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2009 MAR 12 PM 2:08
CLERK U.S. DISTRICT COURT
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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

SACV09-0315 AG MLGx

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 vs.

18 QUEST SOFTWARE, INC.,
19 VINCENT C. SMITH, JOHN J.
LASKEY, and KEVIN E. BROOKS,

20 Defendants.
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Case No.
COMPLAINT

1 1. This action involves improper stock option backdating at Quest
2 Software, Inc. (“Quest”), which resulted in the issuance of financial statements that
3 misstated stock-based compensation expenses by over \$100 million. Between
4 December 1999 and August 2002, Quest regularly backdated employee stock
5 option grants to obtain low exercise prices without recording compensation
6 expenses, which allowed it to report materially inflated income or understated
7 losses. The fraudulent scheme, facilitated by Quest’s most senior executives,
8 involved options to acquire approximately 11 million shares of common stock
9 spread over 28 separate grants, resulting in a \$113.6 million restatement of
10 operating income for the fiscal periods 1999 through 2005.

11 2. The executives involved in the backdating include Vincent C. Smith
12 (“Smith”), Quest’s former chief executive officer and chairman, and current
13 executive chairman; John J. Laskey (“Laskey”), its former chief financial officer;
14 and Kevin E. Brooks (“Brooks”), the former controller and chief accounting
15 officer, and currently Quest’s vice president for sales programs (collectively, the
16 “Individual Defendants”; collectively with Quest, “Defendants”).

17 3. During the relevant period, Laskey created, with Smith’s approval,
18 Quest’s policy of using hindsight to date stock option grants to coincide with
19 monthly low stock prices.

20 4. Smith served on the board of directors and signed unanimous written
21 consents (“UWCs”) memorializing numerous grants. These UWCs were false
22 because they used grant dates selected with hindsight and claimed that the grants
23 were made with strike prices at the “current fair market value” even though no
24 approvals were obtained on the alleged grant date and the board did not execute the
25 documents until well after the alleged grant date.

26 5. Smith, Laskey, and Brooks each knew about the use of hindsight to
27 backdate stock option grants, and all understood that options granted below fair
28 market value, or “in-the-money”, required Quest to record compensation expense.

1 constituting violations of the laws alleged in this Complaint occurred within this
2 district.

3 **DEFENDANTS**

4 11. Quest Software, Inc. is a California corporation headquartered in
5 Aliso Viejo, California. Founded in 1987, Quest creates and sells productivity
6 software designed to manage its clients' existing applications and databases. Since
7 its initial public offering on August 13, 1999, and throughout the relevant period,
8 Quest's common stock was registered under Section 12(g) of the Exchange Act
9 and traded on the Nasdaq National Market under symbol "QSFT."

10 12. Vincent C. Smith, age 44, resides in Newport Beach, California. He
11 served as Quest's chairman and CEO from 1998 until October 10, 2008, when he
12 was appointed executive chairman of the board of directors. As reported in a Form
13 4 filed on May 8, 2008, Smith holds directly and indirectly 31,062,004 shares of
14 Quest stock, approximately 29% of the company.

15 13. John J. Laskey, age 59, is a resident of Newport Coast, California. He
16 served as Quest's chief financial officer from October 1998 until he resigned in
17 February 2001.

18 14. Kevin E. Brooks, age 38, is a resident of Rancho Santa Margarita,
19 California. He served as Quest's controller and principal accounting officer from
20 1999 until October 26, 2006, when he was reassigned to a non-accounting/finance
21 role as a result of Quest's internal investigation into its stock option grant
22 practices. Brooks has been licensed as a CPA in California since November 1992,
23 although his license is currently inactive.

24 **FACTS**

25 **A. Backdating of Stock Options at Quest**

26 15. In December 1999, Laskey recommended to Smith a policy under
27 which the company would pool new hires by month and grant stock options to
28 each pool using the lowest price of that particular month. Smith approved the

1 policy, and the company applied it retroactively so that the October 1999 pool
2 received a \$22.94 exercise price, the November 1999 pool received a \$32.06
3 exercise price, and the December 1999 pool received a \$40.25 exercise price.

4 16. This practice continued through August 2002, resulting in over 8
5 million shares of backdated stock options to rank-and-file employees, accounting
6 for \$89.6 million of the restatement.

7 17. Quest documented approval of its stock option grants almost
8 exclusively through UWCs, which contained a date that purported to be the grant
9 date. However, no approvals were obtained from the board or the compensation
10 committee on the purported grant dates. Laskey prepared or directed the
11 preparation of the UWCs until about April 2000.

12 18. During the relevant period, UWCs were typically circulated for
13 signature long after the alleged grant date. Some UWCs contain fax headers that
14 reflect transmission dates long after the grant date, indicating that the UWCs were
15 signed on the day set forth in the fax transmission header.

16 19. Moreover, the UWCs stated that the "Board hereby determines that
17 the **current** fair market value per share of the common stock is . . ." (emphasis
18 supplied), a statement rendered false by the fact that the Board did not actually
19 meet, discuss, or approve the grant on the alleged grant date and the UWCs were
20 not executed until much later.

21 20. The UWCs typically referred to an attached exhibit that listed the
22 names of the grantees and the number of shares each would receive. During the
23 relevant period, however, many UWCs presented to the directors for signature
24 lacked the exhibits. Board members, knowing that Smith had reviewed or would
25 review the grantee lists, did not concern themselves with the identities of the
26 grantees, relying instead on the efforts of Smith and others in compiling the
27 grantee lists. On occasion, the grantee list was changed even after the UWC was
28 signed, and long after the date of the UWC. Once the UWC was formally signed,

1 the CFO would inform the stock plan administrator to process the grants and send
2 out the award notices to the option grantees.

3 21. Quest did not uniformly apply the policy that Laskey created, instead
4 using hindsight to postpone certain grants for a particular month if it meant lower
5 exercise prices could be obtained.

6 22. In the first quarter of 2000, Quest's stock price, on the rise since the
7 IPO, became more volatile, reaching a high of \$97.50 on March 10, 2000 and a
8 low of \$26.50 on April 14, 2000. As a result, the stock plan administrator reported
9 to Laskey on April 4, 2000, "Also another note from Vinny [Smith].... There will
10 NOT be any options grants for March. He wants them to be granted on April 3rd,
11 due to the price being lower then the 'lowest price' in March [sic]." The company
12 ultimately made the grant on April 14, 2000, which was the lowest price in April
13 and included the first post-IPO, company-wide grant.

14 23. The list of grantees, though, was not finalized until at least July 3,
15 2000. On that day, the stock plan administrator informed Laskey and Brooks that
16 she needed to revise the grantee list for April and asked whether she should send
17 revised minutes to the outside directors. Laskey responded, "I would just change
18 the exhibit to reflect the additions, no need to recycle them." The April 14, 2000
19 grants resulted in the largest unreported compensation expense, approximately \$51
20 million, nearly half of the restatement.

21 24. Brooks, although incorrectly remembering the grant date to have been
22 in March, refers to this grant nearly one year later in a January 3, 2001 e-mail
23 asking whether Quest will move a grant from December 2000:

24 Are we going to move the big option grant to yesterday? If we
25 do, then I don't have to worry about it for this year's audit.

26 That would buy you guys more time to decide. However, I
27 think it would be good to get the info out to the staff soon since
28 we passed on the traditional holiday bonus. Additionally in

1 March when we had the last big drop, we actually granted 0
2 options in February even to new starts and made them March to
3 take advantage of the \$26 price. We need to let [the stock plan
4 administrator] know if we are going to do that again for
5 December new starts.

6 25. Quest did, in fact, delay the December 2000 grant to January 2, 2001,
7 when Quest stock closed at \$23.69, the lowest price in December 2000 and January
8 2001. The UWC approving the grant was dated January 2, even though no
9 approvals were obtained on the purported grant date. Indeed, the UWC was not
10 signed by the two compensation committee members until May 9, 2001.

11 26. Grantees who should have received options in January, February, and
12 March 2001 became part of a March 28, 2001 grant, a date selected with hindsight
13 delayed to take advantage of Quest's falling stock price.

14 27. During the relevant period, the board or the compensation committee
15 approved a total of 28 stock option grants to officers under Section 16 of the
16 Exchange Act and rank-and-file employees, which resulted in a \$113.6 million
17 restatement of operating income for the fiscal periods 1999 through 2005. Other
18 than one grant approved during an actual board meeting on March 28, 2001, no
19 contemporaneous documentation exists to support the grant dates.

20 **B. Quest's Efforts to Avoid Compensation Expenses**

21 28. Quest's stock option practices during the relevant period were
22 designed to avoid or reduce accounting charges for compensation expense
23 associated with stock options. Smith, Laskey, and Brooks knew that in-the-money
24 options resulted in compensation expense. Smith, Laskey, and Brooks were also
25 aware that the company granted non-backdated, in-the-money options, which the
26 company properly expensed. Such options usually arose out of an agreement to
27 provide a specific exercise price in connection with an acquisition or to recruit a
28 key employee. To track such compensation, Quest's accounting department

1 maintained a spreadsheet entitled "Cheap Stock Amortization."

2 29. Even when a particular exercise price was promised, Quest sometimes
3 attempted to reduce the compensation expense by manipulating grant dates. For
4 example, in recruiting one employee, the company promised 40,000 stock options
5 with a negotiated strike price of \$26.50. In response to an e-mail seeking approval
6 to make the grant on October 4, 2000, Smith wrote:

7 There may be a way to avoid the comp charge. Give me until
8 Tuesday of next week to look into this one. Make sure we get it
9 down then. I would like to make the grant in September
10 because the strike price is \$46 so worst case the comp charge is
11 only \$20 per share or a MERE \$800K.

12 30. Nine days later, Smith wrote, "we may push out further. . . . as I said
13 we may try to capture a lower price." Eventually, a decision was made to grant the
14 options on October 30, 2000, when Quest's stock closed at \$35.98. However, on
15 November 29, 2000, Brooks suggested that the options should be "erased" and
16 granted on that day because the stock price, \$28.81, would help to reduce the
17 compensation expense further.

18 **C. Quest's Efforts to Avoid Auditor Scrutiny of the Backdating**

19 31. The close of fiscal quarters created urgency to complete the grant
20 process at Quest. Management was aware that stock options had to be finalized
21 prior to the end of quarterly audits by Quest's outside auditors. Numerous written
22 communications reflect the Individual Defendants' concern that backdated option
23 grants be finalized before the review or audit so as not to arouse the auditors'
24 suspicions. For example:

25 a. On January 9, 2000, Smith asks Laskey "how many more days
26 can we still give out Q4 options?" Laskey asks Smith to finish
27 by January 11 because he needs "to give [the UWCs] to the
28 auditors and also finish off the diluted shares calculation."

- 1 b. On June 22, 2000, Brooks tells a department head that he must
2 obtain approval from Smith for additional option grants before
3 the end of June “or it will be impossible to give them the April
4 price,” suggesting that paperwork supporting the grant had to
5 be completed before the outside auditors began their work in
6 early July.
- 7 c. On November 29, 2000, in connection with finalizing a grant to
8 a particular employee, Brooks states that “crossing quarters is
9 what we really need to avoid.”
- 10 d. On January 4, 2001, Smith agrees to an e-mail suggestion that
11 the company pull back grants purportedly made on October 30,
12 2000 with an exercise price of \$36 and instead grant them at
13 \$27, the lowest price in November, because “auditors have not
14 yet seen them.”

15 32. By November 2000, the auditors had become suspicious of Quest’s
16 accounting for stock options generally, as reflected in an e-mail from Brooks to
17 Smith and Laskey, among others:

18 Due to the numerous changes we have been making to past
19 periods [of stock option grants, the auditors are] growing very
20 skeptical that we are properly accounting for our stock option
21 activity. As a result, they are testing a higher percentage of
22 activity than they normally would. We really should try and
23 regain their confidence so that the level of scrutiny drops back
24 down. Ultimately, less scrutiny gives us more flexibility. . . .

25 33. Despite apparent skepticism, the outside auditors did not uncover
26 Quest’s stock option backdating, in part due to the efforts of Smith, Laskey, and
27 Brooks, which prevented the auditors from detecting the misconduct.

1 **D. Quest's Misleading Disclosures and Concealment of Accounting**
2 **Consequences**

3 34. Quest, through Smith, Laskey, and Brooks, made false and misleading
4 disclosures related to stock option grants in its periodic reports and proxy
5 statements, which were incorporated into its registration statements. In addition,
6 financial statements rendered false and misleading through omission of the
7 compensation expenses continued to appear in Quest's periodic reports through
8 2005.

9 **1. Forms 10-K and 10-Q**

10 35. In all of its periodic reports during the relevant period, Quest
11 represented that it applied Accounting Principles Board Opinion No. 25,
12 *Accounting for Stock Issued to Employees* ("APB 25"). Under APB 25, a public
13 company is allowed to grant stock options to employees without recording an
14 expense so long as the options are granted at-the-money. However, if a company
15 grants "in-the-money" options, it is required to record as an expense on its
16 financial statements the difference between the exercise price and the quoted
17 market price on the "measurement date" over the vesting period of the options.
18 The measurement date, as defined by APB 25, is the first date on which the
19 following information is known: (i) the number of options that an individual
20 employee is entitled to receive, and (ii) the exercise price.

21 36. Quest's financial statements included in its Forms 10-K and 10-Q
22 were not prepared in accordance with APB 25 because Quest failed to record
23 compensation expenses for backdated stock options that were in-the-money at the
24 time of grant. As a result, none of Quest's audited financial statements between
25 1999 and 2005 or its unaudited quarterly financial statements during that period
26 were prepared in accordance with Generally Accepted Accounting Principles, or
27 GAAP. Quest's restatement disclosed that it failed to report material amounts of
28 compensation expenses required by GAAP, and thus overstated (understated) its

operating income (loss) between 1999 and 2005, as follows:

Fiscal Year Ended 12/31	Quest's Operating Income (Loss) As Originally Stated	Unrecognized Compensation Expense	Percentage By Which Operating Income (Loss) Was Overstated (Understated)
1999	\$4,468,000	\$184,127	4%
2000	(\$29,876,000)	\$12,444,871	(29.4%)
2001	(\$53,701,000)	\$18,981,087	(26.12%)
2002	\$9,857,000	\$28,110,278	(154%)
2003	\$25,982,000	\$23,538,001	963.1%
2004	\$63,634,000	\$19,789,110	45.1%
2005	\$74,076,000	\$10,579,087	16.7%
Total	\$94,440,000	\$113,626,561	

2. Registration Statements

37. Quest's registration statements effective from November 1999 through 2005 included and/or incorporated by reference the consolidated financial statements as well as the misrepresentations in Quest's Forms 10-K and 10-Q, and its proxy statements. These registration statements include one Form S-1, one Form S-3, and 11 Forms S-8, which were filed primarily in connection with Quest's acquisitions during the period.

3. Proxy Statements

38. In 2000 and 2001, Quest's proxy statements falsely disclosed that the option grants to its named executive officers were made at fair market value on the date of grant. In addition, the 2000 proxy statement falsely represented that options to Quest's employees were granted at fair market value on the date of grant. These proxy statements were also materially misleading because they failed to disclose that Quest granted backdated, in-the-money options.

4. The Individual Defendants' Roles in Quest's Public Filings

39. During the relevant period, Smith signed the following public filings:

- Forms 10-K for fiscal years 1999 through 2005;
- Letters to shareholders in the 2000 and 2001 proxy statements;
- Forms S-8 filed on November 22, 1999, February 4, 2000, May 26, 2000, November 9, 2000, February 14, 2002, February 6, 2003, July 15, 2003, March 25, 2004, June 23, 2004, June 1, 2005, and July 14, 2005;
- Power of attorney included in Form S-1 filed on February 22, 2000;
- Form S-3 filed on September 26, 2000; and
- Sarbanes-Oxley Section 302 certifications in Forms 10-K from 2002 through 2005.

40. During the relevant period, Laskey signed the following public filings:

- Form 10-K for fiscal year 1999;
- Forms 10-Q filed in 2000; and
- Power of attorney included in Form S-1 filed on February 22, 2000, Form S-3 filed on September 26, 2000, and Forms S-8 filed on November 22, 1999, February 4, 2000, May 26, 2000, and November 9, 2000.

41. During the relevant period, Brooks signed the following public filings:

- Forms 10-K for fiscal years 2000 through 2005;
- Forms 10-Q from the third quarter 2001 through 2005; and
- Power of attorney included in Form S-3 filed on September 26, 2000 and Forms S-8 filed on November 9, 2000, February 14, 2002, February 6, 2003, July 15, 2003, March 25, 2004, June 23, 2004, June 1, 2005, and July 14, 2005.

5. **Misrepresentations to Auditors**

42. During the relevant period, Smith, Laskey, and Brooks signed management representation letters to Quest's outside auditors in connection with

1 the annual audits and quarterly reviews that contained false and misleading
2 statements and omissions. These letters falsely represented that Quest's financial
3 statements were presented in conformity with GAAP, that there had been no fraud
4 involving management or employees who played significant roles in internal
5 controls, and that the company had disclosed all information related to stock option
6 grants.

7 43. Beginning in April 2001, the letters falsely represented that all stock
8 options were made with an exercise price equal to fair market value of Quest stock
9 on the date of grant and that "all required approvals had been received for stock
10 option grants as of the date of grant." These disclosures were materially
11 misleading because Smith and Brooks were aware of the backdating at Quest and
12 that UWCs with false grant dates were provided to the auditors, but they did not
13 disclose this information to the auditors.

14 **E. The Individual Defendants Benefited From the Fraud**

15 44. Smith, Laskey, and Brooks personally benefited from the fraud by
16 receiving backdated options that were in-the-money by approximately \$10.1
17 million (Smith), \$98,000 (Laskey), and \$270,000 (Brooks).

18 45. Smith did not exercise any backdated options, which were repriced as
19 a result of Quest's internal investigation. Laskey's options expired. By exercising
20 certain backdated options, Brooks profited from backdated options by a total of
21 \$69,550, \$34,775 of which he reimbursed to Quest as a result of its internal
22 investigation.

23 46. Smith, Laskey, and Brooks filed false Forms 4 and 5 with the
24 Commission, which misreported the grant dates of stock options they received and
25 the expiration dates of those options.

26 **FIRST CLAIM FOR RELIEF**

27 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

28 **Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act**

1 **(Against All Defendants)**

2 47. The Commission realleges and incorporates by reference ¶¶ 1 through
3 46 above.

4 48. Quest, Smith, Laskey, and Brooks, and each of them, by engaging in
5 the conduct described above, directly or indirectly, in the offer or sale of securities
6 by the use of means or instruments of transportation or communication in interstate
7 commerce or by the use of the mails:

- 8 a. obtained money or property by means of untrue statements of a
9 material fact or by omitting to state a material fact necessary in
10 order to make the statements made, in light of the
11 circumstances under which they were made, not misleading; or
12 b. engaged in transactions, practices, or courses of business which
13 operated or would operate as a fraud or deceit upon the
14 purchaser.

15 49. By engaging in the conduct described above, Quest, Smith, Laskey,
16 and Brooks violated, and unless restrained and enjoined will continue to violate,
17 Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(2) and
18 77q(a)(3).

19 **SECOND CLAIM FOR RELIEF**

20 **PROXY VIOLATIONS**

21 **Violations of Section 14(a) of the Exchange Act and Rule 14a-9 thereunder**

22 **(Against Quest and Smith)**

23 50. The Commission realleges and incorporates by reference ¶¶ 1 through
24 49 above.

25 51. Quest and Smith, by the use of the mails or by any means or
26 instrumentality of interstate commerce or of any facility of a national securities
27 exchange or otherwise, knowingly, recklessly or negligently, solicited proxies by
28 means of a proxy statement, form of proxy, notice of meeting or other

1 communication, written or oral, containing statements which, at the time and in
2 light of the circumstances under which they were made, were false and misleading
3 with respect to material facts, or omitted to state material facts necessary in order
4 to make the statements therein not false or misleading or necessary to correct
5 statements in earlier communications with respect to the solicitation of the proxy
6 for the same meeting or subject matter which was false or misleading.

7 52. By engaging in the conduct alleged above, Quest and Smith violated,
8 and unless restrained and enjoined will continue to violate, Section 14(a) of the
9 Exchange Act, 15 U.S.C. § 78n(a), and Rule 14a-9 thereunder, 17 C.F.R. §
10 240.14a-9.

11 **THIRD CLAIM FOR RELIEF**

12 **FALSIFICATION OF RECORDS**

13 **Violations of Sections 13(b)(5) of the Exchange Act**

14 **and Rule 13b2-1 thereunder**

15 **(Against Smith, Laskey, and Brooks)**

16 53. The Commission realleges and incorporates by reference ¶¶ 1 through
17 52 above.

18 54. Smith, Laskey, and Brooks, directly or indirectly, falsified or caused
19 to be falsified Quest's books, records and accounts subject to Section 13(b)(2)(A)
20 of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

21 55. By engaging in the conduct alleged above, Smith, Laskey, and Brooks
22 violated, and unless restrained and enjoined will continue to violate, Section
23 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Rule 13b2-1 thereunder,
24 17 C.F.R. § 240.13b2-1.

25 **FOURTH CLAIM FOR RELIEF**

26 **FALSE STATEMENT TO ACCOUNTANTS**

27 **Violations of Exchange Act Rule 13b2-2**

28 **(Against Smith, Laskey, and Brooks)**

1 C.F.R. § 240.13a-14.

2 **SIXTH CLAIM FOR RELIEF**

3 **EQUITY BENEFICIAL OWNERSHIP REPORTING VIOLATION**

4 **Violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder**

5 **(Against Smith, Laskey, and Brooks)**

6 62. The Commission realleges and incorporates by reference ¶¶ 1 through
7 61 above.

8 63. Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a), and Rule 16a-
9 3 thereunder, 17 C.F.R. § 240.16a-3, require officers, directors and beneficial
10 owners of more than ten percent of any class of equity security registered pursuant
11 to Section 12 of the Exchange Act, 15 U.S.C. § 78l, to file periodic reports
12 disclosing any change of beneficial ownership of those securities.

13 64. Smith, Laskey, and Brooks failed to accurately report changes of
14 beneficial ownership of their Quest securities by filing Forms 4 and 5 with the
15 Commission that contained false or misleading statements with regard to their
16 options' grant dates and expiration dates.

17 65. By engaging in the conduct alleged above, Smith, Laskey, and Brooks
18 violated, and unless restrained and enjoined will continue to violate, Section 16(a)
19 of the Exchange Act, 15 U.S.C. § 78p(a), and Rule 16a-3 thereunder, 17 C.F.R. §
20 240.16a-3.

21 **SEVENTH CLAIM FOR RELIEF**

22 **VIOLATIONS OF COMMISSION PERIODIC**

23 **REPORTING REQUIREMENTS**

24 **Violations of Section 13(a) of the Exchange Act,**
25 **and Rules 12b-20, 13a-1, and 13a-13 thereunder**

26 **(Against Quest)**

27 66. The Commission realleges and incorporates by reference ¶¶ 1 through
28 65 above.

1 240.13a-1, and 240.13a-13.

2 **NINTH CLAIM FOR RELIEF**

3 **RECORD KEEPING VIOLATIONS**

4 **Violations of Section 13(b)(2)(A) of the Exchange Act**

5 **(Against Quest)**

6 72. The Commission realleges and incorporates by reference ¶¶ 1 through
7 71 above.

8 73. By failing to make or keep books, records and accounts that in
9 reasonable detail accurately and fairly reflected its transactions and disposition of
10 its assets, Quest violated, and unless restrained and enjoined will continue to
11 violate, Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

12 **TENTH CLAIM FOR RELIEF**

13 **RECORD KEEPING VIOLATIONS**

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

15 **(Against Smith, Laskey, and Brooks)**

16 74. The Commission realleges and incorporates by reference ¶¶ 1 through
17 73 above.

18 75. Quest violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
19 78m(b)(2)(A), by failing to make or keep books, records and accounts that in
20 reasonable detail accurately and fairly reflected its transactions and disposition of
21 its assets.

22 76. Smith, Laskey, and Brooks knowingly provided substantial assistance
23 to Quest's violation of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
24 78m(b)(2)(A).

25 77. By engaging in the conduct described above and pursuant to Section
26 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Smith, Laskey, and Brooks aided
27 and abetted Quest's violations, and unless restrained and enjoined will continue to
28 aid and abet violations, of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §

1 78m(b)(2)(A).

2 **ELEVENTH CLAIM FOR RELIEF**

3 **INTERNAL CONTROL VIOLATIONS**

4 **Violations of Section 13(b)(2)(B) of the Exchange Act**

5 **(Against Quest)**

6 78. The Commission realleges and incorporates by reference ¶¶ 1 through
7 77 above.

8 79. By failing to devise and maintain a system of internal accounting
9 controls sufficient to provide reasonable assurances that transactions were recorded
10 as necessary to permit preparation of financial statements in conformity with
11 GAAP and to maintain accountability of assets, Quest violated, and unless
12 restrained and enjoined will continue to violate, Section 13(b)(2)(B) of the
13 Exchange Act, 15 U.S.C. § 78m(b)(2)(B).

14 **TWELFTH CLAIM FOR RELIEF**

15 **INTERNAL CONTROLS VIOLATIONS**

16 **Aiding and Abetting Violations of Sections 13(b)(2)(B) of the Exchange Act**

17 **(Against Smith, Laskey, and Brooks)**

18 80. The Commission realleges and incorporates by reference ¶¶ 1 through
19 79 above.

20 81. Quest violated Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
21 78m(b)(2)(B), by failing to devise and maintain a system of internal accounting
22 controls sufficient to provide reasonable assurances that transactions were recorded
23 as necessary to permit preparation of financial statements in conformity with
24 GAAP and to maintain the accountability of assets.

25 82. Smith, Laskey, and Brooks knowingly provided substantial assistance
26 to Quest's violation of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
27 78m(b)(2)(B).

28 83. By engaging in the conduct described above and pursuant to Section

1 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Smith, Laskey, and Brooks aided
2 and abetted Quest's violations, and unless restrained and enjoined will continue to
3 aid and abet violations, of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
4 78m(b)(2)(B).

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the Commission respectfully requests that the Court:

7 (a) Issue findings of fact and conclusions of law that Defendants
8 committed the alleged violations.

9 (b) Issue judgment, in a form consistent with Rule 65(d) of the Federal
10 Rules of Civil Procedure, permanently enjoining Quest, its agents, servants,
11 employees, attorneys, and those persons in active concert or participation with it,
12 who receive actual notice of the order by personal service or otherwise, from
13 violating Sections 17(a)(2) and (a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2)
14 and (a)(3), Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange
15 Act, 15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a), and Rules
16 12b-20, 13a-1, 13a-13, and 14a-9 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1,
17 240.13a-13, and 240.14a-9.

18 (c) Issue judgment, in a form consistent with Rule 65(d) of the Federal
19 Rules of Civil Procedure, (1) permanently enjoining Smith, his agents, servants,
20 employees, attorneys, and those persons in active concert or participation with him,
21 who receive actual notice of the order by personal service or otherwise, from
22 violating Sections 17(a)(2) and (a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2)
23 and (a)(3), Sections 13(b)(5), 14(a), and 16(a) of the Exchange Act, 15 U.S.C. §§
24 78m(b)(5), 78n(a), and 78p(a) and Rules 13a-14, 13b2-1, 13b2-2, 14a-9, and 16a-3
25 thereunder, 17 C.F.R. §§ 240.13a-14, 240.13b2-1, 240.13b2-2, 240.14a-9, and
26 240.16a-3 and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A),
27 and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and
28 78m(b)(2)(B), and Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§

1 240.12b-20, 240.13a-1, and 240.13a-13, and (2) ordering Smith to pay civil
2 penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and/or
3 Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

4 (d) Issue judgment, in a form consistent with Rule 65(d) of the Federal
5 Rules of Civil Procedure, (1) permanently enjoining Laskey, his agents, servants,
6 employees, attorneys, and those persons in active concert or participation with him,
7 who receive actual notice of the order by personal service or otherwise, from
8 violating Sections 17(a)(2) and (a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2)
9 and (a)(3), Sections 13(b)(5) and 16(a) of the Exchange Act, 15 U.S.C. §§
10 78m(b)(5) and 78p(a), and Rules 13b2-1, 13b2-2, and 16a-3 thereunder, 17 C.F.R.
11 §§ 240.13b2-1, 240.13b2-2, and 240.16a-3 and from aiding and abetting violations
12 of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§
13 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B), and Rules 12b-20, 13a-1, and 13a-13
14 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13, and (2) ordering
15 Laskey to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15
16 U.S.C. § 77t(d), and/or Section 21(d)(3) of the Exchange Act, 15 U.S.C. §
17 78u(d)(3).

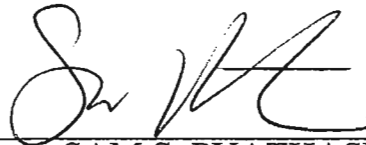
18 (e) Issue judgment, in a form consistent with Rule 65(d) of the Federal
19 Rules of Civil Procedure, permanently enjoining Brooks, his agents, servants,
20 employees, attorneys, and those persons in active concert or participation with him,
21 who receive actual notice of the order by personal service or otherwise, from
22 violating Sections 17(a)(2) and (a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2)
23 and (a)(3), Sections 13(b)(5) and 16(a) of the Exchange Act, 15 U.S.C. §§
24 78m(b)(5) and 78p(a), and Rules 13b2-1, 13b2-2, and 16a-3 thereunder, 17 C.F.R.
25 §§ 240.13b2-1, 240.13b2-2, and 240.16a-3 and from aiding and abetting violations
26 of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§
27 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B), and Rules 12b-20, 13a-1, and 13a-13
28 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13; (2) ordering

1 Brooks to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15
2 U.S.C. § 77t(d), and/or Section 21(d)(3) of the Exchange Act, 15 U.S.C. §
3 78u(d)(3); and (3) ordering Brooks to disgorge all ill-gotten gains from his illegal
4 conduct, together with prejudgment interest thereon.

5 (f) Retain jurisdiction of this action in accordance with the principles of
6 equity and the Federal Rules of Civil Procedure in order to implement and carry
7 out the terms of all orders and decrees that may be entered, or to entertain any
8 suitable application or motion for additional relief within the jurisdiction of this
9 Court.

10 (g) Grant such other and further relief as this Court may determine to be
11 just and necessary.

12
13 DATED: March , 2009



14 SAM S. PUATHASNANON
15 Attorney for Plaintiff
16 Securities and Exchange Commission
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