

approximately \$4 million in revenues from four transactions executed over the course of the second and third quarters of 2002. Specifically, AstroPower, because of Barnett's and Stiner's knowing or reckless misconduct: 1) recognized revenue from sales where payment of the sales price was contingent and collectibility was not assured; 2) recognized revenue from a fictitious sale; and 3) recognized revenue from improper seller-initiated bill-and-hold transactions in which AstroPower bore the risks of ownership and the costs of storage.

3. As a result of improperly recognizing revenue from these transactions, AstroPower's reported revenues were overstated by \$2.1 million or 12% in the second quarter of 2002, and by \$1.9 million or 9% in the third quarter of 2002. AstroPower's net income was also overstated by approximately \$160,000 or 80% for the second quarter of 2002, and approximately \$440,000 or 113% for the third quarter of 2002. These material misstatements were recorded in AstroPower's books and records, reflected in the Company's financial statements, and included in Commission filings that Barnett and Stiner signed.

4. In addition, in connection with a single improper transaction, Stiner made materially false statements to AstroPower's external auditors during AstroPower's 2002 financial statement audit.

5. By their conduct, Barnett and Stiner violated the antifraud, books and records, internal controls and certification provisions of the federal securities laws, and aided and abetted AstroPower's violations of the reporting, books and records, and internal control provisions of the federal securities laws.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78aa].

7. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]

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

THE DEFENDANTS

9. Barnett, age 68, founded AstroPower and served as its Chief Executive Officer and President and as a director from 1989 through 2003. On May 23, 2003, AstroPower's Board of Directors accepted Barnett's resignation after an expanded financial statement audit and an internal investigation uncovered improper revenue recognition practices and significant deficiencies in AstroPower's internal accounting controls and books and records. Barnett is currently a Professor of Electrical and Computer Engineering at the University of Delaware.

10. Stiner, age 53, served as Chief Financial Officer of AstroPower from December 1997 through May 2003. He had previously served as AstroPower's controller from May 1993 through November 1997. On May 23, 2003, AstroPower's Board of Directors accepted Stiner's resignation after an expanded financial statement audit and an

internal investigation uncovered improper revenue recognition practices and significant deficiencies in AstroPower's internal accounting controls and books and records. Stiner was previously licensed as a Certified Public Accountant in Pennsylvania. Stiner is now a self-employed homebuilder.

RELEVANT ENTITY

11. AstroPower was a Delaware corporation located in Newark, Delaware that manufactured solar electric power products including solar cells, modules and panels worldwide. AstroPower's common stock was registered with the Commission under Section 12(g) of the Exchange Act and was listed on NASDAQ's National Market System until July 25, 2003. AstroPower filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in February 2004 and its liquidation plan was accepted in December 2004. Thereafter, AstroPower's common stock was cancelled and its remaining assets liquidated.

BACKGROUND

12. Between 1997 and 2001, AstroPower's reported revenues grew rapidly at an average annual rate of 43%.

13. In 2002, analysts and investors expected AstroPower to maintain its pattern of aggressive revenue growth. In addition, Barnett and Stiner predicted publicly that AstroPower's revenues would grow even more aggressively in 2002 than in the previous year. Following the end of the first quarter of 2002, management issued public guidance indicating that AstroPower's revenues for fiscal year 2002 would grow by 52% to 81% over the Company's reported revenues for fiscal year 2001 or by approximately \$36 million to \$56 million.

14. Faced with lackluster sales and growing inventory levels during the second and third quarters of 2002, Barnett and Stiner resorted to improper revenue recognition practices in an effort to achieve their publicly announced revenue targets and to meet analysts' expectations. As a result, AstroPower, through Barnett's and Stiner's knowing or reckless misconduct, improperly recognized revenue from four transactions executed during these periods.

15. During the 2002 financial statement audit, AstroPower's external auditors questioned the Company's revenue recognition practices and reported to AstroPower's audit committee that they could no longer rely upon the Company's internal controls relating to revenue recognition. At the request of the external auditors, the audit committee initiated an independent investigation of AstroPower's internal controls and revenue recognition practices. The resulting investigative report highlighted significant deficiencies in AstroPower's internal controls and books and records, and identified transactions that were not accounted for in conformity with GAAP.

16. On May 23, 2003, following the release of the investigative report, AstroPower's Board of Directors requested and accepted the resignations of Barnett and Stiner as officers of AstroPower.

FACTS

17. GAAP requires that revenue be realized or realizable and earned before it is recognized. Revenue is deemed realized or realizable when there is persuasive evidence that an arrangement exists, delivery has occurred, the seller's price to the buyer is fixed or determinable, and collectibility of the purchase price is reasonably assured. Further, under Financial Accounting Standards No. 48, *Revenue Recognition When Right*

of Return Exists ("FAS 48"), revenue shall not be recognized if the buyer's obligation to pay the seller is contingent on the resale of the product or if the seller has significant obligations to bring about the resale of the product by the buyer.

18. Barnett and Stiner directly participated in the fraudulent accounting for four transactions over the course of the second and third quarters of 2002 - a contingent sale during the second quarter; a fictitious sale, and two improper seller-initiated bill-and-hold transactions during the third quarter. Each of these transactions failed to meet the requirements for revenue recognition under GAAP and had the effect of materially overstating AstroPower's revenues and net income during the quarter in which it was recorded. These transactions were recorded in AstroPower's books and records for the second and third quarters of 2002 and therefore were included in the Company's financial statements and Commission filings for those periods, rendering each filing inaccurate, false, and misleading.

The Contingent Transaction

19. In an attempt to meet revenue estimates for the second quarter of 2002, AstroPower, as a result of Barnett's and Stiner's misconduct, improperly recognized approximately \$2.1 million in revenue in relation to a sale of solar modules. The sale of the solar modules was contingent, and Barnett and Stiner knew or recklessly disregarded the fact that the contingency had not been fulfilled during the second quarter.

20. In June 2002, an AstroPower salesperson negotiated the sale of over 7,000 AstroPower solar modules, equaling approximately 560 kilowatts, to a privately held California company ("PL Corporation"), an entity with which AstroPower had previously done business. The number of solar modules that AstroPower wanted to sell

exceeded PL Corporation's anticipated need for such modules in order to fulfill its own customers orders.

21. In order to induce PL Corporation to enter into this transaction during the second quarter of 2002, AstroPower agreed to grant certain concessions. For example, as reflected on the June 24, 2002 PL Corporation purchase order submitted to AstroPower in connection with this transaction, AstroPower granted PL Corporation payment terms of net 120 days – significantly longer than the standard payment term of 60 to 90 days that AstroPower generally gave to its customers. AstroPower also contemporaneously agreed to purchase from PL Corporation approximately \$658,000 of systems materials necessary for the mounting of a solar system manufactured by PL Corporation. This agreement was memorialized in a quotation PL Corporation issued on June 24, 2002, the same date as the purchase order.

22. In connection with this solar module transaction, Stiner, with the knowledge of Barnett, entered into an oral side agreement with PL Corporation to create an equivalent level of market demand for PL Corporation's solar systems. In particular, PL Corporation's obligation to pay for the AstroPower solar modules was contingent upon AstroPower's successful marketing and sale of PL Corporation's systems. In fact, AstroPower failed to sell any of the PL Corporation systems during the second quarter of 2002 and should not have recognized any revenue from this contingent transaction until the contingency had been fulfilled.

23. Barnett and Stiner concealed the true terms of the sale to PL Corporation. In the presence of Barnett, Stiner told the AstroPower salesperson responsible for the sale that the oral side agreement to market and sell PL Corporation's solar systems should not

be documented in the purchase order submitted by PL Corporation. Further, Stiner refused to include explicit contractual terms in a separate AstroPower purchase order for solar system materials that would reflect an economic link between AstroPower's sale of solar modules to PL Corporation and AstroPower's purchase of solar systems materials from PL Corporation.

24. This transaction involved a contingency. Therefore, until such time as the contingency was fulfilled, revenue from the solar cell transaction was neither realized or realizable, nor earned, as required by GAAP. In this case, because the contingency was not fulfilled, revenue should not have been recognized during the second quarter of 2002.

25. AstroPower, as a result of Barnett's and Stiner's knowing or reckless misconduct, improperly recognized \$2.1 million in revenue from the contingent sale to PL Corporation, resulting in a 12% overstatement of AstroPower's reported revenues and an approximately 80% overstatement of the Company's net income for the second quarter of 2002.

26. Revenue from this transaction was included in the Company's financial statements contained in its quarterly report for the period ended June 30, 2002 on Form 10-Q. Barnett and Stiner signed and authorized this periodic report that was filed with the Commission on August 14, 2002, knowingly or recklessly disregarding the fact that it contained these false and misleading financial statements.

The Fictitious Sale

27. At the end of the third quarter of 2002, due to Barnett's and Stiner's knowing or reckless misconduct, AstroPower improperly recognized over \$600,000 in

revenue in connection with a fictitious transaction with the owner of a building leased by AstroPower located at 100 Pencader Drive in Newark, Delaware ("Owner").

28. Near the end of the third quarter of 2002, AstroPower's agent began discussions with the Owner regarding the potential sale by AstroPower of a PL Corporation solar system to be installed on the roof of the Owner's building at 100 Pencader Drive. The proposed sale price for the system was approximately \$673,000.

29. AstroPower's agent negotiated the terms of this proposed transaction and memorialized them in a September 19, 2002 letter to Barnett, attaching a document styled as a "quotation" that was signed by Barnett and the Owner. Although the agent indicated that the attachment was a "purchase order for the solar system at 100 Pencader Drive," it was labeled "quotation" rather than "order" and did not contain a purchase order number. Contemporaneous emails confirm that, if purchased, the solar system was to be installed on the roof of the Owner's building at 100 Pencader Drive.

30. Before September 30, 2002, the end of the third quarter of 2002, the Owner learned that the solar system would not fit on the roof of his building. At that time, he lost interest in the transaction and terminated discussions with AstroPower and its agent regarding the proposed purchase of the solar system.

31. Nonetheless, Barnett continued to treat the proposed transaction as an actual transaction although he knew, or was reckless in not knowing, that he did not have a valid order from the Owner.

32. On September 27, 2002, Barnett told an AstroPower employee who was processing the purchase of the solar system that the shipping address for the system

would be “231 Lake” rather than 100 Pencader Drive. The address “231 Lake” referred to a manufacturing facility AstroPower leased from an entity unrelated to the Owner.

33. Two days later, on September 29, 2002, Barnett forwarded a spreadsheet headed “[Owner] System 231 Lake Drive 100 kWp Project” to Stiner and instructed him to “turn it into a P.O. [Purchase Order]” for a solar system from PL Corporation in order to fulfill the Owner’s order.

34. Stiner never questioned the change in the installation site nor requested any order-related documentation from Barnett, despite knowing that 231 Lake Drive was AstroPower’s manufacturing facility and not the Owner’s building.

35. On October 1, 2002, overriding AstroPower’s limited internal controls, Stiner approved the issuance of a backdated invoice to the Owner, dated September 30, 2002, which triggered revenue recognition on the fictitious transaction. Stiner neither confirmed the existence of a valid purchase order from the Owner nor verified that PL Corporation had shipped the solar system before authorizing the issuance of this invoice.

36. Barnett knew that the solar system was not shipped or installed during the third quarter of 2002. Through internal emails sent to him in October and early November 2002, Barnett learned that the actual owner of the building at 231 Lake Drive had not approved the installation of the solar system on its roof. Further, on November 8, 2002 – less than one week before AstroPower filed its Form 10-Q for the third quarter – Barnett also learned that the roof of 231 Lake Drive would require approximately \$20,000 in repairs before the solar system could be installed.

37. Thus, before AstroPower issued its financial statements for the third quarter of 2002, Barnett knew, or was reckless in not knowing, that AstroPower had neither a buyer nor an installation site for the solar system.

38. Similarly, before AstroPower issued its financial statements for the third quarter of 2002, Stiner knew, or was reckless in not knowing, that the accounting department had not received documents evidencing an order from the Owner, that the solar system had not been delivered or installed on the roof of 231 Lake Drive, and that the Owner had no affiliation with the property at 231 Lake Drive.

39. In order to properly recognize revenue from a sale, GAAP requires that revenue be realized or realizable and earned. Revenue is deemed realized or realizable when: (i) there is persuasive evidence that an arrangement exists; (ii) delivery of the product has occurred; (iii) the seller's price to the buyer is fixed or determinable; and (iv) collectibility of the purchase price is reasonably assured. Both Barnett and Stiner knew, or were reckless in not knowing, that at least three of these elements were not present in this transaction because i) there was no valid purchase order between AstroPower and the Owner in place; ii) ownership of the solar system never changed hands; iii) and the Owner never agreed to pay the purchase price.

40. As a result of Barnett and Stiner's misconduct, AstroPower improperly recognized approximately \$673,000 in revenue relating to this fictitious transaction in the third quarter of 2002. Thus, AstroPower's reported revenues for the third quarter of 2002 were overstated by approximately 3% and its net income was overstated by 17%.

41. On November 13, 2002, Barnett and Stiner signed and authorized the filing with the Commission of AstroPower's quarterly report for the period ended

September 30, 2002, on Form 10-Q knowingly or recklessly disregarding that it contained materially false and misleading financial statements.

42. In addition, in connection with the Company's financial statement audit, Stiner made materially false statements relating to the fictitious transaction to AstroPower's external auditors. In March 2003, when an audit confirmation sent to the Owner was returned undeliverable, AstroPower's external auditors asked Stiner about the terms of the sale to the Owner. Stiner told them that the solar system allegedly sold to the Owner had been shipped to 231 Lake Drive. When the auditors inquired why the unit had been shipped to AstroPower's own manufacturing facility, Stiner falsely told the auditors that the building at 231 Lake Drive was not an AstroPower facility, and he told at least one auditor that 231 Lake Drive was the Owner's address.

43. At the time of these discussions, Stiner knew that PL Corporation had not shipped the solar system and that the building located at 231 Lake Drive was, in fact, an AstroPower manufacturing facility owned by an entity unrelated to the Owner.

Improper Bill-and-Hold Transactions

44. During the third quarter of 2002, as a result of Barnett's and Stiner's knowing or reckless misconduct, AstroPower improperly recognized approximately \$1.25 million in revenue relating to two improper bill-and-hold transactions.

45. A bill-and-hold arrangement is one in which a customer enters into a valid agreement to purchase goods but the seller retains custody of the goods until the customer requests shipment. Proper recognition of revenue from a bill-and-hold arrangement requires, among other things, that the buyer initiate the arrangement for substantial

business reasons, the risk of ownership pass to the customer, and the date of delivery of the goods to the customer be fixed.

46. At the end of the third quarter of 2002, AstroPower entered into two transactions with KAC, a California heating and cooling company, for the sale of two solar systems with an aggregate price of \$1.25 million. Both transactions involved certain contingencies that were not fulfilled before the end of the third quarter of 2002. In addition, the sales to KAC did not qualify as bill-and-hold transactions because they were initiated by the seller, AstroPower, the risk of ownership did not pass to KAC, and there was no fixed date of delivery to KAC. For these reasons, AstroPower's recognition of revenue from the KAC transactions during the third quarter of 2002 was improper.

AstroPower Provides Special Terms to KAC

47. On September 4 and September 24, 2002, the founder of KAC submitted to AstroPower quotation sheets indicating an intention to purchase two solar systems for \$155,000 and \$1.1 million, respectively. Both systems were to be used to fulfill contingent orders from KAC's customers.

48. KAC did not need the solar systems until the fourth quarter of 2002, at the earliest, when it would begin installation of the systems at customer-designated sites. However, Barnett, in an attempt to meet revenue targets, pressured AstroPower's sales team to complete the sales to KAC during the third quarter of 2002.

49. To induce KAC to enter into these transactions during the third quarter, Barnett and Stiner agreed to provide extended payment terms, as KAC's purchase was contingent upon its customers receiving certain rebate reservations from two public utility companies. They also agreed to provide for storage of the solar systems at a third

party warehouse until KAC was ready to take delivery. A December 2002 email to Stiner describes this arrangement:

[T]hese types of transactions have always required and will continue to require Sr [sic] Executive management approval. The reason why we have this situation in this particular case is that the customer, [KAC], did not need the product until January. We provided special terms to [KAC] in order to make the shipment happen in September. This was encouraged and approved in advance by . . . and Allen [Barnett], and you also checked off on the terms.

The KAC Contingencies

50. During 2002, the Los Angeles Department of Water and Power and the Southern California Gas Company offered incentives to their customers, in the form of rebates, to promote the installation of energy-efficient solar systems. Both utility companies issued rebate reservations confirming approval of the issuance of a rebate.

51. Barnett and Stiner knew that KAC's obligation to purchase, and thus pay for the solar systems, was contingent upon the receipt of confirmations of rebate reservations by KAC's customers. Barnett and Stiner each received fax copies of the September 24, 2002 quotation sheet from KAC explicitly stating that payment would be due 90 days after confirmation of a rebate. Further, AstroPower's invoice relating to the September 4, 2002 sale shows that payment of the purchase price was contingent upon receipt of rebate approval from one or both of the utility companies.

52. KAC's customers did not receive rebate reservations during the third quarter of 2002. Because the contingent terms of the KAC sales were not fulfilled, recognition of revenue from these transactions during the third quarter of 2002 was improper.

The Failure to Deliver to KAC in the Third Quarter

53. In addition to their contingent terms, the KAC sales did not have a fixed date of delivery and the risk of ownership did not pass to KAC until March 2003.

54. Near the end of the third quarter, on September 24, 2002, Barnett directed an AstroPower employee to prepare a purchase order for the solar systems that were to be sold to KAC and to arrange for storage space at a third-party warehouse where AstroPower would send the systems. Barnett told the employee that AstroPower might be able to “establish fast track credit” with the warehouse if the employee negotiated a good deal with the warehouse.

55. Although Stiner was aware of Barnett’s directives, he did not challenge them. To the contrary, Stiner instructed the employee to use AstroPower’s credit references in discussions with the third-party warehouse regarding the arrangement of storage space.

56. Contemporaneous emails show that Barnett and Stiner knew that revenue recognition would be improper if AstroPower paid for storage of the solar systems to be sold to KAC. During the last week of the third quarter of 2002, Stiner sent two emails to Barnett stating that if AstroPower paid for storage, it would raise a “red flag” and could cause others to question whether a sale had actually occurred. For example, on September 27, 2002, Stiner wrote, “I don’t mean to be a pain, but red flags keep popping up. If we pay for the warehouse, that could bring the sale into question. Do we have any options? Perhaps reduce the price by the warehouse costs and have [KAC] pay for it.”

57. At the end of September 2002, AstroPower shipped the solar systems to a third-party warehouse with which AstroPower had contracted. The solar systems remained at the warehouse until KAC took delivery in March 2003, and AstroPower paid all of the storage costs for the solar systems sold to KAC.

AstroPower Improperly Records Revenue from the KAC Sales

58. AstroPower recorded \$1.25 million in revenue on the two KAC sales. AstroPower's books and records reflect that AstroPower treated the two transactions as completed sales for its third quarter of 2002.

59. Barnett and Stiner knew, or were reckless in not knowing, that neither of the sales to KAC during the third quarter of 2002 met the GAAP requirements for revenue recognition because payment of the purchase price was contingent upon conditions that were not fulfilled during the third quarter.

60. Furthermore, Barnett and Stiner knew, or were reckless in not knowing, that the KAC sales did not meet the revenue recognition criteria for a bill-and-hold arrangement.

61. As a result of improperly recognizing revenue from the sales to KAC, AstroPower's reported revenues for the third quarter of 2002 were overstated by approximately 6% and net income was overstated by approximately 96%. These overstatements were included in AstroPower's financial statements for the third quarter of 2002, rendering them false and misleading.

62. On November 13, 2002, Barnett and Stiner signed and authorized the filing with the Commission of AstroPower's quarterly report for the period ended

September 30, 2002 on Form 10-Q, knowingly or recklessly disregarding the fact that the report included these materially false and misleading financial statements.

Barnett and Stiner Submit False SOX Certifications

63. Barnett and Stiner each signed certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 that falsely stated that AstroPower's quarterly report for the third quarter of 2002 on Form 10-Q, did not contain any material misstatements or omit material information and that the report fairly presented, in all material respects, AstroPower's financial condition and results of operations. At the time that Barnett and Stiner executed these certifications, they knew that AstroPower's financial statements, that were included in the Form 10-Q, were materially misstated due to the improper inclusion of revenue from the fictitious transaction and the improper bill-and-hold transactions with KAC.

64. Barnett and Stiner also falsely stated in their certifications that each had disclosed to the Company's audit committee and its external auditors all instances of fraud. In fact, neither Barnett nor Stiner had disclosed to AstroPower's audit committee or its auditors that the Company had improperly recognized approximately \$4 million in revenue during the nine month period ended September 30, 2002. Likewise, they did not disclose that AstroPower's financial statements for the three and nine month periods ended September 30, 2002, were not prepared in conformity with GAAP and contained material misstatements.

65. In addition, Barnett and Stiner certified that they had each disclosed to AstroPower's external auditors and the audit committee all significant deficiencies in the design and operation of internal controls and identified for the external auditors any

material weaknesses in internal control. Barnett and Stiner knew or were reckless in not knowing that there were significant deficiencies in AstroPower's internal controls relating to revenue recognition and that neither had disclosed these deficiencies to AstroPower's external auditors or audit committee.

66. Based on the foregoing, each of the certifications Barnett and Stiner signed and included as exhibits to AstroPower's quarterly report for the period ended September 30, 2002 on Form 10-Q was false and misleading.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

67. Paragraphs 1 through 66 are hereby realleged and incorporated by reference as if set forth fully herein.

68. As alleged more fully above, Defendants Barnett and Stiner, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of securities: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and courses of business which operate or would operate as a fraud or deceit upon any person.

69. By reason of the foregoing, Defendants Barnett and Stiner violated, and unless restrained will violate, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

SECOND CLAIM FOR RELIEF

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

70. Paragraphs 1 through 69 are hereby realleged and incorporated by reference as if set forth fully herein.

71. As alleged more fully above, Defendants Barnett and Stiner each knowingly circumvented or knowingly failed to implement a system of internal accounting controls at AstroPower, and each, directly or indirectly, knowingly falsified, or caused through the conduct described above to be falsified, AstroPower's books and records.

72. By reason of the foregoing, Defendants Barnett and Stiner violated Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1.

THIRD CLAIM FOR RELIEF

Violations of Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14]

73. Paragraphs 1 through 72 are hereby realleged and incorporated by reference as if set forth fully herein.

74. As alleged more fully above, on November 13, 2002, Defendants Barnett and Stiner each falsely certified AstroPower's quarterly report for the period ended September 30, 2002, filed on Form 10-Q pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 and Exchange Act Rule 13a-14. Each stated that he had reviewed the report and that based upon his knowledge, the report did not contain any untrue statement of 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.

Barnett and Stiner also each certified that, based upon his knowledge, the financial statements and information contained in the quarterly report fairly presented, in all material respects, AstroPower's financial condition, results of operations, and cash flows.

75. Barnett and Stiner knew that the reports they certified contained untrue statements of material fact and omitted to state material facts necessary to make the statements therein, in light of the circumstances under which the statements were made, not misleading.

76. By reason of the foregoing, Defendants Barnett and Stiner violated Exchange Act Rule 13a-14.

FOURTH CLAIM FOR RELIEF

Violation of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] (Stiner)

77. Paragraphs 1 through 76 are hereby realleged and incorporated by reference as if set forth fully herein.

78. As alleged more fully above, Defendant Stiner, who was an officer of AstroPower, directly or indirectly, made or caused to be made materially false or misleading statements or omitted to state or caused another to omit to state, material facts 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 AstroPower.

79. By reason of the foregoing, Defendant Stiner violated Exchange Act Rule 13b2-2.

FIFTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20 and 13a-13 [17 C.F.R. §§ 240.12b-20 and 240.13a-13]

80. Paragraphs 1 through 79 are hereby realleged and incorporated by reference as if set forth fully herein.

81. The Exchange Act and Exchange Rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file quarterly reports on Form 10-Q containing information prescribed by the Commission's rules and regulations, including all such further material information as may be necessary to make the statements contained therein, in light of the circumstances under which they are made, not misleading. Financial statements included in the quarterly reports on Form 10-Q must be prepared in conformity with GAAP.

82. As alleged more fully above, AstroPower filed quarterly reports on Form 10-Q for the periods ended June 30, 2002, and September 30, 2002, containing financial statements that were materially false and misleading and failed to conform with GAAP.

83. As a result of the foregoing, AstroPower violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

84. As alleged more fully above, by their misconduct, Defendants Barnett and Stiner, knowingly provided substantial assistance to AstroPower by signing and causing to be filed with the Commission AstroPower's quarterly reports on Form 10-Q for the periods ended June 30, 2002, and September 30, 2002, that included materially false and misleading financial statements which failed to conform with GAAP.

85. By reason of the foregoing, Defendants Barnett and Stiner each aided and abetted AstroPower's violations of, Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-13 thereunder.

SIXTH CLAIM FOR RELIEF

Aiding and Abetting 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)]

86. Paragraphs 1 through 85 are hereby realleged and incorporated by reference as if set forth fully herein.

87. As alleged more fully above, AstroPower failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets. AstroPower also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets.

88. As a result of the foregoing, AstroPower violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

89. As alleged more fully above, by their misconduct, Defendants Barnett and Stiner knowingly provided substantial assistance to AstroPower in its failure to make and keep accurate books and records and to devise and maintain an effective system of internal accounting controls sufficient to permit the preparation of AstroPower's financial statements for the periods ended June 30, 2002, and September 30, 2002, in conformity with GAAP and to maintain accountability for AstroPower's assets.

90. By reason of the foregoing, Defendants Barnett and Stiner aided and abetted AstroPower's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter final judgments:

A. Permanently restraining and enjoining Defendant Barnett from violating Sections 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5, 13a-14, and 13b2-1, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-13;

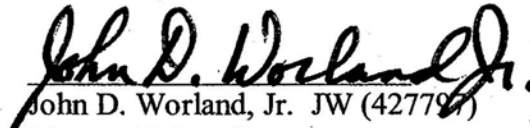
B. Permanently restraining and enjoining Defendant Stiner from violating Sections 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5, 13a-14, 13b2-1, and 13b2-2, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-13;

C. Prohibiting pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], each of Defendants Barnett and Stiner from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports under Section 15(d) of the Exchange Act [15 U.S.C. § 78o];

D. Ordering each of Defendants Barnett and Stiner to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

E. Granting such other additional relief as this Court may deem just and proper.

Dated: March 9, 2009
Washington, D.C.



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