

Chief Operating Officer, and Randy S. Casstevens (“Casstevens”), its then Chief Financial Officer. The Company misrepresented its earnings for three quarters of its 2004 fiscal year and its full year results for fiscal 2004, which ended on February 1, 2004. The Company reported false quarterly and annual earnings and falsely claimed that, as a result of those earnings, it had achieved what had become a prime benchmark of its historical performance, *i.e.*, reporting quarterly earnings per share (“EPS”) that exceeded its previously announced EPS guidance by one cent. The Company also failed to disclose that the Company exceeded its earnings guidance in the fourth quarter of its 2003 fiscal year only by reversing previously accrued incentive compensation expense.

2. When Krispy Kreme ultimately did disclose disappointing earnings and lower its future earnings guidance in the first quarter of its 2005 fiscal year, the closing share price of Krispy Kreme’s stock dropped 29% in a single day, erasing over \$590 million in shareholder value.

3. In the fourth quarter of fiscal 2003 and the first three quarters of fiscal 2004, the Company under accrued (first quarter fiscal 2004) or (in the remaining quarters) reversed previously accrued incentive compensation expense pursuant to Krispy Kreme’s Company’s Senior Executive Incentive Compensation Plan (the “Incentive Plan”). Livengood, Tate and Casstevens were aware of the under accrual and reversals and that, but for their occurrence, the Company would have

failed to exceed its previously announced quarterly EPS guidance by one cent. The defendants nevertheless failed to disclose the impact of the under accrual and reversals on the Company's earnings. In addition, Livengood, Tate and Casstevens described favorably the Company's performance in earnings releases and analyst calls and did not disclose the under accrual and reversals or their impact on Company earnings. Livengood and Casstevens also signed and certified Krispy Kreme filings that misstated the Company's financial performance.

4. Tate caused Krispy Kreme to engage in a bogus round-trip transaction to falsely increase its quarterly earnings in the second quarter of fiscal 2004. This transaction occurred in connection with the reacquisition of a franchise, created fake income, and had no business purpose other than to inflate artificially earnings for the quarter and fiscal year.

5. In August 2003, following the release of the Company's financial results for the second quarter of fiscal 2004, Livengood, Tate, and Casstevens exercised options and sold Krispy Kreme common stock near its all-time high closing share price.

6. Defendant Livengood has engaged in, and unless restrained and enjoined by this Court, will continue to engage in, acts and practices which constitute and will constitute violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

and Rule 13a-14, promulgated under the Securities Exchange Act of 1934 (“Exchange Act”), and aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

7. Defendant Tate has engaged in, and unless restrained and enjoined by this Court, will continue to engage in, acts and practices which constitute and will constitute violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] and Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. §240.13b2-1] and aiding and abetting of violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

8. Defendant Casstevens has engaged in, and unless restrained and enjoined by this Court, will continue to engage in, acts and practices which constitute and will constitute violations of Section 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(3)] and Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13a-14 and 13b2-1 promulgated thereunder [17 C.F.R. §§ 240.13a-14 and 240.13b2-1] and aiding and abetting of 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, 13a-11, and 13a-13

promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

10. This Court has jurisdiction of this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

11. Defendants, directly and indirectly, have made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

12. Venue lies in this Court 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] because Krispy Kreme was based in this district, many of the acts described herein occurred within this district, and the defendants reside in this district.

THE DEFENDANTS

13. Scott A. Livengood, 56, is a resident of Winston-Salem, North Carolina. He was Krispy Kreme's CEO and Chairman of the Board between

October 1999 and January 18, 2005.

14. John W. Tate, 58, is a resident of Winston-Salem, North Carolina. He was Krispy Kreme's CFO and President of its equipment and distribution subsidiary between October 2000 and January 2002, when he was promoted to become the Company's COO. In August 2004, Tate resigned.

15. Randy S. Casstevens, 43 is a resident of Winston-Salem, North Carolina. He joined Krispy Kreme in May 1993, held a variety of increasingly senior finance positions, and was made the Company's CFO in January 2002—a position he held until December 23, 2003. Casstevens is a CPA.

ISSUER INVOLVED

16. Krispy Kreme is a North Carolina corporation based in Winston-Salem, North Carolina. Since approximately 1937, the Company has made and sold doughnuts, initially through a single store in Winston-Salem and subsequently through multiple stores across the United States owned either by Krispy Kreme or franchisees. Since April 2000, shares of Krispy Kreme's common stock have been registered with the Commission pursuant to Section 12(b) of the Exchange Act. Krispy Kreme has been listed on the New York Stock Exchange since May 2001. Krispy Kreme's fiscal year ends on the Sunday closest to the last day in January, which means that the fourth quarter of its 2003 fiscal year ended on February 2, 2003, and the first, second, third, and fourth quarters of its 2004 fiscal year ended,

respectively, on May 4, 2003, August 3, 2003, November 2, 2003, and February 1, 2004.

OVERSTATEMENT OF INCOME

Background

17. Operating initially in the southeastern United States, the Company began expanding nationally in the 1990s through a new franchise program intended to develop untapped geographic markets.

18. Newly licensed franchisees, called “area developers,” committed as part of their franchise agreements to grow their markets by opening a certain number of new stores in their designated areas within a specified period of time. Krispy Kreme viewed these store opening commitments by franchisees—embodied in “store opening schedules”—as a key to the Company’s growth in earnings and market penetration. Because new stores typically had the capacity to produce more doughnuts than could be sold on-site, each new store offered a means to increase the Company’s off-premises product sales through local grocers and other establishments.

19. As a result largely of Krispy Kreme’s new franchise program and new store openings, the Company’s operations spread geographically. Between the Company’s initial public offering (“IPO”) in April 2000 and the end of fiscal 2004, the Company’s store base expanded from roughly 58 Company-owned and 86

franchise stores to over 140 Company-owned and 216 franchised stores. Between fiscal 2000 and fiscal 2004, the Company's annual revenues increased from \$220 million to \$665 million and its EPS—calculated as net income per share on a diluted basis—rose from \$0.15 to \$0.92. Krispy Kreme's share price also grew dramatically, climbing from its IPO price of \$5.25 to a high of \$49.37 on August 18, 2003 and remaining above \$35 through the end of fiscal 2004.

20. Following the April 2000 IPO, the rate of Krispy Kreme's EPS growth was exceptional, increasing at an annual rate of 80%, 67%, and 47%, respectively, in the Company's first three fiscal years as a public issuer.

21. The Company reported EPS that tracked closely and—in almost every quarter—exceeded both Wall Street expectations and its own EPS guidance by at least \$.01. Prior to the second quarter of fiscal 2004, the Company exceeded its quarterly EPS guidance by exactly \$.01 in five of the previous six quarters since it began issuing quarterly EPS guidance in the fourth quarter of fiscal 2002.

Moreover, prior to the second quarter of fiscal 2004, the Company had managed to exceed the consensus analysts' EPS expectation by exactly \$.01 in seven of the previous eight quarters and by *at least* \$.01 in all thirteen quarters since the Company went public in 2000.

22. Beginning in fiscal 2002 and in much of fiscal 2003, the Company's common stock routinely traded at a multiple of over 50 times annual EPS. In fiscal

2004, the Company's stock traded between 30 and 50 times EPS.

The Incentive Plan

23. From the April 2000 IPO through the end of fiscal year 2004, Krispy Kreme's senior executives were compensated annually with a combination of salary, stock option grants, and cash bonuses, the last of which was paid pursuant to the Incentive Plan. Specifically, bonuses for all executive officers were contingent upon the Company meeting or exceeding goals for two performance measures: (i) the attainment of a certain level of return on assets, measured by earnings before interest, taxes and depreciation and amortization, and (ii) a percentage increase in earnings per share of common stock. Once Company goals were achieved, bonus amounts for individual officers were contingent upon those officers meeting or exceeding other performance criteria, selected as appropriate for that particular officer's duties in the Company.

24. In or about fiscal year 2003, the Company implemented the Incentive Plan in such a way that it made the payment of any officer bonuses directly contingent upon only one of the two Company performance criteria noted above. Specifically, no bonuses to officers would be paid unless the Company reported earnings each quarter that exceeded its EPS guidance by one penny.

25. In March 2003, at Livengood's urging, the Company's Compensation Committee approved 2004 payment guidelines for the Incentive Plan whereby up

to \$17.8 million of all earnings in excess of earnings equivalent to the Company's EPS guidance for its full 2004 fiscal year plus \$.04—or a penny per quarter—would be used to fund incentive compensation benefits.

26. Even though the Incentive Plan was expressly tied to the Company's earnings for the full fiscal year, the Company continued to accrue for incentive compensation only if *quarterly* earnings exceeded guidance by a penny.

27. Under Generally Accepted Accounting Principles (“GAAP”), the Company should have accounted for the plan by (1) periodically comparing its monthly forecast of pre-incentive compensation expense EPS for the full fiscal year to its full-year EPS target under the plan and (2) reconciling the then-projected payout under the plan with amounts accrued to date for incentive compensation expense.

28. Despite the fact that the Company consistently maintained a monthly forecast of pre-incentive compensation expense EPS for the full fiscal year—and therefore was capable of the above calculation—the Company did not tie its accounting to that forecasted figure. Instead, Casstevens caused the Company to account for the plan by booking the difference between the Company's actual *quarterly* EPS results and its *quarterly* target EPS guidance plus one penny. In doing so, each quarter he compared EPS prior to booking incentive compensation expense to the Company's EPS guidance plus \$0.01 and added to or reversed the

incentive compensation expense based on the amount needed to achieve EPS guidance for that quarter plus \$0.01.

29. During fiscal years 2002 and 2003, reflecting the Company's strong growth, the Company repeatedly increased its EPS guidance. For example, it increased its guidance for full-year EPS for fiscal 2002 at the end of the first, second and third quarters of fiscal year 2002. In addition, the Company increased its guidance for full-year EPS for fiscal year 2003 three times during fiscal 2002 and twice more during fiscal year 2003. However, the Company still outperformed the consensus analysts' expectations and—to the extent provided—its own quarterly and annual EPS guidance while recording incentive compensation expense in the amount of the excess.

30. Beginning in the second quarter of fiscal year 2003, the growth in Krispy Kreme's system-wide sales—or the sum of sales at stores owned by the Company *and* stores owned by franchisees—began to slacken, due in large part to delays in new store openings. This development in turn adversely affected the Company's rate of earnings growth which—while still strong—declined from prior quarters.

31. The slowing growth of sales in fiscal year 2003, when coupled with Company's increasing annual EPS guidance with each quarter's earnings report, had the effect of reducing, or “squeezing,” the amount of incentive compensation

expense accrued quarterly. Although the Company still had sufficient earnings to make an incentive compensation accrual in the second and third quarters of fiscal 2003 (and still report its EPS guidance plus \$.01 to shareholders), those accruals of \$620,504 and \$537,668, respectively, were significantly less than in previous quarters.

32. In the fourth quarter of fiscal 2003, the Company reversed \$873,261 of previously accrued incentive compensation expense, enabling the Company to report quarterly earnings in line with its EPS guidance plus \$.01. The Company did not disclose that it had met its guidance only by reversing previously accrued incentive compensation expense.

33. At the start of fiscal year 2004, Krispy Kreme announced EPS guidance of \$0.20 for the first and second quarters, \$0.22 for the third quarter, \$0.26 for the fourth quarter, and \$0.88 for the full fiscal year.

34. In the first quarter of fiscal 2004, Krispy Kreme's performance improved from the last quarter of fiscal year 2003 due to the opening of a number of stores with previously delayed openings, leading to an increase in its operating results. This resulted in the Company having sufficient earnings to report EPS of \$0.22—or EPS guidance for the first quarter plus \$.02—*and* to allow Casstevens to accrue \$2,050,001 in incentive compensation.

35. At the end of the first two months of the first quarter, Casstevens

directed that journal entries be made accruing \$2,050,001. He directed that no additional accruals be made for the last month of the quarter, *i.e.*, April 2003, even though as of the end of April 2003, the Company forecasted pre-incentive EPS of \$1.05 for the full fiscal year and, therefore, should have accrued an additional \$798,000 for a total of \$2,848,000 in incentive compensation expense for the quarter. However, if Casstevens had accrued the full \$2,848,000, reported EPS would have been \$0.20, merely equaling the Company's EPS guidance for the first quarter.

36. Beginning in the second quarter of fiscal 2004, as system-wide sales growth continued to slacken, Casstevens reversed compensation expense in order to boost earnings artificially. Specifically, after the last day of the second quarter, *i.e.*, August 3, 2003, but before the books were closed, Casstevens directed the entry of a net \$949,999 reversal in incentive compensation expense previously accrued in the first quarter of fiscal 2004, which increased after-tax earnings by \$574,749 and enabled the Company to report EPS of \$.21 for the quarter, exceeding its previously announced EPS guidance by \$.01.

37. In the third quarter of fiscal 2004, Casstevens caused the Company to make no additional incentive compensation accruals and, instead, caused the Company to reverse the remaining discretionary balance in the account, *i.e.*, \$833,332. This increased Krispy Kreme's after-tax earnings by \$499,999 and

enabled the Company to report EPS of \$.23 for quarter. Absent this reversal by Casstevens, the Company would have reported EPS of \$.22, merely equaling its EPS guidance for the quarter.

38. The incentive compensation under accrual in the first quarter of 2004 and the reversal of incentive compensation in the second quarter of fiscal 2004 were not in accordance with GAAP.

39. Casstevens always informed Livengood and Tate of the amount of the accrual or reversal, which included the reversals in the last quarter of fiscal 2003 and the second and third quarters of fiscal 2004. Livengood and Tate understood that that the reversals were necessary for the Company to meet its quarterly benchmark of exceeding EPS guidance by one penny.

The Round-Trip Transaction

40. In May 2003, during the second quarter of fiscal 2004, Tate caused Krispy Kreme to engage in a bogus round-trip transaction in connection with the reacquisition of Greater DFW Doughnuts, Inc., the franchise covering the Dallas-Ft. Worth area of Texas (hereafter, the "Dallas franchise"). Krispy Kreme paid money to the franchise with the understanding that the franchise would pay the money back to Krispy Kreme in a pre-arranged manner that would allow Krispy Kreme to recognize additional income in an amount roughly equal to the funds originally paid to the franchise.

41. In connection with the reacquisition of the Dallas franchise, the Company increased the price it paid for the franchise by \$800,000, *i.e.*, from \$65,000,000 to \$65,800,000, in return for the franchise purchasing from Krispy Kreme seven auto-extruders—a high margin piece of doughnut making equipment that Krispy Kreme claimed increased the uniformity of doughnut size and thereby saved on the use of doughnut mix.

42. The purchase of the auto-extruders was made solely at the request of Tate, on behalf of Krispy Kreme and arranged after the parties had orally agreed to the \$65 million reacquisition price. But for the \$800,000 increase in that price, the franchise would not have agreed to make the purchase. The additional revenue falsely boosted Krispy Kreme's quarterly income by approximately \$365,000 after taxes.

43. Thereafter, on June 3, 2003, Tate concealed his arrangement with the Dallas franchise from Krispy Kreme's Board by making a presentation to the Board in which he represented that the reacquisition price for the Dallas franchise was only \$65 million. The next day, on June 4, 2003, however, he memorialized his arrangement with the Dallas franchise by sending a letter in which he confirmed that the reacquisition price was \$65.8 million.

Krispy Kreme's Misleading Reports

44. Due to the increases in Krispy Kreme's net income and EPS results as

a result of the under accrual and the reversals, and the roundtrip transaction, various Krispy Kreme filings with the Commission reporting Company net income and EPS results during the relevant period overstated the Company's income and contained omissions of material fact.

45. The Company's Form 10-K for fiscal year 2003, as supplemented by the Company's earnings release for the same period, reported net income and EPS for the fourth quarter of fiscal 2003—excluding a \$9.075 million charge related to an arbitration award—of \$11,302,000 and \$.19, respectively, exceeding its guidance by one cent. However, but for the reversal of incentive compensation expense, the Company would not have exceeded its guidance by one cent.

46. The Company's Form 10-Q for the first quarter of fiscal 2004, as supplemented by the Company's earnings release for the same period, reported net income and EPS for the first quarter of fiscal 2004—excluding a \$525,000 reversal related to an arbitration award—of \$12,822,000 and \$.21, respectively, exceeding its guidance by one cent. However, but for the improper under accrual of incentive compensation expense, the Company would not have exceeded its guidance by one cent.

47. The Company's Form 10-Q for the second quarter of fiscal 2004 reported quarterly net income of \$13,001,000 for Krispy Kreme and EPS of \$0.21, exceeding its guidance by one cent. However, but for Casstevens' improper

reversal of incentive compensation expense and the effect of the improper revenue recognition on the sale of the auto extruders to the Dallas franchise, the Company would not have exceeded its guidance by one cent.

48. The Company's Form 10-Q for the third quarter of fiscal 2004 reported quarterly net income of \$14,522,000 and EPS of \$0.23. Absent Casstevens' reversal of incentive compensation expense, the Company's EPS would have been \$0.22, and the Company would not have exceeded its guidance by one cent.

49. During the relevant period Krispy Kreme announced its quarterly earnings and EPS results each quarter in an earnings release which was filed with the Commission as an attachment to a Form 8-K. The Forms 8-K filed on May 28, 2003 (Q1), August 21, 2003 (Q2), and November 21, 2003 (Q3) also contained misstated income and financial results for Krispy Kreme, consistent with the inaccurate quarterly reports discussed above.

50. Casstevens signed each of the Forms 10-Q and Forms 8-K, noted above.

51. Krispy Kreme's Form 10-K for fiscal year 2004, filed on April 16, 2004 and signed by Livengood, also included overstated earnings as a result of the round trip transaction. The financial results contained in that Form 10-K reported Krispy Kreme's net income as \$57,087,000 and EPS results of \$0.92.

52. On October 28, 2003, during the third quarter of the Company's fiscal year 2004, the Company filed an Form S-3, registering 443,917 shares of Krispy Kreme common stock paid by Krispy Kreme as consideration for the acquisition of a franchise. This Form S-3—again signed by both Casstevens and Livengood—contained misstated financial results because it incorporated by reference, among other financial statements, Krispy Kreme's quarterly reports on Forms 10-Q for the first quarter of fiscal 2004 (ending on May 4, 2003) and the second quarter of fiscal 2004 (ending on August 3, 2003).

53. The financial results in the filings noted were misrepresented and the filings did not disclose the under accrual, the reversals or the round trip transaction and the impact of those actions on the Company's net income. As such, the filings misrepresented the Company's financial results without also disclosing the under accrual or reversals. This lack of disclosure meant Krispy Kreme's filings, noted above, did not comply with Item 303(3) of Regulation S-K that required Krispy Kreme's filings to "[d]escribe any unusual or infrequent events or transactions. . . .that materially affected the amount of reported income from continuing operations." Casstevens' under accruals and reversals and Tate's round trip transaction were such events and transactions.

Misleading Analyst Calls

54. In addition to filing and causing Krispy Kreme to file quarterly,

current, and annual reports containing misstated financial results, Livengood, Tate and Casstevens also did not disclose the existence or impact of the reversals or the under accrual on Krispy Kreme's earnings in various analyst conference calls during the relevant quarters.

55. Livengood, Casstevens and Tate understood that, but for the under accrual of incentive compensation expense in the first quarter of fiscal 2004, and the reversals in the same account in the second and third quarters of fiscal 2004 and the fourth quarter of fiscal 2003, the Company would not have achieved earnings equivalent to its EPS guidance plus one cent. Despite that knowledge, however, they described favorably the Company's financial performance and did not also disclose that such earnings and EPS results had been achieved only through the incentive compensation under accrual and reversals.

56. In a March 18, 2003 conference call, following the fourth quarter of fiscal 2003 in which the Company reversed a net of \$873,261 of incentive compensation expense, Livengood declared that "[o]ur continued focus on opening stores in new markets, establishing strong relationships with our customers and communities, and gaining greater market penetration through multiple channels of sales has allowed us to meet and in some cases exceed our previous projections for the quarter."

57. During the March 18, 2003 call, Tate also described favorably the

Company's performance and EPS results, stating "we are excited about the current performance of the [Company's] business model, its growth, profitability and momentum. We are pleased, once again, to report earnings which exceeded the analysts' consensus by one cent per share."

58. Neither Livengood nor Tate disclosed that, but for the incentive compensation reversal, the Company's quarterly EPS would have fallen short of EPS guidance plus one penny.

59. In an August 21, 2003 conference call following the second quarter of fiscal 2004—a quarter in which Casstevens reversed a net of \$949,999 of previously reported incentive compensation expense—Livengood told analysts:

It's been an extremely exciting quarter for us, and it's included several milestones for the Company. . . . We've kept our focus on opening stores, establishing strong relationships with our customers and communities, gaining greater market penetration through multiple channels of sales. This focus has generated results that have allowed us to meet and in some cases exceed our previous projections for the quarter.

60. In the August 21, 2003 conference call, Tate elaborated on Livengood's comments by stating "[d]iluted earnings per share at \$0.21 grew 39.9% on the basis of very strong operating income growth. As many of you know, the second quarter is our weakest quarter seasonally. We were very pleased with the growth in earnings, and especially with the growth in margins, which

reflects the hard work of our folks in each business segment.” He further added: “In summary, we’re excited about the current performance of the business model, its growth, profitability, and momentum. We are pleased, once again, to report earnings which exceeded analyst consensus by \$0.01 per share.” Later during the August 21, 2003 conference call, when commenting on accrued expenses—the financial statement line item that included the incentive compensation reversal—Casstevens said: “Accrued expenses compared to the first quarter increased by a net of \$1.1 million, or 4.2%. There were no major line item changes in accrued expenses during the quarter.”

61. Again, in making these statements, neither Livengood, Tate nor Casstevens disclosed that such results were only possible by the reversal of incentive compensation expense or the round trip transaction.

62. Livengood’s internal statements contradicted the statements made to analysts. On August 28, 2003, at a meeting among Company senior staff, including Livengood, Tate, and Casstevens, Livengood advised the managers that the second quarter of fiscal 2004 had been a tough quarter, that there had been softness in store opening weeks and retail was down, and that the difference in earnings had been made up with the reversal of previously accrued incentive compensation expense.

Stock Sales

63. In late August 2003, within days of participating in the August 21, 2003 conference call described above, Livengood, Tate, and Casstevens individually created plans directing the sale of Krispy Kreme stock belonging to them upon certain conditions (“Rule 10b5-1 plans”) and sold substantial amounts of Krispy Kreme common stock.

64. Specifically, on August 25, 2003, Livengood entered a Rule 10b5-1 plan covering 235,500 shares to be acquired upon the exercise of options and to be sold at a limit order price of \$40 per share.

65. On August 25, 2003, and pursuant to a Rule 10b5-1 plan, Tate directed the sale of 65,000 shares to occur between August 25, 2003 and September 24, 2003. He also directed that the shares be sold at a limit order price of \$40 per share.

66. On August 25, 2003, Casstevens entered a Rule 10b5-1 plan covering 24,000 Krispy Kreme shares that he already owned and that were sold two business days later. Although Casstevens initially entered a Rule 10b5-1 plan covering only 18,000 of his shares on or about August 23, 2003, he executed a new plan on August 25, 2003 for 24,000 shares. In his plan, Casstevens directed that his shares be sold at a limit order price of \$40 per share.

67. Krispy Kreme’s shares were then trading at prices in excess of \$40 per

share. Accordingly, the defendants' instructions essentially guaranteed that their Rule 10b5-1 plans would be executed immediately, and all stock identified within their plans promptly sold.

68. The sales directed by Livengood and Tate occurred on August 25, 2003.

69. The sales directed by Casstevens occurred on August 27, 2003.

CLAIMS FOR RELIEF

COUNT I--FRAUD

Violations of Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2)]

70. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

71. Defendants Livengood, Casstevens and Tate, in connection with the offer or sale of securities described herein, by the use of the means and instruments of interstate commerce and by use of the mails, directly and indirectly, engaged in transactions, practices, and courses of business which operated and would operate as a fraud or deceit upon the purchasers of securities, all as more particularly described in the paragraphs above.

72. By reason of the foregoing, Defendants Livengood, Casstevens and Tate violated Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)], and unless enjoined will continue to do so.

COUNT II--FRAUD

Violations of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)]

73. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

74. Defendants Livengood and Tate, in connection with the offer or sale of securities described herein, by the use of the means and instruments of interstate commerce and by use of the mails, directly and indirectly, obtained money or property by means of untrue statements of material facts and omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

75. By reason of the foregoing, Defendants Livengood and Tate violated and unless enjoined, will continue to violate Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

COUNT III-REPORTING PROVISIONS

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]

76. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

77. Defendants Livengood, Casstevens and Tate aided and abetted Krispy

Kreme's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1, 240.13a-11 and 240.13a-13], which occurred when Krispy Kreme filed annual, periodic and current reports that contained financial statements that were not prepared in conformity with GAAP and/or contained material misstatements.

78. Through the conduct described in the above paragraphs, the Defendants knowingly and substantially assisted Krispy Kreme's violations of this section and rules.

79. By reason of the foregoing, Defendants Livengood, Casstevens and Tate, aided and abetted and unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1, 13a-11 and 240.13a-13].

COUNT IV- RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and Violations of Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

80. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

81. Defendants Casstevens and Tate aided and abetted Krispy Kreme's

violations of Section 13(b)(2)(A) of the Exchange Act, which occurred when Krispy Kreme failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Krispy Kreme's assets.

82. Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing the falsification of any such books, records or accounts.

83. Through the conduct described in the above paragraphs, Defendants Casstevens and Tate violated Rule 13b2-1 and aided and abetted violations of 13(b)(2)(A) of the Exchange Act and unless enjoined will continue to do so.

COUNT V – BOOKS AND RECORDS AND INTERNAL CONTROLS

VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] of the Exchange Act and Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]

84. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

85. Casstevens and Tate violated Section 13(b)(5) of the Exchange Act by knowingly failing to implement a system of internal accounting controls required by Section 13(b)(2)(A) of the Exchange Act.

86. Section 13(b)(2)(B) requires issuers to devise and maintain a system

of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's authorization and that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets.

87. Through the conduct described above, Defendants Casstevens aided and abetted violations of Section 13(b)(2)(B) and Defendants Casstevens and Tate, by knowingly failing to implement a required system of internal accounting controls, violated Section 13(b)(5) of the Exchange Act and unless enjoined will continue to do so.

COUNT VI- FALSE CERTIFICATION

Exchange Act Rules 13a-14 [17 C.F.R. 240.13a-14]

88. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

89. Livengood and Casstevens violated Rule 13a-14 [17 C.F.R. 240.13a-14] promulgated under the Exchange Act by certifying falsely, on certifications required by Exchange Act Rule 13a-14 to be made in connection with the filing of reports as to which such certification is required, information required to be certified, including but not limited to certifying that the financial statements are not materially

inaccurate.

90. Through the conduct described above, Defendants Livengood and Casstevens violated Rule 13a-14 [17 C.F.R. 240.13a-14] promulgated under the Exchange Act and unless enjoined will continue to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining Defendants, respectively, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them from violating the provisions they are alleged above, respectively, to have violated.

III.

Issue an Order awarding disgorgement of ill-gotten gains and prejudgment interest thereon against Defendants.

IV.

Issue an Order requiring Defendants, pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] to pay civil monetary penalties.

V.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as may be necessary and appropriate.

Dated: March 3, 2009

RESPECTFULLY SUBMITTED,

_____/s/_____
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