

1 LESLIE J. HUGHES (CO Bar No. 15043)
hugheslj@sec.gov
2 LEE C. ROBINSON (CO Bar No. 32734)
robinsonlc@sec.gov
3 Attorneys for Plaintiff
4 U.S. Securities and Exchange Commission
1801 California Street, Suite 1500
5 Denver, Colorado 80202-2656
6 Telephone: (303) 844-1000
Fax: (303) 844-1068
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 SECURITIES AND EXCHANGE
12 COMMISSION,

Case No.

13 Plaintiff,

14 v.

COMPLAINT

15 ROMULUS S. PEREIRA,
16 ROBERT B. STANTON,
17 L. JOHN KERN,
18 ANDREW D. FELDMAN,
19 WILLIAM F. McFARLAND,
20 LORI H. CORNMESSER,

21 Defendants.
22

23 Plaintiff, Securities and Exchange Commission ("SEC") alleges:

24 I. SUMMARY

25 1. From June 2001 through June 2002 (the "relevant period"), **Romulus S. Pereira**,
26 chief executive officer, **Robert B. Stanton**, chief financial officer, **L. John Kern**, executive vice
27 president of worldwide sales, **Andrew D. Feldman**, vice president of marketing, and **William F.**
28 **McFarland**, vice president of finance, engaged in a scheme that defrauded investors by making

COMPLAINT

1 materially false and misleading statements regarding the net revenues of Riverstone Networks,
2 Inc. ("Riverstone"), a public company whose securities were traded on the NASDAQ national
3 market.

4 2. During the relevant period, **Pereira, Stanton, Kern, Feldman, and McFarland**
5 negotiated, reviewed, approved, or were otherwise aware of sales transactions that involved side
6 agreements with purchasers, under which the customer's payment for Riverstone product was
7 contingent upon resale or the purchaser was granted full return, exchange, or cancellation rights
8 and for which Riverstone improperly recognized revenues under Generally Accepted Accounting
9 Principles ("GAAP").

10 3. As a direct result of these Defendants' actions, Riverstone falsely reported at least
11 \$29,613,000 of revenues in its financial statements as a result of the contingent sales, causing
12 revenue overstatements for each of the four quarters in the relevant period ranging between
13 14.31 % and 23.14 %.

14 4. **Pereira, Stanton, Kern, Feldman, and McFarland** knew, or were reckless in not
15 knowing, that it was improper for Riverstone to recognize revenues on these contingent sales
16 under GAAP and that Riverstone's periodic filings with the SEC during the relevant period
17 contained materially false and misleading information regarding its reported revenues.

18 5. **Pereira, Stanton, and McFarland**, who were responsible for Riverstone's
19 accounting department and policies, also failed to devise, implement, and maintain an adequate
20 system of internal accounting controls at Riverstone.

21 6. **Pereira, Stanton, Kern, Feldman, and McFarland**, aided and abetted by
22 Riverstone's director of sales operations, **Lori H. Cornmesser**, made or caused misstatements
23 and omissions to Riverstone's accountants concerning the true nature of certain sales
24 transactions.

25 7. During the relevant period, each of the Defendants circumvented the internal
26 accounting controls that Riverstone had in place and falsified Riverstone's books, records, and
27 accounts.

28 8. While Riverstone's stock price was artificially inflated due to its material

1 overstatement of revenues, each of the Defendants except **McFarland** realized substantial profits
2 from stock sales, bonuses, and other forms of compensation.

3 9. Riverstone was a majority-owned subsidiary of Enterasys Networks, Inc.,
4 formerly known as Cabletron Systems Inc., (referred to jointly as “Enterasys”), until it was spun
5 off as an independent public company on August 6, 2001. Riverstone’s financial statements
6 prior to August 6, 2001, were included in Enterasys’s consolidated financial reports.

7 10. On February 1, 2002, Enterasys announced that it was the subject of a formal SEC
8 investigation and that it was reviewing its sales and revenue recognition practices for its Asia
9 Pacific region and would therefore be delaying the release of its fourth quarter financial results.

10 11. Just before the announcement on February 1, 2002, Riverstone’s stock had a
11 closing price of \$15.72 per share. Within two weeks after Enterasys’s announcement,
12 Riverstone’s stock was trading at \$7.70 per share, a decline of over 50 percent. This represents a
13 change in the value of the shareholders’ stock of approximately \$984 million.

14 12. On August 27, 2003, Riverstone filed an amended current report with the SEC on
15 Form 8-K, which **Stanton** signed, announcing the company had overstated its revenues for fiscal
16 year 2002 by as much as \$85.5 million and for the nine months ended November 30, 2002, by as
17 much as \$12.7 million.

18 II. JURISDICTION AND VENUE

19 13. The SEC brings this action to enforce the federal securities law pursuant to
20 Sections 21(d) and 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §
21 78u(d) and 78u(e)].

22 14. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of
23 the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

24 15. The Defendants, directly or indirectly, have made use of the means or
25 instrumentalities of interstate commerce, or of the mails in connection with the transactions, acts,
26 practices, and courses of business described in this Complaint.

27 16. This district is appropriate for venue under Section 27 of the Exchange Act [15
28 U.S.C. § 78aa]. Certain of the transactions, acts, practices, and courses of business constituting

1 the violations of law alleged in this Complaint occurred within the Northern District of
2 California. The Defendants worked in Riverstone's principle office in Santa Clara, California.
3 The Defendants also reside within this district in Santa Clara or San Mateo counties.

4 III. INTRA-DISTRICT ASSIGNMENT

5 17. Assignment to the San Jose Division is appropriate pursuant to Civil Local Rule
6 3-2(e) because a substantial part of the events that give rise to the Commission's claims occurred
7 in Santa Clara County.

8 IV. DEFENDANTS

9 18. **Romulus S. Pereira**, age 55, a resident of Saratoga, California, served as chief
10 executive officer, president, and as a director of Riverstone from March 2000 until December
11 2003. During the period March 4, 2001 to October 31, 2001, **Pereira** was also the executive at
12 Riverstone in charge of worldwide sales.

13 19. **Robert B. Stanton**, age 54, a resident of Palo Alto, California, served as
14 Riverstone's chief financial officer and executive vice president of finance from August 2000
15 until October 2003.

16 20. **L. John Kern**, age 39, a resident of Hillsborough, California, served as
17 Riverstone's executive vice president of worldwide sales from November 2001 until October
18 2002. **Kern** was Riverstone's vice president of sales from January 2001 to November 2001 and
19 its vice president of worldwide sales operations from April 2000 to January 2001.

20 21. **Andrew D. Feldman**, age 36, a resident of Portola Valley, California, served as
21 Riverstone's vice president of marketing from March 2000 until July 2003.

22 22. **William F. McFarland**, age 54, a resident of Campbell, California, served as
23 Riverstone's vice president of finance from August 2001 until June 2003. **McFarland** was in
24 charge of Riverstone's accounting function, including its financial reporting.

25 23. **Lori H. Cornmesser**, age 35, a resident of San Jose, California, served as
26 Riverstone's director of sales operations from November 2001 to October 2002, and as senior
27 manager of sales operations from December 2000 to October 2001.

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V. RELATED ENTITY

24. Riverstone Networks, Inc. is a Delaware corporation with its principal office in Santa Clara, California. During the relevant period, Riverstone's stock was registered with the SEC pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)].

25. Riverstone designed and sold routers, which are devices for making or transferring connections between communication circuits carrying voice or data transmissions.

VI. PEREIRA, STANTON, KERN, FELDMAN, AND MCFARLAND CAUSED RIVERSTONE TO REPORT IMPROPER REVENUES FROM CONTINGENT SALES

26. Riverstone and its directors, officers, and employees were required to comply with the federal securities laws and regulations. Those laws and regulations were designed to ensure that the financial information of publicly traded companies, such as Riverstone, is accurately recorded and disclosed to the investing public.

27. Under the federal securities laws and regulations, Riverstone was required, among other things: a) to make and keep books, records, and accounts that accurately and fairly reflected the company's business transactions; (b) to devise and maintain a system of internal accounting controls that provided reasonable assurances that the company's financial transactions were recorded in a manner that would permit the preparation of financial statements in conformity with GAAP; and (c) to file with the SEC quarterly reports (known as Forms 10-Q) and annual reports (known as Forms 10-K) that included accurate and reliable financial statements prepared in accordance with GAAP.

28. As a public company, Riverstone was also required to retain accountants to review and audit its financial statements for compliance with GAAP. Officers and directors of public companies are required to provide accountants with information that is not false or misleading.

29. Between June 1, 2001, and June 2, 2002, Defendants **Pereira, Stanton, Kern, Feldman, and McFarland** caused Riverstone to improperly recognize at least \$29,613,000 in revenues from sales transactions involving rights of return, exchange, and cancellation, and other material contingencies such as extended payment terms, which were not accounted for at the

1 time the transactions were originally recorded. As a result, revenues related to these sales either
2 should not have been recognized or should have been recognized in a different period.

3 30. Instead of including the foregoing contingencies in its sales contracts or the
4 customers' purchase orders, Riverstone agreed to these contingencies in side agreements that,
5 due to the acts or omissions of the Defendants, were not recorded in Riverstone's books, records,
6 and accounts, or disclosed to the company's outside accountants.

7 31. The contingent sales were often consummated within the last two weeks of a
8 reporting period when Riverstone was struggling to meet its revenues target.

9 32. **Pereira, Stanton, Kern, Feldman, and McFarland** knowingly, or recklessly,
10 participated in Riverstone's material misstatements of revenues by negotiating, reviewing, or
11 recording revenues on contingent sales and concealing the sales contingencies from Riverstone's
12 outside accountants.

13 33. **Pereira, Stanton, and McFarland** also knowingly, or recklessly, participated in
14 Riverstone's material misstatements of revenues by failing to implement procedures to identify
15 and properly account for contingent sales after gaining knowledge that millions of dollars of
16 contingent sales had occurred at Riverstone.

17 34. As a direct result of these Defendants' actions and omissions, Riverstone
18 materially overstated its revenues for each quarter during the relevant period by at least:
19 \$10,382,000 or 23.1% for the quarter ended September 1, 2001; \$7,519,000 or 14.3% for the
20 quarter ended December 1, 2001; \$7,658,000 or 17.55% for the quarter ended March 2, 2002;
21 and \$4,054,000 or 15.56% for the quarter ended June 1, 2002.

22 35. **Pereira, Stanton, Kern, Feldman, and McFarland** caused Riverstone to file
23 three quarterly reports and one annual report with the SEC that contained false and misleading
24 financial statements, which were not prepared in accordance with GAAP.

25 36. These Defendants' violations resulted in various materially false statements
26 contained in SEC filings and other documents, including: Riverstone's annual report on Form 10-
27 K for the fiscal year from March 4, 2001 to March 2, 2002; Riverstone's quarterly reports on
28 Forms 10-Q for the quarters from June 3, 2001 to September 1, 2001; September 2, 2001 to

1 December 1, 2001; and March 3, 2002 to June 1, 2002; all press releases and other statements
2 incorporating the above documents; and the representation letters sent to Riverstone's outside
3 accountants on September 20, 2001, May 28, 2002, and May 30, 2002.

4 37. **Pereira** and **Stanton** signed each of the Forms 10-Q and 10-K listed above
5 despite their knowledge that, or reckless indifference as to whether, the amount of revenues listed
6 in each report was false and materially overstated.

7 **A. The World Wide Technology Side Agreement**

8 38. In August 2001, **Feldman** approached World Wide Technology, Inc. ("WWT"), a
9 Missouri-based reseller, about placing a \$2.8 million purchase order with Riverstone.

10 39. To induce the sale, **Feldman** agreed via e-mail that WWT would not have to pay
11 for the Riverstone product until it was resold ("sell-through payment term") and that WWT
12 would have full exchange rights on the order.

13 40. **Feldman** informed both **Pereira** and **Stanton** about the sell-through payment
14 term prior to agreeing to it and **Pereira** specifically approved the term and instructed **Feldman**
15 to close the WWT transaction.

16 41. On August 28, 2001, four days before the close of Riverstone's second quarter,
17 WWT submitted a \$2.8 million purchase order to Riverstone that made reference to the sale
18 contingencies contained in **Feldman's** e-mail. **Feldman** told WWT that he could provide a side
19 agreement with the contingencies, but instructed WWT to remove the note referencing them
20 from the purchase order.

21 42. At the time **Feldman** entered into the side agreement with WWT, he was aware
22 that Riverstone intended to recognize revenues on the WWT transaction, that the sale
23 contingencies would prevent revenue recognition under GAAP, and that WWT's purchase order
24 needed to omit any references to the contingencies if revenue was to be recognized.

25 43. In response to **Feldman's** request, WWT sent a revised purchase order to
26 Riverstone deleting the note.

27 44. Despite the known contingencies, **Pereira**, **Stanton**, and **Feldman** caused
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1 Riverstone to recognize \$2.8 million of revenues for the quarter that ended September 1, 2001,
2 from the WWT sale.

3 45. A month after the WWT sale, Riverstone's director of credit and collections,
4 Kathy Alvendia, learned of the sell-through payment term as a result of a collection call to
5 WWT. Alvendia informed **Stanton, Feldman, and McFarland** on October 2, 2001, that the
6 inability to collect the amount owed by WWT at the time would have a major impact on the
7 aging of Riverstone's receivables.

8 46. On October 11, 2001, Alvendia met with **Feldman and McFarland**, at which
9 time **Feldman** confirmed the existence of the sell-through payment term.

10 47. The next day, Alvendia sent an e-mail to **Pereira, Stanton, Kern, Feldman, and**
11 **McFarland** stating that Riverstone gave WWT a sell-through payment term "as part of shipping
12 \$3M in revenue for the qtr."

13 48. Soon after **Pereira and Stanton** were told by Alvendia of the sell-through
14 payment term given to WWT, they both had conversations with her in which they acknowledged
15 that the WWT transaction was a problem.

16 49. Three days later, on October 15, 2001, **Pereira and Stanton** signed Riverstone's
17 Form 10-Q for the quarter ending September 1, 2001, which included all the revenues recorded
18 from the WWT transaction.

19 50. **Pereira, Stanton, and McFarland** took no action to reverse the improper
20 revenues from the WWT transaction, which alone comprised 5.1% of Riverstone's reported
21 revenues for the quarter.

22 51. Absent the WWT sale, Riverstone would not have met its Wall Street revenues
23 expectations for the second quarter of fiscal year 2002, nor would it have posted a profit.

24 52. On September 20, 2001, in connection with the quarterly review by Riverstone's
25 outside accountant, KPMG LLP, **Pereira, Stanton, and McFarland** signed a representation
26 letter indicating that, among other things, all of Riverstone's sales transactions were final, there
27 existed no side agreements involving return rights, and that revenues were reserved to the extent
28 significant future obligations exist.

1 53. On May 28, 2002, **Pereira, Stanton, and McFarland** also signed a representation
2 letter to Riverstone's outside accountant, Ernst & Young LLP ("E&Y"), in connection with the
3 year-end audit for the fiscal year ending March 2, 2002, stating that none of Riverstone's
4 resellers had sell-through payment terms.

5 54. On May 30, 2002, **Pereira** signed a separate representation letter to E&Y stating
6 that he had no knowledge of any side agreements for the period March 4, 2001, to October 31,
7 2001.

8 55. Based on **Pereira, Stanton, and McFarland's** knowledge of the sell-through
9 payment term connected with the WWT sale, their representations and omissions to Riverstone's
10 outside accountants were false and misleading.

11 56. **Feldman's** procurement of the revised purchase order from WWT concealed the
12 sale contingencies from Riverstone's outside accountants. It also caused Riverstone's books,
13 records, and accounts to be false.

14 **B. The Vnetek Side Agreement**

15 57. Riverstone personnel asked customers to remove non-standard terms from
16 purchase orders and instead provide "clean" purchase orders (a purchase order with Riverstone's
17 standard sales terms) and Riverstone personnel, in turn, committed to the non-standard terms in a
18 side letter or verbal agreement.

19 58. **Feldman** and **Kern** were aware of this practice of getting a "clean" purchase
20 order, which was needed to "get through audit."

21 59. On November 29, 2001, three days before the end of Riverstone's third quarter,
22 Vnetek Communications, Inc. ("Vnetek"), a New Hampshire-based reseller, sent **Feldman** a
23 "clean" \$2.0 million purchase order reflecting net 30 payment terms.

24 60. However, to induce the sale, **Feldman** signed a side agreement with Vnetek
25 giving it full return rights and a sell-through payment term for the order.

26 61. At the time he granted Vnetek the full return rights and a sell-through payment
27 term, **Feldman** knew these terms prohibited revenue recognition under GAAP.
28

1 62. The sale contingencies granted to Vnetek by **Feldman** were approved by **Pereira,**
2 **Stanton, and McFarland.**

3 63. Despite the known contingencies, **Pereira, Stanton, Feldman, and McFarland**
4 caused Riverstone to recognize \$1.5 million of revenues for the third quarter that ended
5 December 1, 2001, from the Vnetek sale.

6 64. **Feldman's** procurement of the "clean" purchase order from Vnetek and use of a
7 side agreement concealed the sale contingencies from Riverstone's outside accountants. It also
8 caused Riverstone's books, records, and accounts to be false.

9 **C. The Technica Side Agreement**

10 65. In early 2002, Riverstone was negotiating an opportunity for a large sale to the
11 Defense Information Systems Agency ("DISA"), a branch of the United States Department of
12 Defense.

13 66. Riverstone used resellers to "pull deals forward," meaning to take product in
14 advance of a sale to an end user so that Riverstone could recognize revenues in an earlier quarter
15 for the purpose of meeting Wall Street expectations. This practice was known to **Kern,**
16 **Feldman, and McFarland.**

17 67. Because the DISA sale could not be consummated by the quarter ending March 2,
18 2002, Riverstone's sales personnel approached Technica Corporation ("Technica"), a Virginia-
19 based reseller, about purchasing the DISA inventory before March 2, 2002, with the
20 understanding that Technica did not have to pay for the inventory until it was resold to DISA.

21 68. To induce the sale, **Kern** approved a side agreement granting Technica a sell-
22 through payment term and unlimited stock rotation rights for the order.

23 69. On February 19, 2002, Technica placed a "clean" \$2.0 million purchase order
24 with Riverstone that did not reference the sales contingencies.

25 70. At the time he approved the Technica side agreement, **Kern** knew it was improper
26 to recognize revenues on the transaction under GAAP and that Riverstone intended to include the
27 Technica deal in its revenues for the quarter.
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1 71. On May 1, 2002, a month before Riverstone filed its Form 10-K for the fiscal year
2 ending March 2, 2002, **Cornmesser** received an e-mail from the Riverstone sales person on the
3 Technica account informing her of the side agreement and the sell-through payment term, which
4 she forwarded to **McFarland**.

5 72. **McFarland** took no action on **Cornmesser's** e-mail, and did not request a copy
6 of the side agreement.

7 73. **McFarland** did not bring the Technica side agreement to the attention of
8 Riverstone's outside accountants.

9 74. Notwithstanding their knowledge of the contingency, **Kern** and **McFarland**
10 caused Riverstone improperly to record \$2.0 million of revenues in the quarter ending March 2,
11 2002, on the Technica transaction.

12 75. Just days after **McFarland** was informed of the Technica side agreement,
13 Riverstone's sales personnel approached Technica to take additional product for the DISA deal.

14 76. On May 23, 2002, in the last week of the quarter ending June 1, 2002, **Kern**
15 approved a second side agreement granting Technica a sell-through payment term and unlimited
16 stock rotation rights with respect to an additional \$2.8 million purchase order.

17 77. **Kern** caused Riverstone to recognize \$2.8 million of revenues on the second
18 Technica transaction for the quarter ending June 1, 2002, despite the existence of the side
19 agreement. This transaction with Technica comprised 9.4% of Riverstone's revenues for the
20 quarter.

21 78. On May 30, 2002, within days after the execution of the second Technica side
22 agreement, **Kern** signed a false representation letter to E&Y stating that he had no knowledge of
23 any side agreements with Riverstone's customers.

24 79. Shortly after being informed that Technica had been given a sell-through payment
25 term for its initial \$2.0 million purchase order, **McFarland** signed a false representation letter on
26 May 28, 2002, to E&Y stating that Riverstone had not agreed to sell-through payment terms with
27 its resellers.

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1 80. **Kern, McFarland, and Cornmesser** caused Riverstone's books, records, and
2 accounts to be false by failing to record the side agreements with Technica or by recording
3 revenues without appropriate reserves on contingent sales.

4 **D. The TM Telecom Side Agreement**

5 81. In 2002, Riverstone was working on a potential investment transaction involving
6 a Brazilian end-user called Intelig Telecom ("Intelig"). The parties contemplated that Riverstone
7 would invest approximately \$1.0 million in Intelig in return for Intelig's commitment to purchase
8 Riverstone product in the amount of Riverstone's investment.

9 82. Because the Intelig investment deal could not be completed in the quarter ending
10 June 1, 2002, Riverstone sales personnel engaged in discussions with Florida-based reseller TM
11 Telecom, Inc. ("TM Telecom") about submitting a \$1.0 million purchase order prior to the end
12 of the quarter to purchase the product Riverstone intended to sell to Intelig, i.e., to pull the deal
13 forward.

14 83. To induce the sale, **Kern** approved granting TM Telecom a sell-through payment
15 term for the order, which was conveyed to TM Telecom verbally by a Riverstone sales manager.

16 84. On May 24, 2002, in the last week of the quarter, TM Telecom submitted the
17 purchase order to Riverstone for approximately \$1.0 million of product.

18 85. However, TM Telecom had no need for the Riverstone product and did not have
19 the independent ability to pay for it.

20 86. The investment deal with Intelig was not completed by June 1, 2002.

21 87. At the time that the side agreement with TM Telecom was reached, **Kern** knew
22 that the sale contingency would prohibit revenue recognition under GAAP, that Riverstone
23 intended to recognize revenues on the TM Telecom deal, and that such contingencies were being
24 concealed by omitting references to them in the sales documentation.

25 88. Despite the contingent payment term, **Kern** caused Riverstone to recognize
26 revenues of \$1.0 million on the TM Telecom sale for the quarter ending June 1, 2002.
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1 89. The investment deal with Intelig was never consummated and TM Telecom
2 returned all of the Riverstone product nine months later.

3 90. Kern caused Riverstone's books, records, and accounts to be false by failing to
4 record the side agreement with TM Telecom.

5 E. Additional Contingent Sales Improperly Recorded As Revenues

6 91. In addition to the foregoing transactions, Stanton, Kern, and McFarland
7 approved or had knowledge of the following additional contingent sales for which Riverstone
8 improperly recognized revenues contrary to GAAP:

- 9 a) Everbright, \$1.0 million improper revenues during the quarter that ended
10 September 1, 2001, involving Kern;
- 11 b) Keytron S.A., \$1.4 million total improper revenues during the quarters that ended
12 September 1, 2001, and December 2, 2001, involving Kern;
- 13 c) REON Broadband, \$200,000 improper revenues during the quarter that ended
14 September 1, 2001, involving Kern;
- 15 d) Smartnet Technology, Inc., \$500,000 improper revenues during the quarter that
16 ended September 1, 2001, involving Kern;
- 17 e) ZTE Corporation, \$1.4 million improper revenues during the quarter that ended
18 September 1, 2001, involving Kern;
- 19 f) Spacnet, \$700,000 improper revenues during the quarter that ended December 1,
20 2001, involving Kern and McFarland;
- 21 g) Landata Payama, S.A., \$2.1 million total improper revenues during the quarters
22 that ended December 1, 2001, and March 2, 2002, involving Kern;
- 23 h) All Networks, \$900,000 improper revenues during the quarter that ended
24 December 1, 2001, involving Stanton, Kern, and McFarland;
- 25 i) Commverge, \$2.1 million improper revenues during the quarter that ended March
26 2, 2002, involving Kern;
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- 1 j) Vodatel, \$2.6 million improper revenues during the quarter that ended March 2,
2 2002, involving **Kern**;
- 3 k) KDC Corp., \$1.5 million improper revenues during June 1, 2002, involving **Kern**
4 and **McFarland**;
- 5 l) Solunet, Inc., \$5 million improper revenue during the quarters that ended
6 September 1, 2001, December 1, 2001, and March 2, 2002, involving **Kern**; and
- 7 m) Trispec, \$1.0 million improper revenues during the quarter that ended September
8 1, 2001, December 1, 2001, March 2, 2002, involving **Kern**.

9 **VII. RIVERSTONE'S SYSTEM OF INTERNAL ACCOUNTING CONTROLS WAS**
10 **INADEQUATE AND EACH OF THE DEFENDANTS CONTRIBUTED TO**
11 **RIVERSTONE'S IMPROPER RECORDKEEPING AND CONCEALED**
12 **INFORMATION FROM RIVERSTONE'S OUTSIDE ACCOUNTANTS**

13 92. Riverstone did not devise or maintain a system of internal accounting controls that
14 allowed it to prepare financial statement in conformity with GAAP.

15 93. In some instances, non-standard sales terms, including sell-through payment
16 terms, were not communicated from the sales group to members of the finance department. This
17 problem was specifically brought to the attention of **Stanton**, **Kern**, and **McFarland**, but they
18 never instituted a formal policy to ensure that all non-standard sales terms were properly
19 documented and communicated to the finance department.

20 94. **Pereira**, **Stanton**, and **McFarland** did not perform any investigation and failed to
21 correct Riverstone's books, records, and accounts when sales contingencies were brought to their
22 attention.

23 95. **Kern**, **Feldman**, and **Cornmesser** encouraged others to remove or misstate non-
24 standard sales terms on purchase orders, resulting in inaccurate and incomplete sales records.

25 96. **Cornmesser** failed to keep complete customer files or preserve their integrity,
26 removed side agreements from customer files at the direction of **Kern**, entered false information
27 into Riverstone's order management system, and circumvented Riverstone's credit approval
28 process.

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FIRST CLAIM FOR RELIEF

Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]
(Against Defendants Pereira, Stanton, Kern, Feldman, and McFarland)

101. The SEC realleges paragraphs 1 through 100 above.

102. Based on the conduct alleged above, **Pereira, Stanton, Kern, Feldman, and McFarland**, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or 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; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; in violation of Section 10(b) of the Exchange Act and Rule 10b-5. [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

103. **Pereira, Stanton, Kern, Feldman, and McFarland** violated, and unless restrained and enjoined will in the future violate, Section 10(b) of the Exchange Act and Rule 10b-5.

104. Based on the conduct alleged above, Riverstone violated Section 10(b) of the Exchange Act and Rule 10b-5.

105. Alternatively, based on the conduct alleged above, **Kern and Feldman** knowingly provided substantial assistance to Riverstone in its violations of Section 10(b) of the Exchange Act and Rule 10b-5, and therefore each is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

106. **Kern and Feldman** aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

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SECOND CLAIM FOR RELIEF

**False SEC Filings - Exchange Act Section 13(a) and Exchange Act
Rules 12b-20, 13a-1, and 13a-13**

**[15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20,
240.13a-1, and 240.13a-13]**

(Against Defendants Pereira, Stanton, Kern, Feldman, and McFarland)

107. The SEC realleges paragraphs 1 through 100 above.

108. Riverstone filed with the SEC three quarterly reports on Forms 10-Q and one annual report on Form 10-K that contained materially false and misleading information in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13. [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

109. Based on the conduct alleged above, **Pereira, Stanton, Kern, Feldman, and McFarland** knowingly provided substantial assistance to Riverstone in its violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13, and therefore each is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

110. **Pereira, Stanton, Kern, Feldman, and McFarland** aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

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THIRD CLAIM FOR RELIEF

**False Books and Records - Exchange Act Section 13(b)(5) and Rule 13b2-1
[15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1]**

(Against All Defendants)

111. The SEC realleges paragraphs 1 through 100 above.

112. Based on the conduct alleged above, **Pereira, Stanton, Kern, Feldman, McFarland, and Cornmesser** knowingly circumvented Riverstone's system of internal accounting controls, knowingly falsified Riverstone's books, records, or accounts, and directly or indirectly falsified or caused to be falsified books, records, or accounts described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

1 are recorded as necessary to permit preparation of financial statements in conformity with GAAP
2 or other criteria applicable to the statements.

3 120. Based on the conduct alleged above, **Pereira, Stanton, and McFarland**
4 knowingly provided substantial assistance to Riverstone in its violations of Section
5 13(b)(2)(B)(ii), and therefore each of them liable as an aider and abettor pursuant to Section
6 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

7 121. **Pereira, Stanton, and McFarland** aided and abetted, and unless restrained and
8 enjoined will continue to aid and abet, violations of Section 13(b)(2)(B)(ii) of the Exchange Act
9 [15 U.S.C. § 78m(b)(2)(B)(ii)].

10 **SIXTH CLAIM FOR RELIEF**

11 **Deceit of Accountants - Exchange Act Rule 13b2-2**
12 **[17 C.F.R. § 240.13b2-2]**
(Against All Defendants)

13 122. The SEC realleges paragraphs 1 through 100 above.

14 123. By engaging in the acts and conduct alleged above, **Pereira, Stanton, Kern,**
15 **Feldman, and McFarland**, who were directors or officers of Riverstone when they engaged in
16 the alleged acts and conduct, directly or indirectly, knowingly made or caused to be made
17 materially false or misleading statements, or omitted to state or caused another person to omit to
18 state, material facts necessary in order to make the statements made, in light of the circumstances
19 under which they were made, not misleading to an accountant in connection with an audit or
20 examination of the financial statements of Riverstone required to be made or the preparation or
21 filing of reports required to be filed by Riverstone with the SEC.

22 124. Through the conduct alleged above, **Pereira, Stanton, Kern, Feldman, and**
23 **McFarland** violated, and unless restrained and enjoined will continue to violate, Rule 13b2-2
24 [17 C.F.R. § 240.13b2-2].

25 125. Through the conduct alleged above, **Cornmesser** knowingly provided substantial
26 assistance to **Kern, Feldman, and McFarland** in their violations of Rule 13b2-2, and therefore
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1 is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §
2 78t(e)].

3 126. **Cornmesser** aided and abetted, and unless restrained and enjoined will continue
4 to aid and abet, violations of Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

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6 **PRAYER FOR RELIEF**

7 The SEC respectfully requests that this Court:

8 I.

9 Find that Defendants **Pereira, Stanton, Kern, Feldman, McFarland, and Cornmesser**
10 committed the violations alleged;

11 II.

12 Enter an injunction permanently restraining and enjoining Defendants **Pereira, Stanton,**
13 **Kern, Feldman, McFarland, and Cornmesser** from violating, directly or indirectly, or aiding and
14 abetting violations of the law and rules alleged in this Complaint;

15 III.

16 Order defendants **Pereira, Stanton, Kern, Feldman, and Cornmesser** to disgorge all ill-
17 gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in
18 this Complaint, including, but not limited to, bonuses, commissions, and proceeds from stock
19 sales, plus pre-judgment and post-judgment interest;

20 IV.

21 Order Defendants **Pereira, Stanton, Kern, Feldman, McFarland, and Cornmesser** to
22 pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] in
23 an amount to be determined by the Court, and post-judgment interest;

24 V.

25 Prohibit Defendants **Pereira, Stanton, and Kern**, pursuant to Section 21(d)(2) of the
26 Exchange Act [15 U.S.C. § 78u(d)(2)] from serving as an officer or director of any company
27 having a class of securities registered with the SEC pursuant to Section 12 of the Exchange Act
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1 [15 U.S.C. § 78I] or that is required to file reports pursuant to Section 15(d) of the Exchange Act
2 [15 U.S.C. § 78o(d)];

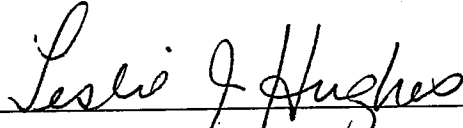
3 VI.

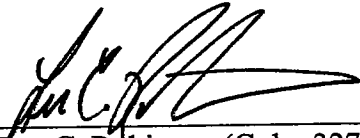
4 Retain jurisdiction of this action in accordance with the principles of equity and the
5 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
6 decrees that may be entered, or to entertain any suitable application or motion for additional
7 relief within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

8 VII.

9 Grant such relief as this Court may determine is just and necessary.

10 DATED: October 12, 2006.

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15 Leslie J. Hughes Esq. (Colo. 15043)

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19 Lee C. Robinson (Colo. 32734)

20 Attorneys for Plaintiff
21 Securities and Exchange Commission
22 1801 California Street, Suite 1500
23 Denver, CO 80202-2656
24 Telephone (303) 844-1000
25 Fax (303) 844-1068
26
27
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