UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action No.: 4:12-cv-1051
	:	
v.	:	**COMPLAINT**
	:	
ANTHONY J. NOCELLA, AND J. RUSSELL MCCANN,	:	
	:	
	:	
Defendants.	:	
	:	

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY

1. This is a financial fraud matter involving securities law violations by former senior executives of Franklin Bank Corp., a Texas-based savings and loan holding company. In 2007, through its wholly-owned subsidiary, Franklin Bank, S.S.B., (together with Franklin Bank Corp., "Franklin" or "the Bank"), Franklin operated a multi-branch savings bank. At the beginning of the financial crisis, during the third and fourth quarters of 2007, Franklin's CEO, Anthony J. Nocella ("Nocella"), and its CFO, J. Russell McCann ("McCann"), engaged in a disclosure and accounting fraud that misled investors about Franklin's financial condition and concealed the extent of its exposure to loan delinquencies.

2. In the second and third quarters of 2007, the financial markets began showing signs of severe distress caused by, among other things, increasing mortgage loan delinquencies and falling home prices. Franklin was not immune. From June 2007 to August 2007, the Defendants regularly reviewed reports revealing a 24% (or $30 million) increase in delinquencies in the Bank's loan portfolio over the 3 month period.

3. At the time they were reviewing this information, Nocella and McCann knew that the market, research analysts, and investors were closely monitoring the quality of Franklin's loan portfolio. In fact, on August 9, 2007, in response to Franklin's request for information about "strategic alternatives" for the Bank, including a possible sale of the Bank, investment bankers from RBC Capital Markets told Nocella and McCann that Franklin needed to "polish the apple" by demonstrating positive earnings "momentum" and "stable asset quality." In light of the precipitous increase in loan delinquencies in the third quarter of 2007, something had to be done to ensure that Franklin's strategic alternatives remained viable.

4. In an effort to conceal Franklin's rising loan delinquencies and improve its earnings for the third quarter of 2007, Nocella and McCann conjured and implemented a loan modification scheme to create the appearance that the Bank's single-family and residential construction loan portfolios were outperforming other banks and that the Bank's earnings were in line with analysts' expectations. At their core, Nocella and McCann's loan modification schemes – with names like "Fresh Start" and "Great News" – were simple. All Nocella and McCann had to do was wave a magic wand (in this case, a pencil) to unilaterally convert non-performing loans into performing loans. In so doing, however, Nocella and McCann violated, and caused Franklin to violate, the relevant accounting rules, the Bank's publicly stated policies on non-performing assets, and the federal securities laws.

5. By engaging in their disclosure and accounting tricks, Nocella and McCann concealed from shareholders over $11 million in delinquent and non-performing, single-family residential loans and $13.5 million in non-performing residential construction loans. Indeed, Nocella and McCann, despite receiving reports showing a sharp rise in delinquent loans, caused Franklin to report in public filings with the Commission that its non-performing assets were flat

when compared to the previous quarter, giving investors the false impression that Franklin was outperforming other banks. Without Defendants' loan modification scheme, Franklin would have reported a 44% increase in its non-performing assets and would have missed its earnings estimates for the quarter by an additional 72%.

6. The Commission, in the interest of protecting the public from such fraudulent activities, brings this civil securities law enforcement action seeking a permanent injunction against Nocella and McCann, enjoining them from further violations or aiding and abetting further violations of the federal securities laws. The Commission also seeks an order barring Defendants from serving as officers or directors of a public company, and imposing disgorgement of ill-gotten gains, plus prejudgment interest, and civil monetary penalties as allowed by law. The Commission further seeks an order requiring Nocella and McCann to repay Franklin for the bonuses they received during the time period of the misconduct and Franklin's materially misstated financial results, as required by Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243].

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under Section 3(b) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7202(b)] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§78u(d), 78u(e), and 78aa].

8. Defendants have, directly and indirectly, made use of the means or instrumentalities of interstate commerce and/or the mails in connection with the transactions described in this Complaint.

9. Venue is proper in this Court under Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§78u(d) and 78aa] because certain of the acts and transactions described herein took place in Houston, Texas, where Franklin is headquartered.

DEFENDANTS

10. Anthony J. Nocella, age 70, resides in Houston, Texas. From 2002 to 2008, Nocella was the President and Chief Executive Officer ("CEO") of Franklin Bank Corp. and Franklin Bank, S.S.B. From 1967 to 1990, he was a Certified Public Accountant licensed in Pennsylvania.

11. J. Russell McCann, age 55, resides in Katy, Texas. From April 2002 to October 2008, McCann was the Chief Financial Officer ("CFO") and Treasurer of Franklin Bank Corp., and the CFO and Chairman of the Board of Directors of Franklin Bank, S.S.B. He is a Certified Public Accountant, and has been licensed in Texas since 1986.

RELEVANT ENTITIES

12. During all relevant periods, Franklin Bank Corp. was a Texas-based savings and loan holding company incorporated under the laws of Delaware and headquartered in Houston, Texas. Through its subsidiary, Franklin Bank, S.S.B., it operated a multi-branch savings bank. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and is currently traded on the OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. During the relevant period, its common stock was traded on the NASDAQ National Market under the symbol "FBTX," and its preferred stock was traded on the AMEX under the symbol "FBK-P.LF." On November 18, 2008, Franklin Bank Corp. filed a voluntary petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code [11 U.S.C. §§ 701-784], in the matter *In re Franklin Bank Corp.*, Case No. 08-12924-CSS (Dist. Del.). The bankruptcy court appointed a Trustee to liquidate the assets of and act on behalf of Franklin Bank Corp.

13. During all relevant periods, Franklin Bank, S.S.B., was a Texas state savings bank headquartered in Houston, Texas. On November 7, 2008, the Texas Department of Savings and Mortgage Lending closed Franklin Bank, S.S.B., and appointed the Federal Deposit Insurance Corporation ("FDIC") as Receiver for the insolvent Bank.

FACTUAL ALLEGATIONS

A. Franklin's Background

14. In August 2001, Nocella and McCann, among others, formed Franklin Bank Corp. On April 9, 2002, Franklin Bank Corp. acquired Franklin Bank, S.S.B., and through it, began operating a multi-branch savings and loan bank. The Bank provided community banking products and services, and commercial banking services to corporations and other business clients, and it originated single family residential mortgages. It also provided financing for single family home builders and commercial real estate.

15. At all times relevant to the misconduct detailed in this Complaint, Nocella and McCann were highly paid senior executives at Franklin. Moreover, each Defendant owned a significant stake of Franklin Bank Corp. that motivated him to ensure that Franklin was a successful business venture. Specifically, at the end of the third quarter of 2007, Nocella and McCann owned approximately 200,000 shares and approximately 40,000 shares of Franklin Bank Corp. stock, respectively. In addition, Nocella and McCann both received incentive based bonuses from Franklin.

16. As CEO and CFO, respectively, Defendants Nocella and McCann were in a position of ultimate responsibility for Franklin's financial condition and Franklin's proper and accurate reporting of that financial condition to the public.

B. Franklin's Disclosure and Accounting Policies

17. In the second and third quarters of 2007, the financial markets began showing signs of severe distress caused by, among other things, increasing mortgage delinquencies and falling home prices. Indeed, many commercial banks disclosed huge losses caused by rising delinquencies in their single-family mortgage loans and related portfolios.

18. As described in its public filings with the Commission, Franklin's stated policy regarding disclosure of non-performing loans was to place such loans "on nonaccrual status [*i.e.*, no longer accrue interest from the loans into income] upon becoming four payments past due as to interest or principal." The Bank's policy was not to return loans to accrual until "the loan becomes current and the borrower demonstrates the ability to repay the loan." Franklin disclosed these policies in periodic filings, including its Form 10-Q for the third quarter of 2007 (hereinafter, the "third quarter 10-Q") and its Form 10-K for 2006, as incorporated by reference in its third quarter 10-Q.

19. Likewise, Franklin, consistent with generally accepted accounting principles ("GAAP"), disclosed in its public filings with the Commission that it considered a loan "impaired" when it was probable that the creditor would be unable to collect all principal and interest amounts due according to the contractual terms of the loan agreement. While the impairment policy excluded "smaller balance homogeneous loans, like single-family residential and consumer loans," the policy did not exclude larger commercial loans, like residential construction loans. Moreover, GAAP required the Bank to impair single-family residential loans if it modified those loans and, in so doing, granted a concession to the borrower (*i.e.*, granted the borrower a troubled debt restructuring ("TDR")). A creditor is deemed to have granted a

concession if, among other things, the debtor's effective borrowing rate on the restructured debt is less than the effective borrowing rate of the debt immediately prior to the restructuring.

20. Nocella and McCann disclosed Franklin's impairment policy and certified that its financial statements conformed to GAAP as part of the Bank's Form 10-K for 2006, which was incorporated by reference in Franklin's third quarter 10-Q.

21. The practical effect of Franklin's disclosure policies on non-performing/non-accrual assets was that Franklin, like other banks, had to disclose that its severely delinquent loans as non-performing loans/assets in Franklin's public filing with the SEC. Likewise, under Franklin's impairment policies and GAAP, the Bank had to conduct an impairment analysis on delinquent loans if it appeared that the borrower would be unable to make its payments according to a loan's terms or if Franklin restructured the loans because of the borrower's financial distress.

C. Nocella and McCann Are Advised to "Polish the Apple"

22. Franklin, like most other banks, was not immune to the economic crisis. By September 2007, Franklin's loan portfolio totaled $4.2 billion, containing $1.8 billion in single-family mortgage loans and $1.3 billion in loans to single-family home builders. More than 70% of its loans were related to the housing market and collateralized by residential real estate.

23. The Bank's total loan delinquencies increased by more than $30 million, or 24%, from June to August 2007. During the third quarter, Nocella and McCann requested and received monthly delinquency reports and updates that showed delinquency increases, including reports on August 8, August 24, and September 11, 2007. By July 31, 2007, Franklin's internal reports showed that the Bank's non-performing loans for single-family residential and residential-construction loans combined were at $22.1 million. By the end of August 2007,

Franklin's internal reports showed that Franklin's non-performing loans for single-family residential and residential-construction loans combined had increased to $24.3 million.

24. During the third quarter of 2007, Nocella and McCann knew that the market, research analysts, and investors were closely monitoring the quality of Franklin's loan portfolio. And Nocella and McCann knew that Franklin was at risk of missing its earnings projections due to its deteriorating single-family and residential construction loan portfolios. In fact, on August 6, 2007, Nocella and Lewis Ranieri ("Ranieri"), Franklin Bank Corp.'s Chairman of the Board, met with investment bankers from RBC Capital Markets ("RBC") to discuss strategic alternatives to raise capital, including a possible sale of the Bank.

25. Three days later, RBC, during a presentation to Franklin's Board of Directors regarding strategic alternatives, told Defendants that for Franklin's strategic options to remain viable, the Bank needed to meet Wall Street earnings per share ("EPS") estimates for the third and fourth quarters of 2007. RBC also recommended to Defendants that Franklin "polish the apple" by demonstrating "positive EPS momentum and stabilized asset quality."

D. Franklin's Scheme to Conceal Its Deteriorating Asset Quality

26. On August 8, the day before the Board of Directors' meeting with RBC, McCann emailed Nocella a spreadsheet of potential problem loans, noting an increase from $14.4 million potential problem loans in March to $28.7 million in June. On August 24, Nocella and McCann received an email stating that delinquent loans had increased an additional $18.3 million since the end of July, and that delinquent loan data was available daily on the delinquent loans report.

27. By the end of August, Nocella and McCann understood that Franklin could not demonstrate "stable asset quality" because its loan portfolio was rapidly deteriorating. Defendants also knew that the Bank was required to impair certain of its larger, commercial

loans – including a $13.5 million loan residential construction loan (*see* section D. 2, below), which would require Franklin to increase its loan loss reserves. Finally, Nocella and McCann were aware that increasing the Bank's non-performing loans and impairing bank assets would decrease Franklin's reported earnings because: (i) Franklin could not, in accordance with GAAP, recognize interest on non-performing loans; and (ii) the increased impairment would require Franklin to increase its loan loss reserves and offset the increased reserves against Franklin's earnings. Franklin treated an increase in reserves as an expense, which reduced the Bank's net income.

28. Realizing the negative implication of increasing non-performing assets and increasing its loan loss reserves on its disclosures and earnings (not to mention its plans for "strategic alternatives"), Nocella and McCann embarked on a scheme to deceive investors about Franklin's non-performing loans, non-performing assets, and earnings.

29. Within days of RBC's meeting with Franklin's Board of Directors, Nocella proposed to implement a loan-modification program aimed at reducing single family residential loans over four payments past due. Pursuant to this program, Franklin would "modify" non-performing loans in the Bank's portfolio to reflect those loans as performing.

30. On August 30, 2007, McCann emailed Nocella, questioning what loans could be brought current as a result of the proposed modifications and whether the proposed loan modification program would improve Franklin's financial statements. Specifically, McCann told Nocella that modifying delinquent loans without an agreement or a payment would "automatically" create a "non-performing loan" for the period of the extension. The email also: (i) advised Nocella that the modified loans would "remain delinquent, but accruing, until such time that payments are made under the modified terms"; and (ii) cautioned Nocella that he was

"still looking at the regs to see when the loan could be considered current under regulatory guidelines." In response, Nocella told McCann that Franklin "need[ed] to get done before 9-30 as you know. Keep working this. This is incredibly important. Need a better answer." Thus, before implementing their loan modification scheme, Nocella and McCann understood that doing so had disclosure and accounting implications for Franklin.

31. Even though the disclosure and accounting issues raised during Nocella and McCann's August 30, 2007 discussion were never resolved, Nocella and McCann approved and implemented three loan modification programs during the third and fourth quarters of 2007: (i) Fresh Start; (ii) Strathmore; and (iii) Great News.

1. Fresh Start

32. Pursuant to the loan modification program known as "Fresh Start," Franklin unilaterally sent letters to delinquent and severely delinquent borrowers – all of whom were four or more payments past due and had failed to demonstrate the ability to pay under the terms of their loans. The letters advised the severely delinquent borrowers that the Bank would consider their loans current if the borrowers: (i) contacted the Bank by October 1, 2007; (ii) agreed to make one payment; (iii) agreed to move all past due amounts to the end of the loan due at the maturity of the loan; and (iv) made a payment on or before October 13, 2007 under the terms of the original loan.

33. Through the end of the third quarter of 2007, Daniel Cooper, an Executive Vice President and Managing Director of the Bank's mortgage banking division, regularly updated Nocella and Ranieri about the dollar amount of loans that had been modified under the Fresh Start program. On September 22, 2007, Cooper notified Nocella via email that Franklin had modified approximately $7 million in loans and would modify more than $10 million in loans,

consistent with the goal Nocella had previously set for the end of the third quarter. But Nocella, citing increasing non-performing loans and non-performing assets, responded to Cooper by increasing the goal to a minimum of $15 million and telling him that $16.7 million "would be better." Notably, Cooper's email to Nocella includes multiple references to "NPL"—shorthand for non-performing loans.

34. On September 28 (the last business day of the third quarter), Cooper emailed Ranieri and Nocella that: (i) approximately $10 million in loans had been modified; (ii) approximately $2 million in payments were posted, but would not appear on the Bank's reports until the following day; (iii) a collection crew was working Saturday; and (iv) $14 million was "within reach but we need to get lucky with some bigger loans."

35. Ultimately, Franklin modified millions of dollars of loans through the Fresh Start program, including $4 million in loans that were previously classified by the Bank as non-performing. In Franklin's third quarter 10-Q, Nocella and McCann removed the non-performing loans that were modified pursuant to the Fresh Start program from the Bank's disclosures of non-performing loans and non-performing assets. Such removal was inconsistent with the Bank's internal Asset Classification Policies and Procedures ("Asset Policies") and publicly disclosed policy on non-performing assets, which required the borrowers to make three payments and otherwise "demonstrate ability to repay the loan" before the loan could be reclassified as performing.

36. Moreover, because the Fresh Start loans were TDRs under GAAP, Franklin was required to impair them pursuant to Statement of Financial Accounting Standard No. 114 ("SFAS" 114). SFAS 114 requires creditors to measure impairment based on the present value of expected future cash flows or an observable fair value of the collateral *(i.e.*, an appraisal) if the

loan is collateral dependent. If that present value is less than the recorded investment in the loan, the impairment should be added to reserves and expensed against income.

37. The modified Fresh Start loans included a concession to the borrower: Franklin lowered the debtors' effective borrowing rates by deferring overdue interest payments, without interest, until a one-time balloon payment at maturity of the loan. Accordingly, the Fresh Start loans should have been treated as TDRs, and Franklin was required to impair them pursuant to SFAS 114.

38. Although Nocella and McCann understood (at least as of August 30, 2007, and likely much earlier) that Fresh Start had accounting implications for the Bank, they did not cause Franklin to conduct an impairment analysis of any of the loans modified under the Fresh Start program during the third quarter of 2007, and did not impair any of the Fresh Start loans as required by GAAP.

39. Further, although Franklin admits that the Fresh Start loan modifications qualified as TDRs, even if they did not, SFAS 5 required Franklin to impair the loans because of the borrowers' failures to make timely payments.

40. As a result of their concealment of the Fresh Start loan modifications, Nocella and McCann caused Franklin to understate its non-performing assets by $4 million in its third quarter 10-Q, representing a 24% understatement of non-performing loans and a 7% understatement of non-performing assets.

41. As a result of Franklin's failure to appropriately impair the Fresh Start loans and the Bank's continued recognition of interest income on these non-performing loans, Nocella and McCann caused Franklin to overstate materially its earnings in the third quarter 10-Q by approximately $1.3 million (17% of reported third quarter earnings).

42. Franklin's accounting for the Fresh Start modifications did not comply with GAAP. On August 6, 2008, Franklin filed a Form 8-K admitting that Franklin "did not account for certain single family mortgage loan modification programs developed and implemented in the 3rd and 4th quarters of 2007 [including Fresh Start] as TDRs, and did not place these loans on non-accrual status."

43. In the face of the clear trend of increasing delinquencies, Nocella and McCann each signed and certified the third quarter10-Q, stating that the decrease in non-performing assets was the result of a decrease in Franklin's non-performing single-family loans. And they did so knowing that such "reduction" was due to their deviation from Franklin's stated disclosure policies relating to non-performing loans.

44. At the time that they signed and certified the third quarter 10-Q, Nocella and McCann knew that: (i) many of the Fresh Start loans were over four payments past due; (ii) the loans had not become current; and (iii) the borrowers had not demonstrated the ability to repay the loan. In fact, Nocella instructed Cooper to focus on modifying non-performing loans in his September 22, 2007 email that increased the monetary target for the Fresh Start program. Likewise, McCann reviewed a spreadsheet after the end of the third quarter that listed many of the Fresh Start loans and indicated that those loans were removed from the Bank's delinquency report.

45. Despite their knowledge of the Bank's publicly stated nonaccrual policy, their participation in the Fresh Start modification, and their awareness of the Fresh Start borrower's financial distress, Nocella and McCann failed to include the Fresh Start loans in the Bank's disclosure of non-performing assets and non-performing loans.

2. Strathmore Modifications

46. Because he understood that Fresh Start was not enough to "polish the apple," Nocella tasked Franklin's General Counsel with reducing the growing delinquencies in Franklin's residential builder construction loan portfolio. Nocella was particularly concerned about four troubled loans totaling $13.5 million to Strathmore Finance Co. and its subsidiaries for four construction projects in the Detroit area (the "Strathmore loans"). By the summer of 2007, Strathmore could not repay the loans and asked Franklin for a loan modification. In fact, Strathmore's financial condition was so dire that it requested an interest reserve as part of the modification.

47. An "interest reserve" allows a lender to advance loan funds to pay interest charges on the outstanding balance of the loan. The interest is capitalized and added to the loan balance.

48. Franklin's Chief Credit Officer ("CCO") reviewed Strathmore's modification request and determined that Strathmore was "insolvent." Accordingly, Epperson instructed the Bank's loan officer to obtain additional collateral from Strathmore as a precondition to any modification of the Strathmore loans, and told the Executive Management Credit Committee ("Credit Committee"), including Nocella and McCann, that banking regulations required new appraisals because the loans were over 90 days delinquent (*i.e.,* non-performing loans).

49. On September 25, 2007, Nocella sent an email to Jones stating that the Bank needed "to get a paper close [on the Strathmore modifications] by Fri. to make numbers."

50. Also on September 25, Nocella and McCann made an investor presentation at a conference hosted by RBC. During the conference, Nocella and McCann told investors that the asset quality in the builder portfolio was stable to improving, that Franklin anticipated a decrease in the overall level of non-performing assets by the first quarter of 2008, and reiterated its full

year 2007 EPS estimates of $1.22 to $1.26. When they made the statements at the RBC conference, Nocella and McCann knew, by virtue of internal delinquency reports that they reviewed, that Franklin's delinquencies continued to increase. Accordingly, they also knew, or were severely reckless in not knowing, that their statements to investors were contingent on Franklin's modification of non-performing loans, including the Strathmore loans.

51. On September 28, based on Nocella and McCann's presentation at the investment conference, RBC issued an analyst report characterizing the purported improvement in the quality of Franklin's loan portfolio as "surprising and very positive." RBC reported that "the net impact of these fundamental trends is a more positive outlook than we were expecting, particularly given the heavy exposure to the mortgage market."

52. That same day, Nocella convened a special meeting of the Credit Committee to address the proposed Strathmore loan modifications. During this meeting and despite the CCO's objections to the Strathmore loan modifications, the Credit Committee, including Nocella and McCann, agreed to modify the Strathmore loans by approving an interest reserve sufficient to cover the next 12 months' interest payments.

53. Nocella and McCann, as the Bank's senior executives and top accountants, knew that the loan modifications would have material accounting implications for the Bank. But neither Nocella nor McCann undertook to determine the appropriate accounting treatment for the Strathmore modification. Likewise, Nocella and McCann both failed to analyze whether the Strathmore loan should be impaired as a result of the borrower's inability to make timely payments under the terms of the loan agreement.

54. By September 28, 2007, the Strathmore loans were over four payments past due, and therefore, non-performing. Moreover, because the Strathmore borrower was insolvent, it

could not demonstrate that it had the ability to make payments on the loan. Accordingly, the Strathmore loans, consistent with the Bank's publicly stated policies relating to non-performing loans, should have been reflected as non-performing in Franklin's third quarter 10-Q, and the Bank should have impaired the Strathmore loans. However, during the third quarter of 2007, Franklin did not conduct an impairment analysis of the Strathmore loans, and did not impair them as required by GAAP.

55. In October 2007, the FDIC examined Franklin and discovered the Strathmore modifications. The FDIC determined that the "Strathmore loans warranted placement on nonaccrual and evaluation for impairment" under SFAS 114. Under SFAS 114, Franklin was required to impair the loans because in light of Strathmore's distressed financial condition, it was improbably that Franklin would be able to collect all principle and interest due on the loan.

56. Despite their certification of the Bank's publicly stated nonaccrual policy, their participation in the Strathmore modification, and their awareness of the Strathmore borrower's financial distress, Nocella and McCann failed to include the Strathmore loans in the Bank's public disclosure of non-performing assets and non-performing loans.

57. As a result of their improper accounting treatment for the Strathmore loan modifications, Nocella and McCann caused Franklin to understate its non-performing loans by $13.5 million in the third quarter 10-Q, representing an 81% understatement of non-performing loans and a 24% understatement of non-performing assets. Because the Strathmore loans were not impaired and the Bank continued to recognize interest income on the non-performing loans, Nocella and McCann caused Franklin to overstate its reported earnings by at least $2.7 million (36% of reported earnings) in the 3rd quarter of 2007.

58. On December 20, 2007, Franklin filed a Form 10-Q/A for the third quarter of 2007, amending its treatment of the Strathmore loans to reflect the loans as TDRs. But the 10-Q/A did not disclose the other modification programs (Fresh Start and Great News). Accordingly, Nocella and McCann continued to understate Franklin's non-performing loans (23%) and non-performing assets (10%) relating to the other programs.

3. Great News

59. Based on the information that Cooper had provided regarding the Fresh Start modifications and the Defendants' later authorization of the Strathmore modifications, Nocella told investors at an RBC investor conference on September 25, 2007 that Franklin anticipated that non-performing assets would decrease by the end of 2007.

60. After the end of Franklin's third quarter, on October 1, 2007, Franklin's Credit Committee convened to discuss loans showing credit deterioration. The draft minutes reflected that Cooper reported to members of the Committee that Fresh Start had reduced the Bank's non-performing assets from $14 million to $10 million, which was at least $6 million less than he had told Ranieri and Nocella in late September.

61. On October 3, 2007, Cooper, Nocella, and the other Bank officers, received via email from the committee secretary the draft minutes of the meeting for comments and corrections. At least three attendees, including Cooper, responded that the draft accurately reflected the discussion during the Credit Committee meeting.

62. On October 4, 2007, Ranieri called Nocella and Cooper to discuss the $6 million shortfall in loan modifications. Indeed, Ranieri was furious that Cooper "had lied" and overstated the number of non-performing loans that were modified and brought current during the third quarter of 2007.

63. Following Ranieri's phone call, in an effort to conceal the $6 million shortfall and placate Ranieri, Nocella directed Cooper to implement a retroactive, unilateral-loan-modification program to reduce the third quarter non-performing loan amounts without requiring a payment from the borrower. At Nocella's direction, Cooper instructed Sharon Koehl ("Koehl"), a senior loan officer at the Bank, to generate a list of *severely delinquent* borrowers (*i.e.*, more than four payments past due) and draft a letter to them.

64. On or about October 5, 2007, Nocella reviewed and approved the modification letter that became known as the "Great News letter," and directed that the letter be sent to 28 single-family borrowers whose loans were classified as non-performing. Although these loans were severely delinquent—between 119 and 545 days past due—the Great News letter advised the borrowers that their loans were now current and that, to remain current, borrowers only needed to make their next scheduled payment.

65. Also on October 5, 2007, Nocella caused the draft of the minutes from the October 1, 2007 Credit Committee meeting to be revised to reflect that non-performing assets dropped from $14 million to $4 million. According to Cooper, the additional $6 million decrease (*i.e.*, from $14 million to $10 million to $14 million to $4 million) reflected unilateral modifications made after the October 1st credit committee meeting (*i.e.*, in the company's fourth quarter) pursuant to the Great News program.

66. After the Great News letters were mailed, Koehl sent the list of borrowers to a member of the Bank's mortgage department that was responsible for updating the loan servicing system. Koehl instructed the employee to reflect the Great News loans as current in Franklin's accounting system. In response, the employee approached Cooper to confirm that he understood that rolling the loans current in the accounting system would alter Franklin's financial records.

67. In response to the employee's concerns, Cooper sought guidance from McCann regarding the accounting treatment for the Great News loans. In response, McCann told Cooper that: (i) Franklin could book the non-performing loans as performing based on the date the decision to modify was made; and (ii) the Great News modifications were an "isolated case" to test the accounting treatment.

68. By the end of the third quarter of 2007, the Great News loans were significantly over four payments past due, and therefore, non-performing. Moreover, none of the Great News borrowers made payments; therefore, none of the Great News borrowers could have demonstrated the ability to make payments on the loan. Accordingly, the Great News loans, consistent with the Bank's publicly stated policy on non-performing assets and the Asset Policies should have been reflected as non-performing in Franklin's third quarter 10-Q.

69. Like the Fresh Start loans, the modified Great News loans included a concession to the borrower: Franklin lowered the debtors' effective borrowing rates by deferring overdue interest payments, without interest, until a one-time balloon payment at maturity of the loan. Accordingly, the Great News loans should have been treated as TDRs, and Franklin was required to impair them pursuant to SFAS 114. However, during the third quarter of 2007, Franklin did not conduct an impairment analysis of any of the loans modified under the Great News program as required by GAAP.

70. In addition, Nocella and McCann, by virtue of their experience as CPAs and as long-time executives at public companies, knew that it was improper to use a program implemented in the fourth quarter of 2007 to fix Franklin's third quarter financial results. In fact, during an internal investigation that followed revelations of Franklin's improper disclosure and accounting practices, Nocella attempted to coerce Koehl into stating that the Great News

program began before the end of the third quarter of 2007. Nocella's efforts to cover up his misconduct further evidence his intent to deceive.

71. As a result of Franklin's failure to appropriately treat the Great News loans as TDRs and impair them and the Bank's continued recognition of interest income on these non-performing loans, Nocella and McCann caused Franklin to overstate its earnings by approximately $1.8 million (24% of reported earnings).

72. By virtue of the Great News program, Nocella and McCann concealed from investors $7 million of non-performing loans in its third quarter 10-Q, representing a 42% understatement of non-performing loans and a 13% understatement of non-performing assets.

73. Despite their certification of the Bank's publicly stated policy on non-performing loans, their knowledge that loan modifications had accounting implications that they had not resolved (as evidenced, for example, by their August 30, 2007 email exchange), their participation in the Great News modification, and their awareness of the Great News borrower's financial distress, Nocella and McCann failed to include the Great News loans in the Bank's disclosure of non-performing assets and non-performing loans.

74. On August 6, 2008, Franklin filed a Form 8-K admitting that it failed to "account for certain single family mortgage loan modification programs developed and implemented in the 3^{rd} and 4^{th} quarters of 2007 [including Great News] as TDRs, and did not place these loans on non-accrual status."

E. Nocella and McCann's Fraudulent Disclosures

75. As described above, Nocella and McCann closely monitored monthly reports indicating that Franklin delinquencies were increasing. In fact, in preparation for filing

Franklin's third quarter 10-Q, McCann reviewed a spreadsheet identifying the modified loans and indicating that those loans were removed from the Bank's delinquency reports.

76. The following chart, based on Franklin's delinquency reports reviewed by Nocella and McCann, summarizes the increase in Franklin's non-performing single-family and residential construction loans during the third quarter of 2007:

Non-performing Loans (in millions)

	Single Family	**Residential Construction**	**Total**
June 30, 2007	$9.9	$4.9	$14.8
July 31, 2007	$10.1	$12.0	$22.1
August 31, 2007	$12.0	$12.3	$24.3
September 30, 2007 (reported)	**$2.9**	**$12.6**	**$15.5**
September 30, 2007 (actual)	**$13.9**	**$26.1**	**$40.0**

77. Despite the clear trend indicating that delinquencies were increasing, Nocella and McCann signed and certified the Bank's third quarter 10-Q, including the statement that *"an increase in non-performing commercial loans . . . was offset by a reduction of non-performing single family mortgages of $9.5 million"* (emphasis added). In light of these clear trends and each Defendant's focus on the delinquency issue during the third quarter of 2007, including the September 22, 2007 email exchange between Nocella and Cooper discussing "NPL," both Nocella and McCann knew that the loan modification schemes were aimed at converting non-performing loans into performing loans.

78. Nocella and McCann disseminated Franklin's false financial performance to the public by: (i) filing a Form 8-K on October 30, 2007 containing the press release announcing Franklin's third quarter performance; (ii) speaking on a quarterly earnings conference call held on October 30, 2007; (iii) filing a third quarter Form 10-Q on November 9, 2007; and (iv) filing a third quarter Form 10-Q/A on December 20, 2007.

79. On August 6, 2008, Franklin filed a Form 8-K and disclosed that "it did not account for certain single family mortgage loan modification programs developed and implemented in the 3rd and 4th quarters of 2007 as TDRs, and did not place these loans on non-accrual status." As a result of the Fresh Start, Strathmore, and Great News modifications, Franklin was able to report non-performing loans of $16.6 million for the third quarter 2007. Had the Bank properly accounted for the modification programs, Franklin's non-performing loans would have increased by $24.5 million (or 147%) and its non-performing assets would have increased by 44%. The majority of these modifications ($21 million) took place after the RBC investor conference on September 25, 2007. Indeed, as a result of the loan modifications, Franklin was able to report that non-performing assets were flat for the third quarter, which was: (i) consistent with Nocella and McCann's false statements at the RBC conference; and (ii) especially significant to investors in light of the rise in delinquencies and non-performing assets at other banks during this time period.

80. As a result of failing to properly account for the loan modification programs in accordance with GAAP and appropriately classifying the modified loans as non-performing assets consistent with Franklin's publicly stated policies, Nocella and McCann misled investors in Franklin's public statements as follows:

Non-performing Assets/Non-performing Loans	Maker(s)	Filing(s)/Event(s)
Misstatement: Franklin "had \$55.4 million in non-performing assets, comprised of \$16.6 million in non-performing loans."	Nocella and McCann	10-Q 8-K
Reality: Franklin had \$79.9 million of non-performing assets, and \$41.1 million of non-performing loans.		
Misstatement: "Loans are generally placed on nonaccrual status upon becoming four payments past due as to interest or principal."	Nocella and McCann	10-Q 10-Q/A
Reality: Nocella and McCann knew, by virtue of their direct participation in the loan modification programs, that the Fresh Start, Strathmore, and Great News programs included loans that were four or more payments past due. They also knew that Franklin was not placing the modified loans "on nonaccrual status."		
Misstatement: "The overall delinquency trends point-to-point, that's June 30th to right now are flat."	Nocella	3rd Quarter Call
Reality: Nocella knew that the number of delinquencies in the Bank's loan portfolio was continuing to increase, when compared to the number of delinquencies as of June 30th. Nocella also knew that Franklin had improperly treated \$24.5 million of non-performing loans and non-performing assets as current during the 3rd quarter.		
Misstatement: Franklin's "non-performing loans as a percentage of total assets remained stable…[and] our non performing assets increase[d] slightly in relationship to our portfolio."	McCann	3rd Quarter Call
Reality: McCann knew that Franklin's non-performing loans, absent improper adjustments relating to Fresh Start, Strathmore, and Great News, were actually \$41.1 million during the 3rd quarter of 2007, which was a 152% increase over the previous quarter.		

Misstatement: Franklin had "$68.9 million in non-performing assets, comprised of $16.6 million in loans that were four payments or more delinquent in nonaccrual status, $13.5 million of restructured loans on nonaccrual and $38.8 million of real estate owned."	Nocella and McCann	10-Q/A
Reality: Franklin had $79.9 million of non-performing assets and $41.1 million of non-performing loans "that were four payments or more delinquent" during the 3rd quarter of 2007.		

Earnings/ Net Income

Misstatement: Franklin earned $7.5 million in net income.	Nocella and McCann	10-Q 8-K
Reality: Franklin earned $1.8 million in net income for the 3rd quarter of 2007.		

Loan Loss Reserves

Misstatement: "Management believes that the allowance for credit losses is adequate to cover known and inherent risks in the loan portfolio as of September 30, 2007."	Nocella and McCann	10-Q 10-Q/A
Reality: By August 2008, Franklin had determined that its financial disclosures for the 3rd quarter of 2007 understated reserves by $2.9 million for the Great News and Fresh Start modification programs and $2.2 million for the Strathmore TDR.		

F. Nocella and McCann's Lies to Franklin's Auditor

81. Despite their extensive knowledge of and participation in the loan modification scheme, Nocella and McCann certified the accuracy of the disclosures in the Forms 10-Q and 10-Q/A for the third quarter of 2007. For each filing, they certified (in pertinent part) that: (i) they had individually reviewed the filing; (ii) it did not contain any untrue statement of a material fact

or omit to state a material fact; and (iii) the financial statements and other financial information, fairly presented in all material respects the issuer's financial condition, results of operations, and cash flows. Nocella and McCann, by virtue of their loan modification scheme, concealed from shareholders rising delinquencies and overstated Franklin's earnings.

82. Moreover, as part of the quarterly review and in advance of filing the Forms 10-Q and 10-Q/A, Nocella and McCann signed management representation letters to Franklin's auditors on November 9, 2007 and December 19, 2007. The letters represented, among other things that: (i) the financial statements conformed with GAAP; (ii) Franklin's internal controls over financial reporting were established and maintained; (iii) ***"all impaired loans receivable have been properly recorded and disclosed in the financial statements;"*** and (iv) ***"[l]oans that have been restructured to provide a reduction or deferral of interest or principal payments because of borrower financial difficulties have been properly recorded and disclosed in the financial statements"*** (emphasis added). As detailed above, these statements were false, and were made by Nocella and McCann in furtherance of their scheme to conceal rising delinquencies and to overstate earnings.

G. Franklin's Corrective Disclosures, Internal Investigation, and Failure

83. On November 26, 2007, Franklin issued a press release announcing, among other things, that it should have classified an additional $13.5 million in loans as non-performing (due to Strathmore), and that it would increase reserves by $20 million. Despite discussions with the FDIC and its auditors about the Strathmore TDRs and the similarity between them and the single-family-modification programs, Franklin did not disclose the Fresh Start and Great News programs as part of the press release.

84. On February 19, 2008, a Franklin employee wrote Franklin's general counsel alleging fiscal irregularities at Franklin. This complaint prompted Franklin's audit committee to retain counsel to investigate. As a result, on March 14, 2008, Franklin announced that it would delay filing its 2007 Form 10-K (it ultimately never made further periodic SEC filings). The internal investigation found that Franklin, through the Fresh Start and Great News programs, improperly treated nonperforming assets as performing assets.

85. On August 6, 2008, Franklin filed a Form 8-K disclosing that accounting issued required Franklin to restate its financial statements in its third quarter 10-Q. In fact, due to Franklin's material non-compliance with the financial reporting requirements of the federal securities laws, which were the result of the misconduct described herein, Franklin was required to issue accounting restatements.

86. On November 7, 2008, the Texas Department of Savings and Mortgage Lending closed Franklin Bank, S.S.B., and the FDIC was appointed Receiver. On November 12, 2008, Franklin Bank Corp. filed Chapter 7 bankruptcy, and the court appointed a trustee. As a result of the Bank's failure, Franklin did not file the required restatement of its financial results.

H. Defendants' Bonus Compensation

87. As CEO, Defendant Nocella received $25,000 in bonuses from the Bank during the twelve months following the filing of the false financials.

88. As CFO, Defendant McCann received $50,000 in bonuses from the Bank during the twelve months following the filing of the false financials.

89. In order to prevent senior executives from profiting from the filing of inaccurate financial statements, Section 304 of the Sarbanes-Oxley Act requires an issuer's CEO and CFO to repay to the issuer any incentive-based compensation, equity-based compensation, bonuses,

and stock-sale profits ("SOX 304 compensation") the executives received during the twelve months following the date on which the original financial statement (giving rise to the restatement) was issued or filed with the Commission (whichever comes first), if those financial results are later required to be restated as a result of misconduct.

90. Franklin was required to restate its financials for the third quarter 2007 as a result of the misconduct of Nocella and McCann. However, neither Defendant has repaid Franklin the SOX 304 compensation he received.

CLAIMS FOR RELIEF

COUNT 1

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

91. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

92. Defendants Nocella and McCann directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

93. By reason of the foregoing, Defendants Nocella and McCann directly or indirectly, violated, and are reasonably likely to continue to violate, unless enjoined, 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 II

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

94. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

95. Franklin, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

96. Defendants Nocella and McCann, directly and indirectly, each had a general awareness that he was part of an overall activity that was improper or illegal and knowingly, or with severe recklessness, provided substantial assistance to violations by Franklin of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

97. By reason of the foregoing, Defendants Nocella and McCann aided and abetted Franklin's violations, and is reasonably likely to again aid and abet Franklin's violations, unless

enjoined, 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 III

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

98. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

99. Defendants Nocella and McCann knowingly, or with severe recklessness, signed and filed materially false and misleading periodic reports and a current report with the Commission that misrepresented Franklin's: (a) non-performing assets, (b) non-performing loans, and (c) net income.

100. Franklin: failed to timely and accurately file reports with the Commission regarding its assets, liabilities, and net income; failed to include material information in its required statements and reports as was necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and filed or caused to be filed with the Commission materially false and misleading financial and informational statements. These filings misstated Franklin's non-performing loans, non-performing assets, and net income.

101. By reason of the foregoing, Franklin violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11, and 240.13a-13].

102. Nocella and McCann knowingly, or with severe recklessness, gave substantial assistance to Franklin in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]

and Exchange Act Rules 12b-20, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11, and 240.13a-13].

103. By reason of the foregoing, Nocella and McCann aided and abetted Franklin's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11, and 240.13a-13].

COUNT IV

Aiding and Abetting Violations of the Books and Records and Internal Control Provisions of the Exchange Act (Sections 13(b)(2)(A) and 13(b)(2)(B)) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]

104. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

105. By engaging in the foregoing misconduct, Franklin, whose securities are registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l]: (a) failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and (b) failed to devise and maintain a system of internal controls sufficient to provide reasonable assurances that: (a) transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (b) to maintain accountability of assets.

106. By engaging in the foregoing misconduct, Franklin violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

107. Nocella and McCann knowingly, or with severe recklessness, provided substantial assistance to Franklin in its failure to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions

Franklin's assets and in failing to devise and maintain a system of internal accounting controls sufficient to reasonably assure that transactions were recorded and financial statements were prepared in conformity with GAAP.

108. By reason of the foregoing, Nocella and McCann aided and abetted Franklin's violations, and unless restrained and enjoined will continue to aid and abet violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A) and (B)].

COUNT V

Circumventing or Failing to Implement Internal Controls
(Exchange Act Section 13(b)(5) and Rule 13b2-1)
[15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1]

109. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

110. By engaging in the foregoing misconduct, Defendants Nocella and McCann violated, and unless enjoined will continue to violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls at Franklin, or by knowingly falsifying, or causing to be falsified, Franklin's books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

COUNT VI

Misrepresentations and Misconduct in Connection
with the Preparation of Required Reports
(Exchange Act Rules 13b2-2(a) [17 C.F.R. § 240.13b2-2(a)]

111. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

112. By engaging in the foregoing misconduct Nocella and McCann violated Exchange Act Rule 13b2-2(a) [17 C.F.R. § 240.13b2-2a] by, directly or indirectly, making, or causing to be

made, materially false or misleading statements, or omitting to state, or causing another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with (a) an audit, review or examination of the financial statements of Franklin required to be made pursuant to Commission rules, or (b) the preparation or filing of documents or reports required to be filed with the Commission.

COUNT VII

Violations of Certifications Rules of the Exchange Act
(Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14])

113. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

114. Acting under Section 302 of the Sarbanes-Oxley Act of 2002 and Exchange Act Rule 13a-14, Nocella and McCann certified on behalf of Franklin Forms 10-Q on November 9, 2007, and 10-Q/A on December 20, 2007.

115. Specifically, Nocella and McCann certified that they had reviewed these reports and that, based on their respective knowledge, the reports did not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and, based on their knowledge, the financial statements and other financial information included in the reports, fairly presented in all material respects the financial condition, results of operation and cash flows of Franklin for the periods presented on the reports.

116. At the time Nocella and McCann issued these certifications, they knew or were severely reckless in not knowing that the reports they certified contained untrue statements of

material facts and/or omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

117. By reason of the foregoing, Nocella and McCann violated and unless enjoined will continue to violate Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] promulgated under Section 302 of the Sarbanes-Oxley Act of 2002.

COUNT VIII

Failure to Reimburse
(Violation of Section 304(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243(b)])

118. The Commission realleges and incorporates by reference Paragraphs 1 through 90.

119. Nocella and McCann, by engaging in the aforementioned conduct, caused Franklin to file Forms 8-K dated October 30, 2007, Form 10-Q for the period ended September 30, 2007, and Form 10-Q/A for the period ended September 30,2007, that were in material non-compliance with its financial reporting requirements under the federal securities laws.

120. Due to Franklin’s material non-compliance with its financial reporting requirements, and as a result of the misconduct of Nocella and McCann, Franklin was required to prepare accounting restatements for the quarter ended September 30, 2007.

121. Defendants have failed to reimburse Franklin for the SOX 304 compensation received or obtained during the statutory time periods established by the Sarbanes-Oxley Act of 2002.

122. The Commission has not exempted Defendants, pursuant to Section 304(b) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243(b)], from its application under Section 304(a) [15 U.S.C. § 7243(a)].

123. By engaging in the conduct described above, Defendants violated, and unless ordered to comply will continue to violate, Section 304(a) of the Act, 15 U.S.C. § 7243(a).

REQUEST FOR RELIEF

For these reasons, the Commission respectfully requests that the Court enter a final judgment:

a) permanently enjoining Nocella and McCann from violating Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder;

b) permanently enjoin Nocella and McCann from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-11, and 13a-13 thereunder;

c) ordering Defendants to disgorge all ill-gotten gains, with prejudgment interest;

d) ordering Defendants to pay civil penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

e) prohibiting each Defendant, under Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports under Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)];

f) in a form consistent with Fed. R. Civ. P. 65(d), ordering Nocella and McCann to reimburse Franklin for bonuses pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243]; and

g) granting such other relief as the Court may deem just and appropriate.

Dated: April 5, 2012

Respectfully submitted,

/s/ Jennifer D. Brandt

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