

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES	)	
SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 02-C-3235
	)	
SCOTT C. ANIXTER, CARL E. PUTNAM,	)	JUDGE MAROVICH
DONALD C. WELCHKO, JOHN P. FIGURELLI,	)	MAGISTRATE JUDGE LEVIN
DARYL T. SPINELL, RONALD M. BANDYK,	)	
AND RENEE L. LEVAULT	)	
	)	
Defendants.	)	
	)	

**AMENDED COMPLAINT**

Plaintiff United States Securities and Exchange Commission (“SEC”) alleges the following:

**NATURE OF THE ACTION**

1. This SEC enforcement action involves a massive financial fraud carried out between January 1, 1998 and March 31, 2000 by the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, and four other top executives and employees (“Defendants”) of Anicom, Inc. (“Anicom”). During this period, the Defendants falsely reported millions of dollars of nonexistent sales, including sales to a fictitious customer, and used other fraudulent techniques to inflate Anicom’s net income by more than \$20 million. To conceal the fraud, certain of the Defendants lied to Anicom’s outside auditors, lied to the Audit Committee of Anicom’s Board of Directors in an internal investigation, and withheld information from the

SEC's staff. When aspects of the fraud were eventually revealed to the public, Anicom's shareholders lost more than \$80 million.

2. The fraud had two distinct aspects. First, Chairman of the Board Scott C. Anixter ("Anixter"), President and Chief Executive Officer Carl E. Putnam ("Putnam"), along with Vice President of Sales Daryl T. Spinell ("Spinell"), Chief Operating Officer John P. Figurelli ("Figurelli"), and Billing Manager Renee L. LeVault ("LeVault") improperly recognized numerous sales that inflated reported revenues and net profits. Additionally, Chief Financial Officer Donald C. Welchko ("Welchko"), with assistance from Figurelli, LeVault, and Vice President of Accounting Ronald M. Bandyk, C.P.A. ("Bandyk"), and with Anixter and Putnam's knowledge, caused Anicom in 1999 to, among other things, improperly recognize more than \$11.7 million in sales to a fictitious customer called SCL Integration Corp. to minimize the effect on income of writing off earlier improper sales.

3. Second, Anixter and Welchko improperly manipulated Anicom's expenses to bring the company's financial results in line with, or at least closer to, analysts' expectations. To that end, Welchko and Bandyk engaged in fraud by entering journal entries that improperly charged certain expenses to an inadvertently created reserve account and a Restructuring Charge, unjustifiably inflated purchase rebates accrued, and accelerated the recognition of sales between reporting periods. As a result of the Defendants' misconduct, Anicom filed with the SEC at least nine materially false and misleading periodic reports on Forms 10-Q and 10-K reports between January 1, 1998 and March 30, 2000 that, among other things, overstated the company's revenues by more than \$38 million.

4. On July 18, 2000, Anicom announced that it was conducting an investigation into accounting irregularities, that investors should not rely on its 1998, 1999, and first quarter 2000

financial statements, and that the Board of Directors (“Board”) had placed Putnam and Welchko on administrative leave. Nasdaq immediately halted trading in Anicom’s stock. When Anicom’s stock finally resumed trading on November 17, 2000, the per share price fell from \$4.00 to \$0.75, reflecting a market loss of more than \$80 million. Anicom ultimately declared bankruptcy in January 2001. As a result, Anicom had to discontinue operations, fire its nearly 1,200 employees, and liquidate its assets to pay creditors.

5. Through the activities alleged in this Complaint, the Defendants violated numerous provisions of the federal securities laws.

6. Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault engaged in fraud in the offer and sale of securities in violation of Sections 17(a)(1) and (3) of the Securities Act of 1933 (“Securities Act”).

7. Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault engaged in fraud in connection with the purchase and sale of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder.

8. Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault also engaged in conduct that circumvented Anicom’s system of internal controls and falsified Anicom’s books and records in violation of Section 13(b)(5) of the Exchange Act.

9. Anixter, Putnam, Welchko, Figurelli, Spinell, and Bandyk aided and abetted Anicom’s failure to file accurate annual and quarterly reports with the SEC that contained all information necessary to ensure that the statements contained in the reports were not materially misleading in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

10. LeVault also aided and abetted Anicom’s violation of Exchange Act Rule 12b-20.

11. Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault aided and abetted Anicom's failure to keep books and records, which accurately and fairly reflected Anicom's assets and recorded transactions in order to permit the financial statements to conform with Generally Accepted Accounting Procedures ("GAAP"), in violation of Section 13(b)(2)(A) of the Exchange Act.

12. Anixter, Putnam, Welchko, Figurelli, and Bandyk similarly aided and abetted Anicom's violation of Section 13(b)(2)(B)(ii) of the Exchange Act.

13. Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault violated Exchange Act Rule 13b2-1.

14. Finally, Welchko and Bandyk made material misrepresentations to Anicom's external auditors, PricewaterhouseCoopers, in violation of Exchange Act Rule 13b2-2.

15. Accordingly, the SEC seeks: (i) entry of a permanent injunction prohibiting the Defendants from further violations of the relevant provisions of the federal securities laws; (ii) the imposition of a civil monetary penalty against each of the Defendants due to the egregious nature of the violations; (iii) entry of an order barring Anixter, Putnam, Welchko, Figurelli, Spinell, and Bandyk from serving as an officer or director of a public company; (iv) disgorgement, with prejudgment interest, of the losses avoided from sales of Anicom stock by Spinell and Bandyk; (v) disgorgement, with prejudgment interest, of Putnam, Welchko, and Figurelli's 1999 performance-based bonuses; and (vi) disgorgement, with prejudgment interest, of Anixter, Putnam, Welchko, and Spinell's salaries unjustly earned after they interfered with an Anicom internal investigation.

## **JURISDICTION**

16. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], and 28 U.S.C. § 1331.

17. The SEC brings this action pursuant to the authority conferred on it by Section 20(b) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

18. Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault, directly and indirectly, made use of the mails and means of instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged herein.

## **DEFENDANTS**

19. Anixter, age 55, resides in Glencoe, Illinois. From Anicom's inception in 1993 through August 1999, Anixter was Anicom's Chairman, Chief Executive Officer, and a Director. In September 1999, Anixter relinquished his Chief Executive Officer position to Putnam and became Anicom's Chairman of the Board. Throughout this period, Anixter signed Anicom's Form 10-K reports and made public statements concerning the company's annual, quarterly, and other periodic reports filed with the SEC. In March 2000, Anixter resigned as Chairman of the Board and became Chairman Emeritus.

20. Anixter controlled Anicom in his capacity as Chairman and Chief Executive Officer, and later as Chairman of the Board. He actually exercised general control over Anicom's operations by, among other things, directing Welchko to manipulate Anicom's expenses in order to meet, or at least come closer to, analysts' expectations concerning the company's revenues and earnings. Anixter also had the power and ability to control Anicom's

sales and accounting functions and did so. Anixter directed Putnam to do whatever was necessary to achieve the sales goals that Anixter set for Anicom. Anixter directed Welchko, who headed Anicom's finance and accounting functions, to leave open quarters and to manipulate rebates to improve the company's financial results.

21. Putnam, age 55, resides in Naperville, Illinois. At all time relevant to this Complaint, Putnam was Anicom's President and a Director, and was responsible for the company's sales. In September 1999, he also became Chief Executive Officer. At all relevant times, Putnam signed Anicom's annual reports on Form 10-K as a Director, President, and in 1999 as CEO. Putnam also made public statements concerning the annual, quarterly, and other periodic reports filed with the SEC. On July 18, 2000, Anicom's Board of Directors placed him on administrative leave. On September 11, 2000, Putnam resigned all positions.

22. Welchko, age 51, resides in Willow Springs, Illinois. At all relevant times, Welchko was Anicom's Chief Financial Officer and was responsible for its accounting and finance functions. In 1998, he became a Director and was a member of the Audit Committee. At all relevant times, Welchko participated in preparing Anicom's annual, quarterly, and other periodic reports filed with the SEC. He signed Anicom's annual reports on Form 10-K as a Director and CFO, and its quarterly reports on Form 10-Q as CFO. Welchko also made public statements concerning the annual, quarterly, and other periodic reports filed with the SEC. On July 18, 2000, the Board placed him on administrative leave. On September 11, 2000, Welchko resigned all positions.

23. Figurelli, age 57, resides in Libertyville, Illinois. In August 1997, Figurelli joined Anicom as Vice President of Credit Services and an officer. In July 1998, he was promoted to

Vice President of Operations and Credit Services. In March 1999, Figurelli became Executive Vice President of Operations and Logistics. On September 10, 2000, he resigned from Anicom.

24. Spinell, age 40, resides in Naperville, Illinois. In 1995, he became Anicom's Vice President of Sales and an officer. In this position, Spinell reported directly to Putnam and managed Anicom's sales force. In January 2000, Spinell stepped down to become the General Manager of Anicom's Elk Grove Village, Illinois location. On September 21, 2000, Spinell resigned from Anicom.

25. Bandyk, age 38, resides in LaGrange, Illinois. He is a certified public accountant in Illinois. In March 1998, Bandyk became Anicom's Vice President – Accounting and an officer. In January 1999, he was made Vice President – Controller. At all relevant times, Bandyk reported to Welchko, managed the accounting department, and participated in preparing Anicom's annual, quarterly, and other periodic reports filed with the SEC. On April 6, 2000, Bandyk resigned from Anicom.

26. LeVault, age 35, resides in Huntley, Illinois. At all relevant times, LeVault managed Anicom's Drop Ship Billing Department. LeVault reported to Bandyk, and had a close working relationship with Putnam. On July 15, 2000, LeVault resigned from Anicom.

#### **ANICOM, INC.**

27. Prior to filing for bankruptcy in January 2001, Anicom was a national distributor of wire and cable products based in Rosemont, Illinois. Anicom's business involved buying wire and cable products from vendors or manufacturers and selling those products to customers with a price mark up.

28. As early as 1995, Anixter planned to grow Anicom into a company with a \$1 billion in annual revenues and then sell the company to a larger concern. As Anicom's largest

individual shareholder with beneficial control of 9.2 percent of the company's common stock, Anixter stood to make millions from his stock holdings from such a sale.

29. Between 1995 and 1998, Anicom grew, in large part, by purchasing sixteen wire and cable companies through cash and stock transactions. By 1999, Anicom had more than sixty-one locations, and employed nearly 1,200 people. Even though annual revenues never reached \$1 billion, Anixter shopped the company to potential buyers in 1999 and for most of 2000.

30. Beginning in January 1998 and continuing through March 2000, Anicom materially overstated its earnings in filings with the SEC. In 1998, Anicom's revenues were overstated by at least \$13.6 million and net income was overstated by at least \$9.3 million. In 1999, Anicom's revenues were overstated by at least \$15.2 million and net income was overstated by at least \$7.3 million. In first quarter 2000, Anicom's revenues were overstated by at least \$9.8 million and net income was overstated by at least \$3.8 million.

31. At all relevant times, Anicom was required to file periodic and other informational reports, including Forms 10-K (annual reports) and 10-Q (quarterly reports), with the SEC pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder. These periodic reports contained, among other things, Anicom's financial statements.

32. Management represented that the financial information contained in Anicom's Form 10-Q reports filed with the SEC in 1998, 1999, and for first quarter 2000 reflected all normal recurring adjustments necessary for a fair presentation of the results for that interim period. Management further represented that Anicom's Form 10-Q reports should be read in conjunction with the company's audited financial statements filed with the SEC on Form 10-K.



Anicom's Form 10-K reports filed with the SEC as of December 31, 1998 and December 31, 1999 included the Report of the Company's Independent Accountants, PricewaterhouseCoopers, which stated that management represented that the financial information contained in those reports were prepared in conformity with GAAP and fairly presented Anicom's financial position in all material respects.

33. The price of Anicom's stock was determined by factors such as Anicom's reported revenues, net income, and earnings per share, and the company's ability to meet revenue and earnings per share targets and expectations. Typically, if a company announces earnings that fail to exceed or at least meet analysts' expectations, the price of the company's securities decline. Quarter to quarter, analysts and the investing public judged Anicom according to, among other things, revenues and earnings.

34. Management, including Anixter, Putnam, and Welchko, provided guidance to the investing public concerning Anicom's anticipated revenues and earnings prior to filing the company's periodic reports with the SEC. Management provided this guidance through press releases and scheduled conference calls with analysts that followed the company. Relying in part on the guidance provided by Anicom's management, many analysts disseminated to the investing public their own estimates of Anicom's expected performance. The investing public closely followed the analysts' estimates or expectations regarding Anicom's performance.

35. At all relevant times, Anicom's common stock was registered with the SEC under Section 12(g) of the Exchange Act. Prior to its delisting on November 16, 2000, Anicom's common stock was traded on the Nasdaq National Market. On November 26, 2002, the SEC revoked the registration of Anicom's common stock and Series C preferred stock pursuant to Section 12(j) of the Exchange Act.

## **SALES FRAUD**

36. Anixter set Anicom's sales and earnings per share objectives based on his and analysts' expectations about the company's financial results. Anixter knew or was reckless in not knowing that he directed the other Defendants to do anything necessary to meet those objectives. In order to meet Anixter's financial objectives for Anicom, Defendants Anixter, Putnam, Welchko, Figurelli, Spinell, and LeVault knew or were reckless in not knowing that they caused Anicom to improperly recognize revenue from sales in which product, such as wire and cable, had not shipped or would never ship. Anixter knew or was reckless in not knowing that the other Defendants had caused Anicom to recognize revenue from improper sales because Putnam advised Anixter about the details of such sales, including customer names and dollar amounts.

37. One way that Defendants Putnam, Welchko, Figurelli, Spinell, and LeVault caused Anicom to improperly recognize revenue involved drop shipments. In a drop shipment, Anicom arranged for a vendor or manufacturer to ship the product directly to the customer. Anicom billed customers for the cost of the product and a mark up in price after receiving notification from the vendor or manufacturer that product had been shipped to the customer.

38. To recognize revenue from a drop shipment, Anicom's employees entered incoming customer orders into the company's billing system, which designated the orders as "booked." Pursuant to Anicom's revenue recognition policy, which was based on Statement of Financial Concepts No. 5, Anicom recognized (or "billed") revenue and the associated cost of sales when product for a "booked" order was shipped to the customer. Anicom disclosed its revenue recognition policy to the public in its Form 10-K reports filed with the SEC.

39. Near the end of quarters in 1998, 1999, and first quarter 2000, Putnam, and, in 1998 and 1999, Spinell, knew or were reckless in not knowing that they instructed Anicom's employees to book orders which customers had not yet placed with Anicom. Putnam and Spinell knew or were reckless in not knowing that these booked orders were billed and, accordingly, improperly recognized as revenue on Anicom's financial statements filed with the SEC.

40. In at least one instance, Putnam and Spinell requested that a customer, Checkpoint Systems, Inc., submit an order which Putnam and Spinell knew that the customer did not intend to honor. Putnam and Spinell knew or were reckless in not knowing that this order would be billed to the customer and improperly recognized as revenue on Anicom's financial statements filed with the SEC.

41. Where a booked order exceeded the customer's existing credit line, customer accounts needed credit approval in order to process the order any further. Figurelli provided the required credit approval even though he knew or was reckless in not knowing that the customer had not placed an order with Anicom. Figurelli also provided the required credit approval even though he knew or was reckless in not knowing that Anicom improperly billed customers for those orders, which Anicom reported as revenue on its financial statements filed with the SEC.

42. Because customers did not place these orders, Anicom did not order the necessary product from vendors or manufacturers to send to the customers. In order to bill these orders, and improperly recognize the orders as revenue, LeVault entered false data into Anicom's billing system to show that the vendor or manufacturer had shipped the product to the customer. Putnam, Welchko, Figurelli, and Spinell knew or were reckless in not knowing that LeVault entered false data into Anicom's billing system in order to show that product was shipped to customers. Furthermore, Putnam, Welchko, Figurelli, Spinell, and LeVault knew or were

reckless in not knowing that the sales billed as a result of LeVault entering the false data would be included in Anicom's financial statements filed with the SEC.

43. In later quarters, LeVault knew or was reckless in not knowing that she entered customer credits into Anicom's billing system to eliminate the receivables previously generated by improper sales. Putnam, Welchko, Figurelli, and Spinell knew or were reckless in not knowing that LeVault entered customer credits in the billing system to eliminate the receivables previously generated by the improper sales. Putnam, Welchko, Figurelli, and Spinell knew or were reckless in not knowing that these credits caused Anicom to file materially misstated financial statements with the SEC.

44. The improper sales entered into Anicom's billing system were reflected on the Flash Report. The Flash Report was an online report available through Anicom's billing system that tracked sales activity, including the sales and gross profit numbers for every sales person and sales totals by branch, region, and for Anicom. Data appearing on the Flash Report updated about every fifteen minutes. All of the Defendants had access to the Flash Report, Putnam watched it constantly.

45. Throughout 1998, 1999, and first quarter 2000, the average customer order posted to the Flash Report was about one thousand dollars. The dollar amounts of the improper sales ranged from \$11,500 to \$5 million. Improper sales ranging from \$11,500 to \$5 million appeared as billed on the Flash Report. In light of their access to the Flash Report, all the Defendants knew or were reckless in not knowing that Anicom billed improper sales, which were included in Anicom's financial statements filed with the SEC.

46. Three examples of improperly recognized sales involved Spanpro, Inc., GTT Electronics, Inc., and SCL Integration Corp.

**Spanpro, Inc.**

47. In its Form 10-Q filed with the SEC for the quarter ended September 30, 1998, Anicom improperly recognized nearly \$5.5 million in revenue from an improper sale to Spanpro, Inc. During the summer of 1998, Spanpro had discussed with an Anicom sales representative the possibility that it might purchase a large quantity of fiber optic cable for use in building a fiber optic loop in Kentucky. Putnam and Spinell knew of this potential order, and that Spanpro was experiencing difficulties in securing a needed right-of-way permit for a segment of the loop. During a conference call in mid-September 1998, Putnam and Spinell instructed the Anicom sales representative to book the order in the billing system. Putnam and Spinell knew or were reckless in not knowing that Spanpro had not placed the order with Anicom and that Anicom would recognize revenue from this order on its financial statements filed with the SEC.

48. On September 30, 1998, Figurelli approved credit for the order when he knew or was reckless in not knowing that (a) Spanpro had not placed an order with Anicom, and (b) that Anicom would not ship any product to Spanpro for the order. LeVault knew or was reckless in not knowing that she entered false data into the billing system to show that product had been shipped to Spanpro. Putnam, Figurelli, Spinell, and LeVault knew or were reckless in not knowing that LeVault entered false data into Anicom's billing system to show that product was shipped to Spanpro to improperly recognize the order as revenue on Anicom's financial statements filed with the SEC.

**GTT Electronics, Inc.**

49. In its Form 10-K report for the fourth quarter and year ended December 31, 1998, Anicom improperly recognized revenue from a sale to GTT Electronics, Inc. In December 1998, Spinell ordered a sales person in Anicom's Dallas, Texas branch office to book a sale to GTT

Electronics for \$2.1 million because Spinell “needed the numbers.” The sales person informed Spinell that Anicom did not have an order from GTT Electronics. Spinell knew or was reckless in not knowing that GTT Electronics had not placed the order with Anicom. Spinell also knew or was reckless in not knowing that Anicom would recognize the order from GTT Electronics as revenue on its financial statements filed with the SEC.

50. On December 30, 1998, Figurelli approved credit for the order when he knew, or was reckless in not knowing, that (a) GTT Electronics had not placed an order with Anicom, and (b) that Anicom would not ship any product to GTT Electronics for the order. LeVault knew or was reckless in not knowing that she entered false data into the billing system to show that product had been shipped to GTT Electronics. Putnam, Figurelli, Spinell, and LeVault knew or were reckless in not knowing that LeVault entered false data into Anicom’s billing system to show that product was shipped to GTT Electronics to improperly recognize the order as revenue on Anicom’s financial statements filed with the SEC.

#### **SCL Integration Corp.**

51. By early 1999, improper and otherwise uncollectible sales made up approximately \$10 million, or nearly 20 percent, of Anicom’s accounts receivable. Pursuant to Statement of Financial Concepts No. 6, these receivables should have been written off Anicom’s books and records at the time they became uncollectible.

52. In first quarter 1999, Welchko informed Bandyk of a plan that would gradually eliminate the improper and otherwise uncollectible accounts receivable. Welchko’s plan was two-part: (a) to remove certain improper and otherwise uncollectible sales through sales credits; and (b) to offset the credits by recording additional improper sales, which would later be written off on a monthly basis over the latter half of 1999. Welchko and Bandyk knew or were reckless

in not knowing that this plan was contrary to GAAP, which called for Anicom to write off the receivables all at once and would have required Anicom to take a significant charge to income. Welchko and Bandyk knew or were reckless in not knowing that implementing this plan would cause Anicom to file materially misstated financial statements with the SEC in 1999.

53. Welchko and Figurelli compiled a list of improper sales and uncollectible amounts that needed to be removed from Anicom's accounts receivable. At Welchko's direction, LeVault researched each item on the list to determine whether it was a real sale that was deemed uncollectible or an improper sale that was to be removed from Anicom's accounts receivable through a sales credit. LeVault's work resulted in two lists: one that totaled \$4,466,337 and another that totaled \$2,117,454. The first number represented the amount of improper sales in Anicom's accounts receivable, and the second number represented arguably legitimate amounts due to Anicom but which Anicom's customers disputed and, therefore, might not be collectible.

54. The two amounts calculated by LeVault and a third amount called "Credit Reserve" were reflected on a document prepared by Welchko entitled "Credit Disbute (sic)." Credit Reserve totaled \$3,870,554. The "Credit Reserve" was in anticipation of future improper or uncollectible sales. The two numbers from LeVault plus the Credit Reserve totaled \$10.454 million.

55. In March 1999, Figurelli instructed a Credit Department employee to set up a new customer account in Anicom's billing system for a fictional company called SCL Integration Corp. ("SCL Integration"). Figurelli provided the employee with all the necessary information to add SCL Integration to the billing system, including customer name, address, telephone number, and credit limit. Curiously, the address provided by Figurelli for SCL Integration was

identical with the exception of one digit to the address of Figurelli and Putnam's former employer – Anixter International, Inc. Welchko and LeVault instructed another employee to arrange the Flash Report to allow only Putnam, Welchko, Figurelli, and LeVault to view transactions involving SCL Integration.

56. Putnam, Welchko, Figurelli, Bandyk, and LeVault knew about SCL Integration, and knew that SCL Integration did not, and does not, exist. In addition, Putnam, Welchko, Figurelli, Bandyk, and LeVault knew that it was a fictitious company created solely for the purpose of obscuring the write off of uncollectible accounts receivable on Anicom's books and records. Putnam, Welchko, Figurelli, Bandyk, and LeVault knew or were reckless in not knowing that using SCL Integration to obscure the write off of uncollectible accounts receivable was improper and would result in Anicom filing materially misstated financial statements with the SEC.

57. On April 6, 1999, LeVault booked and billed nine sales for fiber optic cable to SCL Integration that totaled \$10.454 million. She billed the sales to SCL Integration at the same time, but backdated the invoices so that two of the sales were in January 1999, four were in February 1999, and three were in March 1999. No product for these sales ever shipped to SCL Integration. On October 12, 1999, LeVault backdated to September 30, 1999 another sales invoice to SCL Integration for \$1.3 million. LeVault, along with Putnam, Welchko, Figurelli, and Bandyk knew that she had billed more than \$11.7 million in sales to a fictitious customer account.

58. LeVault noted on each sales order the month in which that particular sale should be reversed by sales credit. Her information came from Welchko's "Credit Dispute" document,



which showed when and how much of SCL Integration's sales should be removed by sales credit.

59. During a meeting in April 1999, Welchko informed Anixter and Putnam that Anicom had billed sales to a customer account to mask the negative effect on the financial statements of issuing millions of dollars in credits during first quarter 1999. Welchko explained to Anixter and Putnam that the sales billed to the customer account would be removed by credits to that account over the remainder of 1999 to spread out the reduction in revenue. Accordingly, Anixter knew or was reckless in not knowing that Welchko had caused Anicom to bill sales to a customer account for the purpose of obscuring the write off of uncollectible accounts receivable on the company's books and records. Furthermore, Anixter knew or was reckless in not knowing that billing the sales to the customer account to obscure the write off of uncollectible accounts receivable was improper and would result in Anicom filing materially misstated financial statements with the SEC

60. In each month from March 1999 through October 1999, LeVault issued a sales credit to SCL Integration. Anixter, Putnam, Welchko, Figurelli, and Bandyk knew or were reckless in not knowing that LeVault issued these credits to SCL Integration. Anixter, Putnam, Welchko, Figurelli, Bandyk, and LeVault also knew or were reckless in not knowing that the credits issued to SCL Integration were improperly issued for the purpose of eliminating from accounts receivable improper sales made to a fictitious customer or to otherwise obscure the write off of improper sales. In addition, Anixter, Putnam, Welchko, Figurelli, Bandyk, and LeVault knew or were reckless in not knowing that the credits issued to SCL Integration would cause Anicom to file with the SEC materially misstated financial statements.

61. At the end of the second quarter of 1999, Anixter knew or was reckless in not knowing the credits issued to SCL Integration during the second quarter were reversed at his direction. In July 1999, after the end of the second quarter, Welchko directed Bandyk to enter a journal entry that moved \$3.3 million in credits issued by LeVault in April, May, and June 1999 into third quarter 1999. In July, August, and September 1999, Bandyk knowingly wrote those credits off by journal entry against sales and allowance for doubtful accounts. Welchko and Bandyk knew or were reckless in not knowing that moving the credits from second quarter 1999 into third quarter 1999 was improper and would cause Anicom to file materially misstated financial statements with the SEC.

62. In December 1999, the SEC sent Anicom a letter requesting that Anicom voluntarily produce information relating to sales credits over \$1,000 issued during 1999. Welchko instructed an Anicom employee to compile the responsive information but remove all sales credits relating to SCL Integration. As a result of Welchko's instructions, in March 2000 Anicom produced the requested information to the SEC having improperly excluded the credits issued to SCL Integration.

**Anicom's Credit Managers Complained To Putnam, Welchko, Figurelli, And Spinell About The Improper Sales Practices**

63. Putnam, Welchko, Figurelli, and Spinell knew or were reckless in not knowing that Anicom's financial statements included improper sales based on their interactions with the company's Credit Department. Anicom's Credit Managers were responsible for collecting the accounts receivable owed to the company, and identifying uncollectible accounts receivable that needed to be written off the books and records. The job performance of the Credit Managers was evaluated, among other things, on their ability to collect outstanding accounts receivable. The Credit Managers knew that Anicom's accounts receivable and, accordingly, its financial

statements included improper sales because they encountered these sales in performing their duties.

64. The Credit Managers complained about the improper sales to Putnam at a Credit Manager's meeting in March 1998, and to Spinell at a Credit Manager's meeting in March 1999. Putnam and Spinell knew or were reckless in not knowing that the Credit Manager had warned them that Anicom recognized improper sales and that the company's accounts receivable contained improper sales.

65. At the Credit Manager's meeting in March 1999, Figurelli, then Director of Credit Services, admitted to the Credit Managers that improper and otherwise uncollectible sales made up approximately 20 percent, or \$10 million, of Anicom's accounts receivable. Following that meeting, Figurelli allowed the Credit Managers to identify to him those sales which the Credit Managers had determined were improper. Where Figurelli agreed that a particular sale was improper, he permitted the Credit Manager(s) to disregard that sale in computing the amounts on which they were responsible for collecting.

66. In August 1999, Welchko took over management of Anicom's Credit Department from Figurelli. At that time, at least one Credit Manager informed Welchko that Anicom recognized improper sales as revenue and that its accounts receivable contained these improper sales. In September 1999, Welchko met with several Credit Department employees to identify the existing improper and other uncollectible sales in accounts receivable.

#### **Anixter And Putnam Improperly Manipulated Anicom's Sales Credit Process**

67. At various times in 1998 and into 1999, Anixter knew or was reckless in not knowing that he instructed Putnam to not issue credits owed to customers to avoid decreasing Anicom's revenues. Putnam required that the Credit Department employees responsible for

processing customer credits advise him of any customer credit that decreased gross profit by an amount exceeding \$1,000. Putnam knowingly refused to issue credits in a timely manner due to customers for legitimate reasons, such as incorrectly shipped products. On one occasion, a Credit Department employee complained to Figurelli that Putnam had refused to issue a credit due to a customer. Figurelli and the Credit Department employee went to speak with Putnam about the matter. Before discussing the proposed customer credit, Figurelli pretended to measure Putnam with his hands, telling Putnam that he was measuring him for a prison uniform.

68. Anixter and Putnam knew or were reckless in not knowing that delaying the issuance of credits misstated sales, cost of sales, and accounts receivable for that period and future periods. Furthermore, Anixter and Putnam knew or were reckless in not knowing that this practice caused Anicom to file materially misstated financial statements with the SEC.

69. In addition, Putnam knowingly refused to process certain credits, either through the Credit Department or material returned to Anicom's warehouses, at month or quarter end. In those situations, warehouse personnel put aside customer returned material until they were authorized to process the returned merchandise again. Putnam knew or was reckless in not knowing that this practice overstated accounts receivable, as well as misstated inventory, sales, and cost of sales for that period and the period when the material was ultimately recorded as returned into inventory. Furthermore, Putnam knew or was reckless in not knowing that this practice caused Anicom to file materially misstated financial statements with the SEC.

**The Impact Of The Sales Fraud On Anicom's Financial Statements  
Was Readily Apparent To The Defendants**

70. In total, the improper sales and credit practices described above caused Anicom to overstate its sales, as reported in its financial statements filed with the SEC on Forms 10-Q and 10-K, by at least \$13.6 million in 1998, at least \$15.2 million in 1999, and at least \$9.8 million in

2000. All of the Defendants knew or were reckless in not knowing that these improper practices caused Anicom to file materially misstated financial statements with the SEC.

### **FRAUD IN THE ACCOUNTING DEPARTMENT**

71. Anixter and Welchko knew or were reckless in not knowing that they improperly manipulated Anicom's expenses to report financial results in line with, or at least closer to, analysts' expectations about the company's revenues and earnings. At each quarter end, Anixter, Welchko, and Putnam met to discuss Anicom's financial results. During these meetings, Anixter and Welchko identified certain expense items that could be manipulated to meet analysts' expectations about the company's financial results. Anixter kept track of the improper sales and expense adjustments on various post-it notes and pieces of paper that he referred to as his "sin list."

### **Welchko And Bandyk Improperly Charged Expenses To An Inadvertently Created Reserve Account**

72. In December 1997, Anicom purchased and installed a new billing system. As a result of the conversion to the new billing system, an \$8 million out-of-balance condition appeared in a balance sheet liability account called the inventory clearing account.

73. The inventory clearing account represented inventory that had been received by Anicom, but not yet billed to Anicom by the vendor. As a result of Anicom's December 1997 billing system conversion, the inventory clearing account became out-of-balance with the subsidiary perpetual inventory record when the balance from the inventory clearing account on the old billing system's general ledger was transferred to the new billing system's general ledger but not to the new subsidiary perpetual inventory records. This resulted in the inventory clearing account carrying a credit balance that exceeded the subsidiary perpetual inventory records by more than \$6 million. This credit balance represented inventory for which Anicom had not been

billed at the date of the transfer. In the months following the transfer, unit of measure errors in the new billing system's inventory module and operator keypunch errors further increased the out-of-balance condition and misstated the carrying value of inventory and cost of sales.

74. In June 1998, Bandyk directed an accounting department employee to isolate the out-of-balance amount, by then exceeding \$8 million, by transferring the full amount to another balance sheet liability account, referred to as the inventory clearing account.

75. Between June and November 1998, Welchko directed Bandyk to make approximately \$6 million in improper cost of sales reductions against the inventory clearing account.

76. In August 1998, Bandyk authorized an Anicom employee to improperly write off against the inventory clearing account more than \$106,000 in liabilities assumed by Anicom as a result of acquiring another wire and cable company.

77. In November 1998, Bandyk improperly wrote off against the inventory clearing account \$935,254 in unreconciled differences from Anicom's cash checking account.

78. Under Statement of Accounting Standards No. 5, financial statement accruals shall be made when (a) information available prior to issuance of the financial statements indicates that it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statement, and (b) the amount of loss can be reasonably estimated.

79. Welchko and Bandyk knew or were reckless in not knowing that using the inventory clearing account to reduce cost of sales by approximately \$6 million, write off acquisition liabilities of \$108,000, and adjust the cash checking account by \$935,254 violated GAAP and caused Anicom to file with the SEC materially misstated financial statements in 1998.

**Anixter, Welchko, And Bandyk Improperly Charged Expenses To A  
Third Quarter 1999 Restructuring Reserve**

80. Anixter, Welchko, and Bandyk knew or were reckless in not knowing that Anicom improperly allocated expenses to a Restructuring Reserve. Anicom reported this Restructuring Reserve in the income statement filed with the SEC as part of its Form 10-Q for the quarter ended September 30, 1999. The Restructuring Reserve was represented in the 10-Q as a one-time exiting charge to close out and downsize several warehouse locations. But as Anixter told Putnam and Spinell, Anicom took the charge to “flush all the [problems] down the toilet.”

81. Welchko directed Bandyk to charge items unrelated to discontinuing the warehouses to the Restructuring Reserve. These items totaled more than \$7.65 million, including a bank fee incurred when Anicom violated its working capital loan covenants, a note receivable with accrued interest, charges incurred for enhancement to a computerized inventory control system, and accounts receivable.

82. Under FASB EITF 94-3, a company is permitted to recognize a one time charge related to exiting an activity that has no future economic benefit and meets all the following conditions: (a) the cost is not associated with or does not benefit activities that will be continued; (b) the cost is not associated with or is not incurred to generate revenues after the exit plan’s commitment date; and (c) the cost meets one of the following criteria: (i) the cost is incremental to other costs incurred by the enterprise in the conduct of its activities prior to the commitment date and will be incurred as a direct result of the exit plan; and, (ii) the cost represents amounts to be incurred by the enterprise under a contractual obligation that existed prior to the commitment date and will either continue after the exit plan is completed with no economic benefit to the enterprise or be a penalty to cancel the contractual obligation.

83. Anixter, Welchko, and Bandyk knew or were reckless in not knowing that charging the items described above to the Restructuring Charge caused Anicom to file with the SEC false and misleading financial statements for the third quarter of 1999 that materially underreported Anicom's expenses related to continuing business activities.

**Anixter, Welchko, and Bandyk Unjustifiably Inflated Purchase Rebates Accrued**

84. Anicom received either cash or credit rebates from certain vendors if the company met certain annual purchasing goals. Each month, Bandyk accrued one-twelfth of Anicom's budgeted amount for rebates based on Welchko's projections about the company's purchasing levels. In 1998 and 1999, Anixter knew or was reckless in not knowing that he instructed Welchko to accrue more in purchase rebates than Anicom expected to receive based on its purchasing levels. Welchko carried out Anixter's directive by instructing Bandyk to make journal entries to accrue additional purchase rebates, which had the financial statement effect of understating cost of sales and overstating net income.

85. In 1998, Bandyk, at Anixter and Welchko's direction, entered journal entries recognizing rebates that understated cost of sales and overstated net income, as reported in financial statements filed with the SEC, by approximately \$1,652,163.

86. In 1999, Bandyk, at Anixter and Welchko's direction entered journal entries recognizing rebates that understated cost of sales and overstated net income, as reported in financial statement filed with the SEC, by approximately \$929,000.

87. Under Statement of Financial Concepts No. 5, purchase rebates should be recognized when (a) realized, and (b) earned. Anixter, Welchko, and Bandyk knew or were reckless in not knowing that they improperly recorded journal entries that accrued more in purchase rebates than was justified by Anicom's purchasing volume. Accordingly, Anixter,



Welchko, and Bandyk knew or were reckless in not knowing that their treatment of purchase rebates accrued caused Anicom to file materially misstated financial statements with the SEC in 1998 and 1999.

**Anixter, Welchko, And Bandyk Improperly Accelerated The  
Recognition Of Sales Between Reporting Periods**

88. At the end of quarters in 1998 and 1999, Anixter inflated Anicom's sales results by ordering Welchko to keep the quarter open so that the company could recognize revenue from sales that actually occurred in the first few days of the following quarter. Anixter gave these directives after learning from Putnam that Anicom's quarterly sales numbers were not good enough to meet his expectations about the company's sales results. On at least one occasion, Anixter gave such a directive and stated that last day of the quarter was March 35th.

89. From fourth quarter 1998 through fourth quarter 1999, Welchko directed Bandyk to accelerate the recognition of revenue by recording in the just-completed quarter sales that occurred, and were recorded in the billing system, in the first few days of the new quarter. On at least one occasion, Bandyk investigated sales that were moved into the just-completed quarter and found that the product did not ship until the new period.

90. Nonetheless, Bandyk, at Welchko's direction, knowingly recorded in the prior quarter sales occurring in the first few days of the new quarter.

91. In each successive quarter, Bandyk knowingly reversed the prior quarter journal entry, and repeated the process to avoid a major revenue and earnings shortfall.

92. Under Statement of Financial Concepts No. 6, revenue is recognized when earned. As discussed above, Anicom's revenue recognition policy called for recognizing revenue when product was shipped to the customer. Anixter, Welchko, and Bandyk knew or were reckless in not knowing that recording sales prior to shipping the product to customers

violated GAAP and caused Anicom to file materially misstated financial statements with the SEC from fourth quarter 1998 through fourth quarter 1999.

### **Welchko And Bandyk Lied To Anicom's External Auditors**

93. The public accounting firm of PricewaterhouseCoopers conducted Anicom's annual external audits. In March 2000, Welchko and Bandyk signed a management representation letter in connection with PricewaterhouseCooper's audits of Anicom's consolidated financial statements as of 1998 and 1999 and for each of the three years for the period ended December 31, 1999. By signing that letter, Welchko and Bandyk falsely represented that, among other things, during those periods no fraud had occurred involving management or employees who had significant roles in Anicom's internal controls.

94. At the time that they signed the management representation letter, Welchko and Bandyk knew or were reckless in not knowing that they had recorded in those periods numerous improper journal entries that overstated Anicom's earnings and caused Anicom to file materially misstated financial statements with the SEC.

### **FALSE STATEMENTS MADE TO THE PUBLIC**

95. As a result of the activities discussed above, in each of the nine quarters between January 1, 1998 and March 31, 2000, Anicom made materially false and inaccurate statements concerning its financial results in press releases and periodic reports filed with the SEC. Furthermore, as discussed below, Anicom's periodic reports contained material misrepresentations and omissions in the Management's Discussion and Analysis ("MD&A") sections. The general purpose of the MD&A disclosure is to give investors an opportunity to look at a company's business through the eyes of management by providing a historical and

prospective analysis of the company's financial condition and results of operations, with a particular emphasis on the company's prospects for the future.

96. On February 17, 1999, Anicom issued a press release announcing record financial results for the fourth quarter and year ended December 31, 1998. The press release announced, among other things, that Anicom's net sales increased 93 percent, from \$244 million in 1997 to \$470 million in 1998. The press release stated that "[t]hese record sales reflect strong progress in the continuing implementation of Anicom's integrated growth strategy." This statement was materially false and inaccurate because Anicom's "record sales" included improper sales activity that exceeded \$13.6 million for the year.

97. Anicom's 10-K report for the fourth quarter and year ended December 31, 1998 contained the same financial information that was disclosed in the company's February 17, 1999 press release. Anicom's financial statements for the quarter contained material misstatements resulting from the non-GAAP accounting practices discussed above, including the improper sale to Spanpro, misuse of the inventory clearing account, overstated purchase rebates accrued, and improperly accelerated sales.

98. The MD&A section in Anicom's 10-K report for the fourth quarter and year ended December 31, 1998 compounded the misrepresentations in the financial statements. In discussing net sales, the MD&A stated that "[t]he significant increase is primarily attributable to acquisitions coupled with internal growth, which has led to new customers, new products, increased market share, expanded market penetration and increased volume with existing customers." This statement was false because, among other things, it failed to disclose that Anicom's financial results included improper sales activity that exceeded \$13.6 million.

99. On May 5, 1999, Anicom issued a press release announcing record financial results for the first quarter ended March 31, 1999. The press release quoted Anixter as stating:

Anicom posted a solid first quarter. We see positive trends continuing for our business and end market. Our current financial strength will allow us to continue growing aggressively, while maintaining our emphasis on improving the bottom line. We will continue to pursue additional markets and select acquisition opportunities as they develop.

This statement was materially false and inaccurate because Anicom's "record results" were based on, among other things, improper sales activity to SCL Integration.

100. On August 12, 1999, Anicom issued a press release announcing record sales results for the second quarter ended June 30, 1999. The press release stated that net sales for the second quarter of 1999 increased to a record \$132 million, a 17 percent increase from net sales of \$113 million in the second quarter of 1998. The press release also quoted Anixter as stating:

While we still reported record net sales for the quarter and first half of 1999, we are disappointed that these results reflect slower growth than we had anticipated. We have already taken steps to address the situation. . . .

In addition to the steps we have taken to improve the bottom line, we will continue to actively pursue additional markets and selected acquisition opportunities as they develop. Anicom has demonstrated impressive growth performance, with five consecutive years of record sales, going from \$18 million in 1994 to more than \$470 million in 1998. We remain optimistic that this trend will continue in both the near and long term.

These statements were materially false and inaccurate because Anicom's record results for the quarter and first half of 1999 were based on, among other things, improper sales activity to SCL Integration.

101. As a further example, on February 23, 2000, Anicom issued a press release announcing, among other things, a "[s]ixth consecutive record year in sales" for the fourth quarter and year ended December 31, 1999. The press release announced that net sales increased 14 percent to \$537 million in fiscal 1999, from \$470 million in 1998. With respect to Anicom's

1999 sales results, Putnam stated that “[d]uring 1999 we . . . created new sales programs to target our resources on higher margin products.” As with the prior quarters, these statements were materially false and inaccurate because Anicom’s record results for the fourth quarter and year ended December 31, 1999 were based on, among other things, improper sales activity to SCL Integration.

102. On March 30, 2000, Anicom filed with the SEC its Form 10-K report for the year ended December 31, 1999. The report included the financial information that was disclosed in its February 23, 2000 press release. Anicom’s financial statements for the quarter contained material misstatements resulting from the non-GAAP accounting practices discussed above, including improper sales to SCL Integration and GTT Electronics, overstated purchase rebates accrued, and improperly accelerated sales.

103. The MD&A section in Anicom’s Form 10-K report for the fourth quarter and year ended December 31, 1999 furthered the misrepresentations in the financial statements. In discussing net sales, the MD&A stated that “[t]hese increases are primarily attributable to acquisitions, which have led to new customers, new products, and expanded market penetration. These results were adversely impacted by declining sales at certain of the locations acquired from TW Communications (“TW”) in December 1997.” This statement was false because, among other things, it failed to disclose that Anicom’s financial results for fourth quarter 1999 and year ended December 31, 1999 included improper sales activity to SCL Integration.

104. From January 1, 1998 through March 31, 2000, Anixter knew or was reckless in not knowing that his actions caused Anicom’s publicly disseminated financial information contained in periodic reports on Form 10-K and 10-Q and in press releases relating to the company’s annual and quarterly earnings to misstate and omit material facts about Anicom’s

financial condition. As Chairman, Chief Executive Officer, and a Director, and later as Chairman of the Board, Anixter signed Anicom's Form 10-K reports and made public statements knowing, or was reckless in not knowing, that the company's financial information was false and misleading. Anixter knew or was reckless in not knowing that Anicom's financial statements were inflated by improper sales because Putnam kept him informed concerning the details of improper sales, including customer names and dollar amounts. Anixter also knew or was reckless in not knowing that Anicom's financial statements were improperly manipulated by numerous accounting entries because he directed Welchko to, among other things, understate Anicom's cost of sales by overstating rebates receivable.

105. From January 1, 1998 through March 31, 2000, Putnam knew or was reckless in not knowing that his actions caused Anicom's publicly disseminated financial information contained in periodic reports on Forms 10-K and 10-Q and press releases of annual and quarterly earnings to misstate and omit material facts about Anicom's financial condition. As a Director and President, Putnam signed Anicom's Form 10-K reports. As the senior Anicom manager in charge of sales, Putnam, among other things, directed lower level employees to book improper sales, which he knew or was reckless in not knowing would be recognized as revenue on Anicom's financial statements filed with the SEC.

106. From January 1, 1998 through March 31, 2000, Welchko knew or was reckless in not knowing that his actions caused Anicom's publicly disseminated financial information contained in periodic reports on Forms 10-K and 10-Q and press releases of annual and quarterly earnings to misstate and omit material facts about Anicom's financial condition. In 1998, Welchko directed Bandyk to prepared journal entries that, among other things, improperly reduced cost of sales by more than \$6 million. In 1999, he planned and executed a scheme to

recognize more than \$11.7 million in improper sales to SCL Integration. Furthermore, Welchko participated in the preparation of the financial statements filed with the SEC, and signed Anicom's Form 10-K reports as a Director and CFO and Form 10-Q reports as CFO.

107. From January 1, 1998 through March 31, 2000, Figurelli knew or was reckless in not knowing that his actions caused Anicom's publicly disseminated financial information contained in periodic reports on Forms 10-K and 10-Q and press releases of annual and quarterly earnings to misstate and omit material facts about Anicom's financial condition. He provided credit approval for numerous improper sales. In February 1999, he admitted to Anicom's Credit Managers that nearly 20 percent of the company's accounts receivable was composed of improper and otherwise uncollectible sales. In March 1999, he directed a lower level employee to add SCL Integration to the billing system to conceal these problems, which were known to him at the time.

108. From January 1, 1998 through December 31, 1999, Spinell knew or was reckless in not knowing that his actions caused Anicom's publicly disseminated financial information contained in periodic reports on Forms 10-K and 10-Q and press releases of annual and quarterly earnings to misstate and omit material facts about Anicom's financial condition. Spinell directed lower level employees to book improper sales, which he knew or recklessly disregarded would be recognized as revenue on Anicom's financial statements filed with the SEC.

109. From January 1, 1998 through March 30, 2000, Bandyk knew or was reckless in not knowing that his actions caused Anicom's publicly disseminated financial information contained in periodic reports on Forms 10-K and 10-Q and press releases of annual and quarterly earnings to misstate and omit material facts about Anicom's financial condition. Bandyk knew or was reckless in not knowing that he recorded improper journal entries to Anicom's books and

records, and knew or was reckless in not knowing that Anicom had improperly recognized revenue to a fictitious customer, SCL Integration. Bandyk also participated in the preparation of Anicom's financial statements, when he knew or was reckless in not knowing that the improper entries would be included in Anicom's financial statements filed with the SEC.

110. From January 1, 1998 through March 31, 2000, LeVault knew or was reckless in not knowing that her actions caused Anicom's publicly disseminated financial information contained in periodic reports on Forms 10-K and 10-Q and press releases of annual and quarterly earnings to misstate and omit material facts about Anicom's financial condition. LeVault knew or was reckless in not knowing that she entered false data into the billing system to show that product had been shipped to customers when, in fact, no product had been shipped. She also knew or was reckless in not knowing that she recorded improper sales to a fictitious customer, SCL Integration.

### **DEFENDANTS' UNJUST ENRICHMENT**

#### **Putnam, Welchko, And Figurelli's 1999 Performance-Based Bonuses**

111. For 1999, the Board awarded Putnam, Welchko, and Figurelli performance-based bonuses of \$40,000 each, based on Anicom's 1999 pro forma results without giving effect to the charges and costs associated with the company's restructuring. As described above, in 1999 Putnam, Welchko, and Figurelli knew or were reckless in not knowing that their actions caused Anicom to file materially misstated financial statements with the SEC.

#### **Spinell And Bandyk's March 2000 Anicom Stock Sales**

112. On March 14, 2000, Spinell exercised options to purchase Anicom stock and sold 16,000 shares, realizing a net profit of \$63,000. At the time he sold, Spinell knew or was



reckless in not knowing that Anicom had recognized improper sales in the past and filed materially misstated financial statements with the SEC.

113. On March 23 – 24, 2000, Bandyk exercised options to purchase Anicom stock and sold 4,300 shares, realizing a net profit of \$7,804. At the time he sold, Bandyk knew or was reckless in not knowing that Anicom’s financial statement filed with the SEC were materially misstated by improper sales and improper journal entries.

**Anixter, Putnam, Welchko, And Spinell’s Misconduct Relating To  
Anicom’s October 1999 Internal Investigation**

114. In October 1999, the Board of Directors retained the law firm of Winston & Strawn to conduct an internal investigation into allegations made by a former employee about improper sales.

115. Putnam told Spinell that Anicom was doing the internal investigation just in case the SEC came calling. Putnam also told Spinell that he and Welchko wanted to make sure that everyone interviewed by Winston & Strawn told the same story. Putnam then discussed with Spinell what they should tell Winston & Strawn’s lawyers about certain improper sales which Anicom had recognized as revenue on its financial statements filed with the SEC.

116. At Putnam’s request, Spinell then went to see Welchko. Spinell told Welchko that Putnam had approved Spinell’s story about certain sales. Welchko and Spinell then discussed those sales in more detail. Afterward, Spinell went to Putnam’s office and told Putnam that he had spoken to Welchko and was ready to meet with Winston & Strawn’s lawyers.

117. When Winston & Strawn interviewed Spinell, he repeated Putnam and Welchko’s version of the story about the sales.

118. As Chairman of the Board, Anixter was present when Winston & Strawn informed the Board of Directors of the results of the investigation, which concluded that no

further investigation was warranted. Anixter knew or was reckless in not knowing that Putnam, Welchko, and Spinell had lied to Winston & Strawn in order to cover up their misconduct.

119. In January 2000, Spinell took a demotion to General Manager at Anicom's Elk Grove Village, Illinois office. In June 2000, Spinell truthfully described his actions when interviewed during a second internal investigation into allegations of improper sales and other fraudulent activity.

120. On or about July 18, 2000, the Board of Directors placed Putnam and Welchko on administrative leave. The Board allowed Spinell to remain in his position. On September 11, 2000, Putnam and Welchko resigned rather than face termination. On September 21, 2000, Spinell resigned under similar circumstances.

121. Had Putnam, Welchko, and Spinell told Winston & Strawn the truth in October 1999, Anicom's Board would have fired them and Anixter. As a result, Putnam and Welchko were unjustly enriched by the salaries that they received after October 1999, \$322,000 and \$215,000, respectively. Spinell was unjustly enriched by \$30,000 in salary that he received in November and December 1999 when he was Vice President of Sales.

122. Had Anixter told the Board that he knew that Putnam, Welchko, and Spinell had lied in the October 1999 internal investigation, the Board would have fired Anixter immediately because of his complicity in the fraud. By staying silent, Anixter was able to remain with Anicom until its demise at the end of 2000. As a result, Anixter was unjustly enriched by the gross salary that he received from October 1999 through December 2000 in the amount of \$545,234.

## COUNT I

### **Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)] (Against Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault)**

123. Paragraphs 1 through 122 are realleged and incorporated by reference.

124. From January 1, 1998 through December 31, 1998, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud.

125. Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault knew or were reckless in not knowing the facts described in paragraph 1 through 122.

126. By reason of the activities described in paragraphs 123 through 125, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault violated Section 17(a)(1) of the Securities Act [15 U.S.C. §§ 77q(a)(1)].

## COUNT II

### **Violations of Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)] (Against Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault)**

127. Paragraphs 1 through 122 are realleged and incorporated by reference.

128. From January 1, 1998 through December 31, 1998, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, engaged in transactions, practices, and courses of business which operated or would have operated as a fraud and deceit upon purchasers.

129. By reason of the activities described in paragraphs 127 through 128, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault violated Section 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1)].

### **COUNT III**

#### **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] (Against Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault)**

130. Paragraphs 1 through 122 are realleged and incorporated by reference.

131. From January 1, 1998 through March 31, 2000, Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and course of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchase and sellers of securities.

132. Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault knew or were reckless in not knowing the facts and circumstances described in paragraph 1 through 122.

133. By reason of the activities described in paragraphs 130 through 132, Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault violated 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].

#### **COUNT IV**

##### **Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] (Against Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault)**

134. Paragraphs 1 through 122 are realleged and incorporated by reference.

135. From January 1, 1998 through March 31, 2000, Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault knew or were reckless in not knowing that they circumvented a system of internal accounting controls at Anicom and knowingly falsified Anicom's books and records.

136. By reason of the activities described in paragraph 134 through 135, Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

#### **COUNT V**

##### **Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78t(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] (Against Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault)**

137. Paragraphs 1 through 122 are realleged and incorporated by reference.

138. From January 1, 1998 through March 31, 2000, Anicom violated Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13 by filing materially false and misleading annual reports on Form 10-K and materially false and misleading quarterly reports on Form 10-Q with the SEC.

139. By engaging in the conduct described in paragraph 137 through 138, Anixter, Putnam, Welchko, Figurelli, Spinell, and Bandyk knowingly and substantially aided and abetted Anicom's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78t(a)] and Rules 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.13a-1, and 240.13a-13].

140. By engaging in the conduct described in paragraphs 137 through 138, Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault knowingly and substantially aided and abetted Anicom's violation of Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20].

141. By engaging in the conduct described in paragraphs 137 through 138, Anixter, as a control person under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] is liable for Anicom's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78t(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.13a-1, and 240.13a-13].

### **COUNT VI**

**Aiding and Abetting Violations of Sections 13(b)(2)(A) and 13(b)(2)(B)(ii) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)(ii)] and Violations of Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] (Against Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault)**

142. Paragraphs 1 through 122 are realleged and incorporated by reference.

143. From January 1, 1998 through March 30, 2000, Anicom violated Section 13(b)(2)(A) by failing to make and keep books, records, and accounts that accurately and fairly reflected Anicom's transactions and the disposition of its assets.

144. From January 1, 1998 through March 30, 2000, Anicom violated Section 13(b)(2)(B)(ii) by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that Anicom's transactions were recorded as necessary to permit preparation of its financial statements in conformity with GAAP and to maintain accountability for assets.

145. By engaging in the conduct described in paragraphs 142 through 143, Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault knowingly and substantially aided and abetted Anicom's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

146. By engaging in the conduct described in paragraphs 142 and 144, Anixter, Putnam, Welchko, Figurelli, and Bandyk knowing and substantially aided and abetted Anicom's violations of Section 13(b)(2)(B)(ii) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)(ii)].

147. By engaging in the conduct described in paragraphs 142 through 143, Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by falsifying and causing to be falsified Anicom's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

148. By engaging in the conduct described in paragraphs 142 through 144, Anixter, as a control person under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] is also liable for Anicom's violations of Sections 13(b)(2)(A) and 13(b)(2)(B)(ii) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) 78m(b)(2)(B)(ii)].

## **COUNT VII**

### **Violations of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] (Against Welchko and Bandyk)**

149. Paragraphs 1 through 122 are realleged and incorporated by reference.

150. Welchko and Bandyk directly and indirectly made or caused to be made materially false and misleading statements or omitted or caused others to omit material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading to Anicom's independent auditors in connection with an audit of Anicom's required financial statements and in the preparation and filing of documents or reports required to be filed with the SEC.

151. By engaging in the conduct described in paragraphs 149 through 150, Welchko and Bandyk violated Rule 13b2-2 [17 C.F.R. § 240.13b2-2] promulgated under Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

## **RELIEF REQUESTED**

WHEREFORE, the SEC requests that this Court enter a judgment:

A. permanently enjoining Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault from future violations, and aiding and abetting future violations, of Sections 17(a)(1) and 17(a)(3) of the Securities Act.

B. permanently enjoining Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault from future violations, and abetting and abetting future violations, of Sections 10(b) and 13(b)(5) of the Exchange Act and Rule 10b-5 thereunder;

C. permanently enjoining Anixter, Putnam, Welchko, Figurelli, Spinell, and Bandyk from aiding and abetting future violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder;

D. permanently enjoining Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault from aiding and abetting future violations of Exchange Act Rule 12b-20;

E. permanently enjoining Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault from aiding and abetting future violations of Section 13(b)(2)(A) of the Exchange Act;

F. permanently enjoining Anixter, Putnam, Welchko, Figurelli, and Bandyk from aiding and abetting future violations of Section 13(b)(2)(B)(ii) of the Exchange Act;

G. permanently enjoining Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault from future violations of Exchange Act Rule 13b2-1;

H. permanently enjoining Welchko and Bandyk from future violations of Exchange Act Rule 13b2-2;

I. barring, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Anixter, Putnam, Welchko, Figurelli, Spinell, and Bandyk from serving as an officer



or director of any issuer required to file reports with the SEC under Sections 12(b), 12(g), or 15(d) of the Exchange Act [15 U.S.C. §§ 78l(b), 78l(g), and 78o(d)];

J. ordering Anixter, Putnam, Welchko, Figurelli, Spinell, Bandyk, and LeVault each to pay an appropriate civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

K. ordering Spinell to pay disgorgement of \$63,000, plus prejudgment interest, related to the losses that he avoided by selling Anicom stock in March 2000;

L. ordering Bandyk to pay disgorgement of \$7,804, plus prejudgment interest, related to the losses that he avoided by selling Anicom stock in March 2000;

M. ordering Putnam, Welchko, and Figurelli to each pay disgorgement of \$40,000, plus prejudgment interest, related to their 1999 performance-based bonuses;

N. ordering Anixter, Putnam, Welchko, and Spinell to pay disgorgement of \$545,234, \$322,000, \$215,000, and \$30,000, respectively, plus prejudgment interest, related to the salaries that each unjustly earned after they interfered with Anicom's October 1999 internal investigation;

O. retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

P. granting such other and additional relief as this Court deems just and proper.

Respectfully submitted,

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DATED: July 29, 2004