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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

THE PENN TRAFFIC COMPANY,

Defendant.

08 Civ. ____ (____)

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges the following against defendant The Penn Traffic Company (“Penn Traffic” or “Defendant”):

SUMMARY

1. This matter involves widespread accounting fraud and violations of the financial reporting provisions of the federal securities laws by Penn Traffic, a New York-based supermarket chain operator and wholesale food distributor.

2. The accounting fraud involved two separate schemes. First, Penn Traffic engaged in a scheme to recognize promotional allowances prematurely. Penn Traffic obtained promotional allowances – also referred to as rebates, slotting fees, or vendor allowances – from vendors for various marketing and promotional activities, such as advertising, special displays, new item placement, price protection, and exclusivity.

From approximately the second quarter of Penn Traffic's Fiscal Year ("FY") 2001 through at least the fourth quarter of Penn Traffic's FY 2003 (the "Promotional Allowances Relevant Period"), Penn Traffic prematurely recognized promotional allowances in advance of Penn Traffic's performance of certain key, contingent activities. Penn Traffic improperly reported reduced costs of goods sold on its books as a result of its premature recognition of promotional allowances.

3. Penn Traffic, through senior executives and other personnel in Penn Traffic's marketing department (the "Marketing Department"), effectuated the promotional allowance fraud through the routine submission of false information to Penn Traffic's accounting department (the "Accounting Department") so that promotional allowances were "pre-billed" or "pulled forward" at the end of fiscal periods in an attempt to meet or come closer to meeting income targets and budget plans set for the Marketing Department. The practice of "pre-billing" or "pulling forward" promotional allowances violated Generally Accepted Accounting Principles ("GAAP") and Penn Traffic's internal accounting policies, both of which generally required that promotional allowances be recognized only when a contingent future event actually took place.

4. As a result of the promotional allowance fraud, Penn Traffic materially misstated its operating income in its public filings with the Commission in the aggregate by approximately \$10 million from the second quarter of Penn Traffic's FY 2001 through the third quarter of Penn Traffic's FY 2003.

5. In a second fraudulent scheme, Penn Traffic made fraudulent entries and/or adjustments to the books and records of Penn Traffic's wholly-owned bakery manufacturing subsidiary, Penny Curtiss from at least Penn Traffic's FY 2000 through

the first quarter of Penn Traffic's FY 2003 (the "Penny Curtiss Relevant Period"). Penn Traffic recorded fraudulent entries and/or adjustments to Penny Curtiss' books and records so that Penny Curtiss would both continue to operate and meet or come close to meeting sales targets set by Penn Traffic's senior management. In the most significant of the fraudulent adjustments, Penn Traffic recorded phony entries and/or adjustments in Penny Curtiss' general ledger that overstated the amount of inventory, thus reducing the cost of goods sold. These fraudulent entries and/or adjustments at Penny Curtiss caused Penn Traffic to overstate Earnings Before Income, Taxes, Depreciation, and Amortization ("EBITDA"), as well as its net income, in filings with the Commission.

6. As a result of the fraudulent conduct at Penny Curtiss, Penn Traffic misstated more than \$7 million of income over a three-and-one-quarter year period from Penn Traffic's FY 2000 through the first quarter of Penn Traffic's FY 2003. In September 2002, Penn Traffic restated its financial results for these periods.

7. In addition, Penn Traffic failed to file and/or filed untimely or incomplete financial reports with the Commission. Penn Traffic failed to file required quarterly and annual reports with the Commission for all fiscal periods between the fourth quarter of Penn Traffic's FY 2003 and the fourth quarter of its FY 2005. Penn Traffic also filed untimely or otherwise non-compliant required quarterly and annual reports with the Commission for all fiscal periods between the first quarter of Penn Traffic's FY 2006 and the fourth quarter of its FY 2008.

VIOLATIONS AND THE RELIEF SOUGHT

8. By virtue of the conduct alleged herein, Penn Traffic, directly or indirectly, singly or in concert, has engaged in acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)]; Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)]; and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, and 240.13a-13].

9. Unless Penn Traffic is permanently restrained and enjoined, Penn Traffic will again engage in the acts, practices, and courses of business set forth herein and in acts, practices, and courses of business of similar type and object.

10. By this action, the Commission seeks a judgment permanently enjoining and restraining Penn Traffic from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, and 240.13a-13], and granting such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

11. The Commission brings this action pursuant to the authority conferred upon it by Section 20 of the Securities Act [15 U.S.C. § 77t] and Section 21 of the Exchange Act [15 U.S.C. § 78u], seeking to restrain and enjoin permanently Penn Traffic from engaging in the acts, practices, and courses of business alleged herein.

12. Penn Traffic, directly or indirectly, has used the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein.

13. Certain of the transactions, acts, practices and courses of business alleged herein occurred in the Northern District of New York, including conduct by Penn Traffic at Penn Traffic's offices in Syracuse, New York.

14. Accordingly, this Court has jurisdiction over this action, and venue is proper in this district, pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

THE DEFENDANT

15. **Penn Traffic**, a Delaware corporation with headquarters in Syracuse, New York, operates supermarket chains, as well as wholesale food distribution businesses, under various trade names in upstate New York, Vermont, and New Hampshire. Prior to approximately May 2003, Penn Traffic's common stock and warrants were traded on NASDAQ's National Market under the symbols "PNFT" and "PNFTW," respectively. On May 30, 2003, Penn Traffic filed for Chapter 11 bankruptcy protection for the second time in approximately four years. Penn Traffic emerged from bankruptcy on April 13, 2005, at which time its existing common stock, which was registered with the Commission pursuant to Section 12(g) of the Exchange Act, was canceled and new common stock was issued to certain claim holders, registered with the Commission

pursuant to Section 12(g) of the Exchange Act. Penn Traffic's common stock is currently quoted on the "Pink Sheets" operated by Pink OTC Markets Inc.

RELEVANT ENTITY

16. **Penny Curtiss** was a wholly owned subsidiary of Penn Traffic that manufactured baked goods for sale at Penn Traffic supermarkets and other stores until January 2, 2008, when Penn Traffic announced that it was closing its Penny Curtiss commercial bakery operation.

FACTS

Penn Traffic's Financial Condition and Internal Budget Plan

17. At all relevant times, Penn Traffic operated in two primary industry segments: a retail food business through its ownership of numerous supermarkets throughout the northeast United States and a wholesale food distribution business. Penn Traffic's retail food business constituted approximately 90 percent of Penn Traffic's revenues and cash flow at all relevant times.

18. Penn Traffic operated on a FY schedule that ends on the Saturday closest to January 31 each year. Each FY is designated according to the calendar year in which it ends. Specifically, Penn Traffic's FY 2000 began January 31, 1999, and ended January 29, 2000; FY 2001 began January 30, 2000, and ended February 3, 2001; FY 2002 began February 4, 2001, and ended February 2, 2002; and FY 2003 began February 3, 2002, and ended February 1, 2003.

19. Penn Traffic operated at a net loss for each of the FYs 2001, 2002, and 2003. Penn Traffic sought bankruptcy protection in 1999 and again in May 2003.

20. After Penn Traffic's emergence from bankruptcy in 1999, Penn Traffic

employed an internal yearly budget plan, broken down into twelve periods, each consisting of four or five weeks, with the ends of periods 3, 6, 9, and 12 corresponding to fiscal quarterly reporting period ends. Penn Traffic's internal budget plan was also broken down by departments and divisions.

21. Some Penn Traffic officers and other senior management personnel that headed departments and/or divisions engaged in fraudulent schemes to meet – or come closer to meeting – these budget plan numbers.

The Promotional Allowance Fraudulent Scheme

22. During the Promotional Allowances Relevant Period, Penn Traffic fraudulently recognized promotional allowances prematurely – or “pulled forward” the promotional allowances – in an attempt to meet internal period end budget plan numbers.

23. Penn Traffic senior management in the Marketing Department orchestrated, directed, and/or participated in the fraudulent practice of pulling forward promotional allowances.

Penn Traffic's Promotional Allowance Policies and Relevant Accounting Principles

24. During the Promotional Allowances Relevant Period, the Marketing Department was structured, in part, based upon product category divisions and sub-categories of those divisions. The product category divisions were responsible for purchasing and merchandising products within their respective division, including negotiating promotional allowances with vendors.

25. During the Promotional Allowances Relevant Period, a significant portion of Penn Traffic's operating income came from promotional allowances. Promotional allowances, also referred to as rebates, slotting fees, or simply allowances, are vendor

payments for various marketing and promotional activities, such as advertising, new item special displays, price protection, and exclusivity.

26. Penn Traffic was not entitled to receive any of the promotional allowances until Penn Traffic performed under merchandising agreements entered into with vendors. Penn Traffic was required to “earn” the promotional allowance by performing the agreed upon merchandising programs.

27. Penn Traffic’s policies generally required that merchandising agreements entered into with vendors for promotional allowances be set forth in a “deal sheet,” a form which summarized the parameters of the agreement, the event or performance date(s), and the agreed upon payment.

28. Penn Traffic created invoices to vendors for promotional allowances either by an automated or manual process. Deal sheets were generally required to be entered by Marketing Department personnel into an electronic tracking system (“ETS”) used by the Accounting Department. After a promotional event actually occurred (*e.g.*, an advertisement ran in a newspaper), Marketing Department personnel were generally required to submit appropriate confirmations of the event to the ETS, which then automatically generated an invoice to bill the vendor for the agreed upon amount set forth in the deal sheet. In some instances, Penn Traffic policies permitted Marketing Department personnel to submit manually created invoice requests to the Accounting Department with appropriate documentation of the merchandising agreement and confirmation of performance.

29. Penn Traffic’s Accounting Department accounted for most vendor allowances as a reduction in cost of goods sold (“COGS”).

30. The rules and regulations of the Commission provide that financial statements that are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate [Regulation S-X, 17 C.F.R. § 210.4-01(a)(1)].

31. GAAP requires that revenues or gains be recognized only when the revenues or gains are both: (1) realized or realizable, and (2) earned. Revenues and gains are realized under GAAP when services are exchanged for cash or claims to cash. Revenues and gains that involve an “earnings process” are earned under GAAP when an entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues or gains. GAAP similarly prohibits contingencies that might result in gains from being recognized before the contingency is eliminated.

32. GAAP also requires that expenses, such as the COGS, be matched with revenues and be recognized at the same time as the revenues that result directly and jointly from the same transactions or other events as the expense.

33. By intentionally pulling forward promotional allowances, Penn Traffic recognized promotional allowances before contingent future events took place and thereby violated GAAP.

34. During the Promotional Allowances Relevant Period, Penn Traffic’s policies with respect to the recognition of promotional allowances generally required that promotional allowance monies be recognized as reductions to the COGS only once a contingent future event or events constituting performance of the applicable merchandising agreement took place. Penn Traffic’s promotional allowance accounting policies and procedures were communicated to Penn Traffic personnel with responsibilities involving promotional allowances.

35. In order to effectuate the promotional allowance fraud, Marketing Department personnel misrepresented information contained in deal sheets, confirmations, manually created invoice requests, and/or supporting documentation provided to the Accounting Department to make it look like the payment was for past performance, when in truth it related to future and contingent obligations.

36. Penn Traffic's conduct of pulling forward promotional allowances violated Penn Traffic's own internal accounting policies.

37. Penn Traffic officers and other management personnel in the Marketing Department knew or recklessly disregarded that the "pre-billing" or "pulling forward" of promotional allowances would have the effect of understating COGS, which would result in overstated earnings results for Penn Traffic.

Improper Techniques Used to Pull-Forward Promotional Allowances

38. Beginning in at least the second quarter of Penn Traffic's FY 2001, Marketing Department personnel employed a variety of fraudulent methods to "pre-bill" or "pull forward" promotional allowances in or around internal period ends in an attempt to meet internal budget plans.

39. Penn Traffic officers and other management personnel in the Marketing Department carefully monitored the financial performance of their areas of responsibility and thus knew when those results would not meet the internal budget plan. Typically, if there was a shortfall to the internal budget plan, Marketing Department personnel sought out and/or directed subordinates to seek out, opportunities to pull forward funds from upcoming merchandising agreements for promotional allowances. Marketing Department personnel took advantage of the approximately two-week time period

between the end of Penn Traffic's fiscal period and the close of the accounting records for that period (the "accounting window period") to accomplish much of the pre-billing or pulling forward of promotional allowances.

40. Penn Traffic pre-billed or pulled forward promotional allowances as a result of Marketing Department personnel presenting false information to the Accounting Department that made it look like a payment was for past performance while the true terms of the payments related to future contingent obligations. Marketing Department personnel then deleted the deal sheet for the future merchandising event from which the funds were pulled forward – if the full amount of funding was pulled forward – or revised the deal sheet to reduce the funding by the amount pulled forward.

41. Penn Traffic pre-billed or pulled forward several types of promotional allowances, including but not limited to, "lump sum" advertising allowances, "scan down" advertising allowances, slotting fees, vendor rebates and accruals, and "upfront" contract payments.

42. For instance, Penn Traffic pre-billed or pulled forward "lump sum" advertising allowances – fixed fees paid by a vendor under a merchandising agreement in exchange for advertisement of a particular product in Penn Traffic's weekly newspaper circulars.

43. Senior Marketing Department personnel determined how much promotional allowance money might be available to pull forward by looking at lump sum advertising allowance merchandising agreements for upcoming weeks after period end and having an assistant total up those amounts. For example, in an e-mail dated January 17, 2002, from one Penn Traffic vice-president ("Vice President A") to her subordinates

(copying another Penn Traffic vice-president (“Vice President B”)), eleven days before the internal period 12 and fiscal year end 2002, Vice President A listed the discounts and allowances identified as of that date, noting a shortfall of approximately \$2 million to the internal budget plan, and identified as a “Contingency Option[.]” the “Lump Sum Ad Payments” for the week ending February 9, 2002, of \$104,200. Advertisements running during the week ending February 9, 2002, would occur during Penn Traffic’s FY 2003 and lump sums paid for those advertisements could not properly be booked in FY 2002.

44. In order to pre-bill the funds due for future lump sum advertising allowances, Vice President A instructed her subordinates to obtain the consent and assistance of the vendor’s representative to provide false back-up, often in the form of an e-mail, to match the manual invoice request which falsely stated that the invoice was for “additional” payments on a past advertisement, even though the payment was actually for advertisements that had not yet run. This sham was designed to circumvent the Accounting Department’s promotional allowance policies and practices during the Promotional Allowances Relevant Period that required that funds received from “lump sum” advertising allowances were only earned the week that the advertisement ran. Penn Traffic obtained the consent and assistance of the vendor’s representative by promising that the future advertisement would still run and that the vendor would not be billed for it twice.

45. As an example, in order to pre-bill lump sum advertising allowances in the fourth quarter of FY 2003 for advertisements that were not scheduled to run until the first quarter of FY 2004, a Marketing Department employee obtained an e-mail from a vendor representative, dated January 9, 2003, which stated: “Just a note to confirm our

conversations that you are authorized to claim and bill \$10,000 for Advertising Performance from [vendor] for your holiday ad of 12/8/02.” The vendor representative then forwarded this e-mail back to the same Penn Traffic category manager three minutes later with the message: “First one for accounting... This is for you and me. Payment of \$10,000 below is for ads of 2/2/03: [product name]... originally at \$5,000... now no charge. [product name] ad of 2/16/03, originally at \$5,000, now no charge.” As a result of this conduct, Penn Traffic recognized the \$10,000 from this promotional allowance as a reduction of COGS in its fourth quarter of FY 2003 instead of its first quarter of FY 2004.

46. Penn Traffic pre-billed or pulled forward another type of promotional allowance, “upfront” contract payments, by intentionally mischaracterizing certain contract payments in order to circumvent the Accounting Department’s policies that required that all contract money, including upfront payments and signing bonuses, greater than \$100,000 be spread over the life of the contract. Penn Traffic entered into annual merchandising agreements with some vendors to provide a variety of merchandising benefits for the vendors’ products, such as in-store displays, drink coolers placed in checkout lanes, and exclusivity, in exchange for item purchase pricing and payments as specified in the agreements.

47. For example, in order to bolster FY 2002 results, Vice President A renegotiated a three-year agreement with a soft drink manufacturer for checkout lane coolers that was to begin February 1, 2002, and was not signed until at least February 22, 2002, to include an upfront payment and a commensurate reduction in the annual rate paid per cooler. Even though the contract was not signed until the first quarter of Penn

Traffic's FY 2003, Vice President A directed her subordinate to have the upfront payment booked in the fourth quarter of its FY 2002 by creating two manual invoice requests submitted on the same date, one for \$92,700 and the other for \$53,100, as "non-refundable signing bonuses," to also circumvent the policy to spread contract payments in excess of \$100,000 over the life of the contract.

48. As another example, Vice President B directed one of his subordinates to negotiate and book in the fourth quarter of FY 2002 an upfront payment of \$250,000 from a vendor for a packaged salad exclusivity contract that was still being negotiated and that was ultimately never entered into.

Material Misstatements and Omissions of Fact

49. As a result of Penn Traffic's fraudulent conduct with respect to promotional allowances, Penn Traffic understated COGS and overstated its earnings during the Promotional Allowances Relevant Period.

50. Penn Traffic misstated its reported operating results, among other results, in Penn Traffic's Forms 10-Q and 10-K filed with the Commission during the Promotional Allowances Relevant Period, in total, by approximately \$10 million of improperly recognized promotional allowances from the second quarter of FY 2001 to the third quarter of FY 2003:

Penn Traffic Fiscal Period	Approximate Overstatement¹	Originally Reported Operating Income (Loss)	% of Understatement of Loss or Overstatement of Income
Q2 FY01	32,693	(10,827,000)	0.3%
Q3 FY01	25,000	(19,173,000)	0.1%
Q4 FY01	457,597	(4,786,000)	9.5%
Total FY01	515,290	(51,145,000)	1.0%
Q1 FY02	432,709	(17,046,000)	2.5%
Q2 FY02	1,307,455	(8,938,000)	14.6%
Q3 FY02	1,537,278	(16,230,000)	9.5%
Q4 FY02	3,307,106	(5,984,000)	55.3%
Total FY02	6,584,548	(48,198,000)	13.7%
Q1 FY03	1,691,293	10,620,000	18.9%
Q2 FY03	592,612	14,150,000	4.4%
Q3 FY03	447,578	(205,000)	218.3%
Q1-Q3 FY03	2,731,483		
Total	9,831,321		

51. As a consequence, Penn Traffic made material misstatements and omissions of material fact concerning Penn Traffic's earnings for the second quarter of FY 2001 through the third quarter of FY 2003 in various public documents, including in Forms 10-Q and 10-K filed during the Promotional Allowances Relevant Period, and in connection with the offer, purchase and sale of securities. Penn Traffic's reported results were also false and misleading because they did not comply with GAAP and failed to disclose the practice of pre-billing or pulling forward promotional allowances.

52. In September 2002, Penn Traffic restated its financial results due to the fraudulent conduct described below that occurred at Penn Traffic's wholly-owned bakery manufacturing subsidiary, Penny Curtiss.

53. Even after this restatement, Penn Traffic's operating loss was still understated, and in the one quarter for which Penn Traffic did report operating income, that income was still overstated, among other things, as a result of the pre-billing or pulling forward of promotional allowances:

¹ The approximate overstatement amounts stated in this Complaint do not include the effect of rebooking promotional allowances that were improperly pre-billed or pulled forward in prior quarters.

Penn Traffic Fiscal Period	Approximate Overstatement	Restated Operating Income (Loss)	% of Understatement of Loss or Overstatement of Income
Q2 FY01	32,693	(10,827,000)	0.3%
Q3 FY01	25,000	(19,173,000)	0.1%
Q4 FY01	457,597	(8,538,000)	5.4%
Total FY01	515,290	(54,897,000)	0.9%
Q1 FY02	432,709	(18,174,000)	2.4%
Q2 FY02	1,307,455	(10,312,000)	12.7%
Q3 FY02	1,537,278	(17,089,000)	9.0%
Q4 FY02	3,307,106	(7,402,000)	44.7%
Total FY02	6,584,548	(52,977,000)	12.4%
Q1 FY03	1,691,293	9,423,000	21.9%
Total	8,791,131		

54. As a result, Penn Traffic made material misrepresentations and omissions of fact concerning Penn Traffic's earnings for the second quarter of its FY 2001 through the first quarter of its FY 2003 in amended Forms 10-Q and 10-K, and in connection with the offer, purchase and sale of securities. Penn Traffic's restated results were also false and misleading because they did not comply with GAAP and failed to disclose the practice of pre-billing or pulling forward promotional allowances.

55. In addition, Penn Traffic repeated the misstatements it made in its Commission filings during the Promotional Allowances Relevant Period by incorporating them by reference in a Form S-8 Registration Statement filed by Penn Traffic on October 1, 1999 (the "Form S-8"). The Form S-8 specifically incorporated by reference all documents filed with the Commission by Penn Traffic pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of the Form S-8 and prior to the filing of a post-effective amendment to the Form S-8 indicating that all securities offered have been sold or which deregisters all securities then remaining. Penn Traffic did not terminate the offering through a post-effective amendment during or before the Promotional Allowances Relevant Period. As a result, all of Penn Traffic's subsequent Forms 10-Q and 10-K filed with the Commission during the Promotional Allowances

Relevant Period, were incorporated by reference into the Form S-8. Penn Traffic offered and/or sold securities pursuant to the Form S-8 during the Promotional Allowances Relevant Period.

56. In press releases announcing quarterly and year-end financial results, Penn Traffic also materially overstated its “adjusted net income,” a term Penn Traffic defined in its press releases as net income excluding amortization of excess reorganization value, unusual items, and certain special costs, as a result of the pre-billing and pulling forward of promotional allowances. The improperly recognized promotional allowances represented material percentages of Penn Traffic’s reported “adjusted net income”:

Date of Press Release	Penn Traffic Fiscal Period	Approximate Overstatement	Press Release Reported “Adjusted Net Income” (Loss)	% of Overstatement of Reported Adjusted Net Income or Understatement of Adjusted Net Loss
9/6/00	Q2 FY01	32,693	4,300,000	0.8%
12/6/00	Q3 FY01	25,000	(1,000,000)	2.5%
3/30/01	Q4 FY01	457,597	5,600,000	8.9%
3/30/01	Total FY01	515,290	7,200,000	7.7%
6/12/01	Q1 FY02	432,709	200,000	216.4%
9/13/01	Q2 FY02	1,307,455	5,300,000	32.7%
12/11/01	Q3 FY02	1,537,278	2,300,000	201.5%
4/2/02	Q4 FY02	3,307,106	7,100,000	87.2%
4/2/02	Total FY02	6,584,548	15,000,000	78.2%
6/12/02	Q1 FY03	1,691,293	1,100,000	154.0%
9/18/02	Q2 FY03	592,612	2,700,000	28.1%
12/13/2002	Q3 FY03	447,578	(4,500,000)	9.9%

57. As a consequence, Penn Traffic made material misstatements and omissions of material fact concerning Penn Traffic’s adjusted net income for the second quarter of FY 2001 through the third quarter of FY 2003 in press releases publicly announcing financial results during the Promotional Allowances Relevant Period.

The Penny Curtiss Fraudulent Scheme

58. During the Penny Curtiss Relevant Period, Penn Traffic recorded false accounting entries and engaged in other accounting improprieties at Penn Traffic's wholly-owned bakery manufacturing subsidiary, Penny Curtiss.

59. In violation of Penn Traffic's own policies, Penn Traffic permitted a Penny Curtiss executive ("Penny Curtiss Executive") to write and release his own manual journal entries without any form of review.

60. As the highest ranking employee at Penny Curtiss, the Penny Curtiss Executive systematically overstated inventory at Penny Curtiss by making, and by directing other Penny Curtiss personnel to make, phony journal entries on Penny Curtiss' general ledger. The Penny Curtiss Executive determined the amount of the improper entries based solely on the end-of-period sales budget plan numbers for Penny Curtiss.

61. The Penny Curtiss Executive and/or other Penny Curtiss personnel also purposefully manipulated other types of accounting records. Specifically, the Penny Curtiss Executive and/or other Penny Curtiss personnel improperly stopped accruing three different expenses by making manual adjustments to Penny Curtiss' general ledger and pre-booked a variety of sales, made to both Penn Traffic and outside vendors, prior to engaging in all activities necessary to finalize these sales.

62. The Penny Curtiss Executive knew or recklessly disregarded that overstating inventory would have the effect of understating COGS, which would result in overstated EBITDA and net income for Penny Curtiss and its parent company, Penn Traffic. The Penny Curtiss Executive also knew or recklessly disregarded that his

manipulation of other types of accounting records would make Penny Curtiss appear more profitable than, in fact, it was.

63. On August 8, 2002, Penn Traffic issued a press release announcing that it would restate its financial results due to the false accounting entries at Penny Curtiss. On September 18, 2002, Penn Traffic provided the specifics of the restatement: (a) its net income for the 13-week period ended May 4, 2002, the fiscal years ended February 2, 2002 and February 3, 2001, and the 31-week period ended January 29, 2000 were reduced by \$0.7 million, or \$0.04 per diluted share, \$3.0 million or \$0.15 per diluted share, \$2.4 million or \$0.12 per diluted share, and \$1.1 million or \$0.05 per diluted share, respectively, for a cumulative after-tax effect of \$7.2 million; and (b) its EBITDA for the 13-week period ended May 4, 2002, the fiscal years ended February 2, 2002 and February 3, 2001, the 31-week period ended January 29, 2000, and the 21-week period ended June 26, 1999 were reduced by \$1.2 million, \$4.2 million, \$3.2 million, \$1.3 million, and \$1.1 million, respectively, for a total of \$11 million.

64. As a result, Penn Traffic's pre-tax operating income in the following fiscal periods as reported in Forms 10-Q and 10-K, were materially affected:

Fiscal Period	Overstatement	Originally Reported Pre-tax Operating Income (Loss)	% of Understatement of Loss or Overstatement of Income
Q1 FY03	\$1,197,000	\$10,620,000	12.7%
FY 2002	\$4,779,000	(\$48,198,000)	9.9%
Q1 FY02	\$1,128,000	(\$17,046,000)	6.6%
FY 2001	\$3,752,000	(\$51,145,000)	7.3%

65. Penn Traffic's reported results contained material misrepresentations and omissions of fact concerning Penn Traffic's earnings, made in connection with the offer, purchase and sale of securities. Penn Traffic's results were also false and misleading

because they did not comply with GAAP and failed to disclose the fraudulent accounting practices at Penny Curtiss.

66. In addition, Penn Traffic repeated the misstatements it made in its Commission filings during the Penny Curtiss Relevant Period by incorporating them by reference in the Form S-8. The Form S-8 specifically incorporated by reference all documents filed with the Commission by Penn Traffic pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of the Form S-8 and prior to the filing of a post-effective amendment to the Form S-8 indicating that all securities offered have been sold or which deregisters all securities then remaining. Penn Traffic did not terminate the offering through a post-effective amendment during or before the Penny Curtiss Relevant Period. As a result, all of Penn Traffic's subsequent Forms 10-Q and 10-K filed with the Commission during the Penny Curtiss Relevant Period, were incorporated by reference into the Form S-8. Penn Traffic offered and/or sold securities pursuant to the Form S-8 during the Penny Curtiss Relevant Period.

Penn Traffic's Failure to File Financial Reports

67. Between Penn Traffic's FY 2003 and its FY 2008, Penn Traffic failed to file and/or filed untimely or incomplete financial reports with the Commission.

68. Penn Traffic has failed to file annual reports on Forms 10-K for Penn Traffic's FYs 2003, 2004, and 2005 and quarterly reports on Forms 10-Q for Penn Traffic's FYs 2004 and 2005.

69. Penn Traffic also filed untimely or incomplete financial reports with the Commission on Forms 10-K for its FYs 2006, 2007, and 2008 and on Forms 10-Q for its FYs 2006, 2007, and 2008.

70. For example, Penn Traffic filed its Form 10-K for FY 2006 on August 17, 2007, over a year late. This Form 10-K included audited financial information for a 41-week period prior to the end of the FY and unaudited financial information for prior periods and years. Penn Traffic's Form 10-K for FY 2007 was likewise untimely and did not include certain prior fiscal year financial result comparisons.

FIRST CLAIM FOR RELIEF

**(Violations of Section 17(a) of the
Securities Act [15 U.S.C. § 77q(a)])**

71. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 70.

72. Penn Traffic, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of Penn Traffic's securities, knowingly or recklessly, has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of Penn Traffic's securities and upon other persons, including in Penn Traffic's filings for the period between its FY 2000 and FY 2003 and the Form S-8 filed by Penn Traffic on October 1, 1999, incorporating by reference the above filings, and in other public statements.

73. The misstatements and omissions of fact detailed in paragraphs 1 through 70 hereof were material.

74. By reason of the foregoing, Penn Traffic, singly or in concert, directly or indirectly, has violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

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

75. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 74.

76. Penn Traffic, directly or indirectly, singly or in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of Penn Traffic securities, knowingly or recklessly, has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers or sellers of Penn Traffic securities and upon other persons, including in Penn Traffic's filings for FY 2000 through FY 2003 and the Form S-8 filed by Penn Traffic on October 1, 1999, incorporating by reference the above filings, and in other public statements.

77. The misstatements and omissions of fact detailed in paragraphs 1 through 70 hereof were material.

78. By reason of the foregoing, Penn Traffic, singly or in concert, directly or indirectly, has violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF

(Violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13])

79. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 78.

80. Penn Traffic failed to file factually accurate annual and quarterly reports with the Commission, and failed to provide, in addition to the information expressly required to be included in a statement or report filed with the Commission, such further material information as was necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

81. Penn Traffic also failed to file, or filed untimely or otherwise non-compliant annual and quarterly reports with the Commission for the fiscal periods between the fourth quarter of its FY 2003 and the fourth quarter of its FY 2008.

82. By reason of the foregoing, Penn Traffic violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

83. Penn Traffic failed to make and keep books, records and accounts which in reasonable detail, accurately reflect the transactions and dispositions of assets of the issuer and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in

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

84. By reason of the foregoing, Penn Traffic violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court issue a Final Judgment:

I.

Permanently enjoining Penn Traffic, and its agents, servants, employees, and attorneys, and all persons in active concert or participation with Penn Traffic, who receive actual notice of the injunction by personal service or otherwise, and each of them, from (a) violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)]; and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, and 240.13a-13].

II.

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 30, 2008

s/ Scott L. Black
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