats and incorporates paragraphs 1 through 33 of this Complaint by reference as if set forth *verbatim*.

58. Defendants Simola and Cahill signed a Sarbanes-Oxley certification on behalf of PowerCold. At the time each signed the certification, they were aware that PowerCold's revenue recognition scheme had materially impacted the financial results each certified as accurate.

59. Exchange Act Rule 13a-14 requires an issuer's principal executive and financial officer to certify in each quarterly and annual report filed or submitted by the issuer under Section 13(a) of the Exchange Act, that: 1) they have reviewed the report; and 2) based on their knowledge, the report does not contain any untrue statement of material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report. Simola and Cahill knew, or were reckless in not knowing, that the reports each certified contained untrue statements of material fact and omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which the statements were made, not misleading.

60. By reason of the foregoing, Simola and Cahill violated, and unless enjoined will continue to violate, Rule 13a-14 [17 C.F.R. § 240.13a-14] promulgated under Section 302 of the Sarbanes-Oxley Act of 2002.

EIGHTH CLAIM

Aiding and Abetting Violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

61. Plaintiff repeats and incorporates paragraphs 1 through 33 of this Complaint by reference as if set forth *verbatim*.

62. Defendant PowerCold, having a class of securities registered pursuant to Section 12 of the Exchange Act, is required to maintain its accounting records in accordance with Sections 13(b)(2)(A) and 13(b)(2)(b) of the Exchange Act.

SEC v. PowerCold Corporation, et al.

Complaint

Page-16

63. PowerCold failed to maintain its accounting records, and Defendants Simola, Cahill and Hofer aided and abetted PowerCold's failure to maintain its accounting records in accordance with Sections 13(b)(2)(A) and 13(b)(2)(b) of the Exchange Act.

64. By reason of the foregoing, Defendants Simola, Cahill and Hofer aided and abetted, and unless enjoined will continue to aid and abet, violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)].

PRAYER

The Commission respectfully requests that the Court:

65. Permanently restrain and enjoin Defendants from violating, or aiding and abetting violations, directly or indirectly, the provisions of law and rules alleged in this Complaint.

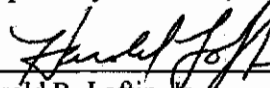
66. Order Defendants to pay civil money penalties, plus post-judgment interest, pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] in an amount to be determined by the Court.

67. Order that Defendants, under Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], are prohibited from acting as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

68. Grant such other relief as this Court may deem just or appropriate.

Dated this 10th day of March, 2009.

Respectfully Submitted,



Harold R. Loftin, Jr.

Texas Bar No. 12487090

U.S. Securities and Exchange Commission

Burnett Plaza, Suite 1900

801 Cherry Street, Unit #18

Fort Worth, TX 76102-6882

(817) 978-6450

(817) 978-4927 (fax)