UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 52126 / July 26, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2282 / July 26, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11990

In the Matter of **MICHAEL J. CHESHIRE** **Respondent.**	:	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Michael J. Cheshire ("Cheshire" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement of Michael J. Cheshire ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] as follows:

RESPONDENT

Cheshire, age 56, was the president and chief operating officer of Gerber Scientific, Inc. from February 1997 to September 1998 and chief executive officer and Chairman of the Board of Directors from September 1998 until November 2001. Mr. Cheshire resides in Farmington, Connecticut.

RELEVANT ENTITY

Gerber Scientific, Inc. ("Gerber" or "Company"), a Connecticut corporation with its headquarters in South Windsor, Connecticut, at all relevant times, was a provider of sign making and specialty graphics, apparel and flexible materials, and ophthalmic lens processing goods and services. During those times, Gerber conducted its business primarily through four subsidiaries: Gerber Scientific Products, Inc. ("GSP"); Spandex PLC; Gerber Technology, Inc.; and Gerber Coburn Optical, Inc. ("Gerber Coburn"). Gerber uses a fiscal year that ends on April 30. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

SUMMARY

While Gerber was preparing its annual report on Form 10-K for fiscal year 2000, Cheshire learned that, due to a clerical error, the Company had failed to record approximately $1.5 million of a $6.2 million decrease in the value of the inventory of the Company's GSP subsidiary for the fourth quarter. Notwithstanding this information, the Company did not disclose this mistake by correcting its previously issued press release reporting earnings for the quarter and year ended April 30, 2000, and then filed its annual report on Form 10-K with materially inaccurate financial statements and related disclosures. Had Gerber correctly recorded the entire $6.2 million in the fourth quarter of 2000, its reported net earnings would have been $725,000 or $0.04 per share for the quarter and $24.9 million or $1.12 per share for the year. Instead, Gerber erroneously reported net earnings of $1.7 million, or $0.08 per share, for the quarter, and net earnings of $25.875 million, or $1.16 per share, for the year. Cheshire knew or should have known of the inaccuracies but nonetheless signed the Form 10-K. Due to his actions, Cheshire was a cause of Gerber's violation of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-1 resulting from the materially inaccurate financial

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[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

statements and disclosures that the Company included in its Form 10-K for fiscal year 2000 as a result of the failure to record the $1.5 million.

FACTS

By late February 2000, Cheshire had been informed of a large discrepancy between the estimated value of GSP's physical inventory and the value of that inventory reflected on the Company's books. As a result, Cheshire ordered an expanded annual review of GSP's inventory. The review was begun by GSP personnel and then completed by a special internal audit team formed to determine the precise amount of the discrepancy. By no later than April 25, 2000, the special audit team informed Cheshire that GSP's inventory was overstated by approximately $6 million.

On April 26, 2000, Gerber issued a press release disclosing that it would record a charge of approximately $6 million to write down the value of GSP's inventory. The Company reported that it expected that the charge would equal $.17 per share and that, before any restructuring charges, it expected earnings for the fourth quarter of fiscal year 2000 to be reduced to $.08 to $.12 per share and earnings for the year to be $1.16 to $1.20 per share.

By early May 2000, the special audit team informed Cheshire that the exact amount of the overstatement of GSP's inventory was $6.2 million. On May 25, 2000, Gerber issued a press release announcing its results for the fourth quarter and year ended April 30, 2000. Gerber reported net earnings of $1.7 million, or $.08 per share, for the quarter and net earnings of $25.9 million, or $1.16 per share, for the year. Gerber announced that the write-down equaled $.18 per share, gave the write-down as one of two principal reasons why its earnings for the quarter were lower than the prior year's fourth quarter earnings, and stated that, without the write-down, per share earnings for the year would have been $1.34 and thus would have exceeded the prior year's earnings of $1.29 per share.

During GSP's budgeting process in June 2000, GSP management discovered that the Company actually had recorded only $4.7 million of the $6.2 million charge for the inventory overstatement. In late June 2000, Cheshire was informed of the $1.5 million error. In early July 2000, Cheshire discussed how to handle the error with Gerber's chief financial officer and controller.

Notwithstanding the discovery of the failure to record $1.5 million of the $6.2 million charge, the Company, on July 27, 2000, filed its annual report on Form 10-K for 2000 that reported the same results that the Company had announced in its May 25, 2000, press release.[2] In addition, in footnotes to the financial statements and other disclosures in the Form 10-K, the Company misrepresented that it had recorded the entire $6.2 million charge. Had Gerber recorded the entire $6.2 million in the fourth quarter of fiscal year 2000, reported net earnings would have been $725,000, or $.04 per share, for the quarter and $24.9 million, or $1.12 per

[2] The Company also did not correct the May 25, 2000, press release.

share, for the year. Even though he was aware of the $1.5 million error, Cheshire signed the Form 10-K with the inaccurate financial statements and disclosures that resulted from the failure to record the entire $6.2 million charge.[3]

DISCUSSION

Section 13(a) of the Exchange Act requires issuers of registered securities to file periodic reports with the Commission containing information prescribed by specific Commission rules. Rule 13a-1 requires the filing of annual reports on Form 10-K. Rule 12b-20 requires, in addition to information required by Commission rules to be included in periodic reports, such further material information as may be necessary to make the required statements not misleading. These reports are required to be complete and accurate. See SEC v. Savoy Industries, Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978).

As a result of its failure to record the $1.5 million error in the fourth quarter of fiscal year 2000, Gerber violated Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-1.[4] In its annual report on Form 10-K for 2000, the Company misstated its earnings for both the fourth quarter and the year. In addition, the Company misrepresented that it had recorded the entire $6.2 million charge when, in fact, it had recorded only $4.7 million.

Cheshire knew or should have known that, as a result of the failure to record the $1.5 million, reported earnings and other disclosures in the Form 10-K were inaccurate. By then signing the Form 10-K, Cheshire was a cause of Gerber's violation of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-1.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions specified in Respondent Michael J. Cheshire's Offer.

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[3] On August 27, 2002, Gerber filed its annual report on Form 10-K for its fiscal year ended April 30, 2002. In that Form 10-K, Gerber included restated financial statements for its fiscal years ended April 30, 2000, and April 30, 2001, and for the seven quarters ended January 31, 2002. It also restated its retained earnings as of April 30, 1999. Among other things, the Company included a restatement for its failure to record the $1.5 million in the fourth quarter of fiscal year 2000.

[4] The Commission previously issued an Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 finding that Gerber violated, among other provisions, Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-1. See Gerber Scientific, Inc., Exchange Act Release No. 49541 (Apr. 8, 2004). Gerber consented to the issuance of the order without admitting or denying the findings other than those as to jurisdiction. Id.

ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 21C of the Exchange Act, Michael J. Cheshire cease and desist from causing any violations and any future violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-1.

By the Commission.

Jonathan G. Katz
Secretary