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U.S. DISTRICT COURT
DISTRICT OF COLORADO

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GREGORY C. LANGHAM
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BY ______________ DEP. CLK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-1039 RPM-MJW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LOUIS E. RIVELLI,
RODNEY B. JOHNSON,
STEPHEN G. BURKE,
TERESA W. AYERS,
CRAIG L. STEVENSON,
ROBERT T. HOFFMAN,

Defendants.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission" or "SEC"), for its complaint, alleges:

I. SUMMARY

1. Fischer Imaging Corporation ("Fischer"), a medical equipment manufacturer based in Denver, materially misstated numerous line items in its financial statements for reporting periods from January 2000 through September 2002. During these periods, Fischer reported the misstated financial results in its filings, press releases, and earnings calls, and incorporated them by reference into its registration statements for securities offerings. The misstated financial results were based on Fischer's improper accounting practices relating to revenue recognition, inventory valuation, and calculation of gross profits.

2. The defendants named in this action are six of Fischer's former officers or directors who were responsible for Fischer's accounting improprieties: chief executive officer

("CEO") and president **Louis E. Rivelli ("Rivelli")** ; chief financial officers ("CFOs") **Rodney B. Johnson ("Johnson")** and **Stephen G. Burke ("Burke")**; chair of the audit committee **Teresa W. Ayers ("Ayers")**; and senior sales executives **Craig L. Stevenson ("Stevenson")** and **Robert T. Hoffman ("Hoffman")**. Each of these individuals was responsible for Fischer's improper recognition of revenue on equipment that was shipped to Fischer-controlled warehouses and not delivered to customers. Rivelli, Johnson, Stevenson, and Hoffman were also involved in formulating or reviewing contingencies for various transactions, with knowledge that Fischer improperly recognized revenue on the transactions before the contingencies were resolved.

3. From January 2000 through September 2002, Rivelli and Johnson also knowingly or recklessly caused Fischer to materially overstate its inventory account and its net income by failing to write off excess or obsolete inventory associated with discontinued product lines because of the potential impact on Fischer's reported profits. As Fischer's CFOs, Johnson and Burke were also at least reckless in allowing other improper inventory accounting practices at the company. Finally, Rivelli, Johnson, and Burke knowingly or recklessly allowed Fischer to improperly overstate its gross profits by failing to correct Fischer's clear misclassification of certain service expenses.

4. In addition to their participation in Fischer's accounting improprieties, Rivelli, Johnson, Stevenson, and Hoffman were also involved in preparing or obtaining false or misleading documents about Fischer's transactions and providing them to Fischer's outside auditors. Ayers also made false or misleading statements to Fischer's auditors about Fischer's revenue recognition practices. Rivelli, Johnson, and Burke also provided false or misleading

management representation letters to Fischer's auditors to conceal Fischer's improper revenue recognition practices and other accounting misstatements.

II. JURISDICTION AND VENUE

5. The SEC brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t (b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u (d)].

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa].

7. Certain of the transactions, acts, practices, and courses of business constituting the violations of law alleged herein occurred within this judicial district. Moreover, Rivelli, Johnson, Ayers, and Hoffman reside in this district.

8. In connection with the transactions, acts, practices, and courses of business described in this Complaint, each of the Defendants, directly and indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

III. DEFENDANTS

President and CEO

9. **Louis E. Rivelli**, age 61, of Longmont, Colorado, was Fischer's president and chief operating officer ("COO") from September 1999 to December 2000. Rivelli became Fischer's CEO in December 2000 and remained Fischer's CEO and president until he left Fischer in April 2002.

CFOs & Audit Committee Chair

10. **Rodney B. Johnson**, age 52, of Centennial, Colorado, was Fischer's CFO, vice president of finance, and secretary from August 2000 until he left Fischer in October 2002. Johnson has held a Colorado CPA license since 1982, which is currently inactive.

11. **Stephen G. Burke**, age 56, of Providence, Utah, was a consultant for Fischer's board of directors from March 2002 through October 2002. Burke was Fischer's CFO, executive vice president of finance, and secretary from October 2002 to January 2004. Burke has held a Minnesota CPA license since 1998, which is currently inactive.

12. **Teresa W. Ayers**, age 52, of Boulder, Colorado, joined Fischer's board of directors in April 2002 and simultaneously became the chair of its audit committee. Ayers left Fischer's board of directors in October 2003. Ayers has held a Georgia CPA license since 1978, which is currently inactive.

Sales Executives

13. **Craig L. Stevenson**, age 51, of Duluth, Georgia, became Fischer's vice president of sales and business development in July 2000. Beginning in April 2001, Stevenson's role transitioned from vice president of sales to that of a product manager for various Fischer product lines; however, Stevenson continued to be involved in Fischer's sales. During 2003, Stevenson became Fischer's vice president of marketing and held that position until he left Fischer in April 2004.

14. **Robert T. Hoffman**, age 53, of Broomfield, Colorado, was Fischer's eastern regional sales manager from October 2000 through April 2001. From May 2001 through October 2002, Hoffman continued to manage sales in the eastern region but also served as Fischer's national sales manager. From October 2002 to November 2004, Hoffman was Fischer's vice president of sales.

IV. RELATED PARTY

15. **Fischer Imaging Corporation** is a Delaware corporation with its principal place of business in Denver, Colorado. Fischer designs, manufactures, and markets specialty medical imaging systems used for the diagnosis and screening of disease. Fischer's common stock is registered with the SEC pursuant to Section 12(g) of the Exchange Act and Fischer is required to file periodic reports with the SEC on Forms 10-K and 10-Q. Fischer's common stock traded on the NASDAQ National Market until it was delisted on July 7, 2003, due to Fischer's failure to file timely reports with the SEC. Fischer's common stock is currently quoted in the electronic quotation service operated by the Pink Sheets, LLC.

V. SUMMARY OF VIOLATIONS

16. Rivelli violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2] thereunder, and aided and abetted violations of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

17. Johnson violated Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 [17 C.F.R. § 240.13a-14] thereunder, and aided and abetted violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

18. Burke violated Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 thereunder, and aided and abetted violations of Sections 13(a) and

13(b)(2) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

19. Ayers violated or aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, violated Rules 13b2-1 and 13b2-2 of the Exchange Act, and aided and abetted violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

20. Stevenson and Hoffman violated Section 17(a) of the Securities Act and violated or aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and aided and abetted violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

VI. FACTS

A. BACKGROUND

21. In September 1999, after years of reporting net losses, Fischer's board of directors hired Rivelli as Fischer's president and COO. During the following year, Fischer hired Johnson as CFO and Stevenson and Hoffman as senior sales executives. Each of these Defendants was given financial incentives to improve Fischer's performance, including stock options and bonuses or commissions.

22. Thereafter, Fischer claimed to have achieved dramatically improved results, reporting net income of approximately $2.1 million for its fiscal year ending December 31, 2000 and $3.3 million in fiscal 2001. Fischer's reported gross margins also increased from 44% in

1999 to 50% in 2000 and 51% in 2001. Fischer's stock price also increased dramatically, reaching a high of $17.65 in the fourth quarter of 2001—an increase of more than $15, or about 660%, over its 1999 high.

23. Rivelli, Johnson, Stevenson, and Hoffman reaped substantial personal profits from Fischer's reported turnaround through exercising options and selling Fischer stock near its all time highs during the third and fourth quarters of 2001. Rivelli alone reaped over $2 million in profits from exercising options and selling Fischer stock during the third and fourth quarters of 2001. Additionally, these individuals received other compensation tied to Fischer's reported performance.

24. In the first quarter of 2002, soon after Fischer's stock reached its high in the fourth quarter of 2001, Fischer's board of directors became increasingly concerned with Fischer's inordinately high inventory levels and engaged Burke as an outside consultant to review Fischer's inventory balances. In April 2002, Fischer's board of directors asked Rivelli to resign and Gerald Knudson, a member of Fischer's board of directors, took over as Fischer's CEO. Also in April 2002, Ayers joined Fischer's board of directors and became the chair of its audit committee. In May 2002, Ayers expanded her role in Fischer's accounting, operations, and SEC filings.

25. On August 14, 2002, Fischer announced that its Form 10-Q for the second quarter ending June 30, 2002 would be delayed because of an anticipated write down of inventory, among other reasons. Fischer lost 39% of its market value when its stock price dropped from $8.15 on August 13, 2002, to $4.95 on August 14, 2002. When Fischer eventually did file its second quarter report, it reduced its stated inventory account by approximately 40% to more accurately reflect its actual value.

26. Johnson resigned as Fischer's CFO in October 2002, and Burke became Fischer's CFO the same month.

27. Also in October 2002, Fischer hired a new controller. When closing out the books at the end of that year, the controller discovered that Fischer had been improperly recognizing revenue on sales of equipment which had been shipped to third party warehouses rather than to customers. The controller raised the issue with Fischer's external auditors, who then began a more comprehensive review of the company's accounting practices. Fischer also engaged a law firm to conduct an internal investigation relating to revenue recognition issues.

28. On April 1, 2003, Fischer announced that it would delay filing its Form 10-K for 2002, and that it would likely restate its financial results for 2000, 2001, and the first three quarters of 2002. Fischer's stock lost 18% of its value when it dropped from $5.39 on April 1, 2003, to $4.40 on April 2, 2003. On July 3, 2003, Fischer announced that it had been delisted from the NASDAQ National Market. Fischer's stock, which had traded at $4.72 on July 2, 2003, dropped 22% to close at $3.67 on July 3, 2003.

29. On April 15, 2004, Fischer filed its Form 10-K for its 2002 fiscal year, which contained audited restated financial results for its 2000 and 2001 fiscal years and unaudited restated financial results for the first three quarters of 2002. Fischer's restatements show that in its annual and quarterly filings from 2000 through the third quarter of 2002, the company misstated its revenue by 2% to 28%, its net income by 12% to 272%, the value of its inventory by 30% to 81%, and its gross profit by 10% to 673%.

B. FRAUDULENT REVENUE RECOGNITION

1. Recognition of Revenue in Violation of Generally Accepted Accounting Principles

30. Under Generally Accepted Accounting Principles ("GAAP"), revenue must be realized or realizable and earned before it can be recognized. Revenue is considered to have been earned when an entity has substantially accomplished what it must do to be entitled to the benefits of the revenues, and when all material terms of the transaction have been completed. If shipping terms of a sale are "FOB Destination," revenue is typically realized and earned when products are physically delivered to the customer. If the terms of a sale specify that the customer will take title and assume the risks of ownership when the product is shipped —generally known as an "FOB Factory" term—then delivery for purposes of GAAP occurs when the product is shipped from the manufacturer to the customer or to a customer-designated location.

31. Beginning at least as early as January 1, 2000 and continuing through the filing of Fischer's report on Form 10-Q for the quarter ended September 29, 2002, the Defendants carried out a scheme to fraudulently inflate Fischer's reported quarterly revenue by recognizing revenue on equipment as to which customers had not yet agreed to accept delivery, and on transactions as to which there were material contingencies, including rights of return.

32. In an effort to increase Fischer's reported quarterly revenue and net income, Rivelli set rigid sales targets and pressured Fischer's sales personnel to meet them. Throughout his tenure at Fischer, Rivelli led regular sales meetings attended by Johnson, Stevenson, Hoffman, and others, at which the status of each sales prospect was discussed in detail, including customers' requested delivery dates. For fiscal quarters from the beginning of 2000 though the third quarter of 2002, Fischer typically recognized the majority of its revenue during the last few

weeks of each quarter. Towards the end of each quarter, Rivelli held sales meetings once or more a day to discuss how to "move" prospective sales from later quarters into the present quarter.

33. To secure orders at the ends of quarters, Rivelli directed Fischer's sales staff to offer customers substantial discounts and other incentives to enter into sales contracts or issue purchase orders with FOB Factory terms. However, many of the customers who entered into sales agreements in order to take advantage of these incentives did so only with the explicit understanding that they did not agree to take delivery of the products until later quarters. Rivelli, Johnson, Burke, Stevenson, and Hoffman caused Fischer to improperly recognize revenue in the current quarter upon shipment of FOB Factory orders before customers were willing to take delivery.

34. When customers signed sales agreements with FOB Factory terms but were not ready to take delivery of products, Fischer shipped the products to third party warehouses designated by Fischer, where Fischer controlled the equipment, paid to store it, and insured it. Fischer's customers typically did not know that Fischer had shipped their orders, did not know where the products were stored, and did not have access to the products while they were in storage. Even though Fischer's customers were located all over the country, many of these orders were stored in a warehouse in Colorado, near Fischer's factory. Equipment covered by such orders often remained in Fischer storage facilities for periods of several months to over a year after Fischer had recognized revenue on the transactions. Further, Fischer used warehoused equipment it had purportedly already sold to fulfill later orders from other customers, upgraded and repaired the equipment, and used the equipment for its own benefit in trade shows. When customers were ready to accept delivery of product, Fischer coordinated and paid for delivery to

the customer. Fischer improperly recognized revenue from warehoused shipments sent to Fischer controlled storage facilities during every quarter of 2000 and 2001 and the first three quarters of 2002.

35. During the same period, Fischer also recognized revenue on orders shipped to storage that were subject to side letters explicitly committing Fischer to retain the risks of ownership after shipment. Certain of these sales were also subject to other unsatisfied material contingencies such as cancellation rights and rights of return, many of which were also documented in side letters.

36. It was wrong under GAAP for Fischer to recognize revenue when it shipped orders to Fischer warehouses because, among other reasons, delivery had not occurred and the revenue had not been earned. Delivery did not occur when Fischer shipped equipment to warehouses paid for and controlled by Fischer because, among other reasons, it had not yet shipped the equipment to the customer or a customer designated site, Fischer continued to bear the risk of loss and liabilities of ownership of the equipment, and ownership had not passed to the customer. The revenue was not yet earned because Fischer still had to ship the products to customers to be entitled to the benefit of the revenue from the sales.

37. Fischer improperly recognized revenue from orders subject to contingencies and terms committing Fischer to bear the risk of loss of the products until delivery to customer locations. For each such transaction, Fischer again improperly recognized revenue upon shipment to a Fischer warehouse. It was improper under GAAP to recognize revenue on contingent transactions upon shipment to Fischer controlled warehouses because, among other reasons, delivery had not occurred and the revenue was not yet earned. Additionally, it was improper for Fischer to recognize revenue upon shipment of orders subject to contingencies for

several reasons which vary based on the specific terms of each contingent transaction. Some of the additional reasons that revenue recognition was improper on contingent transactions include: the revenue was not realized or realizable because collection of the sales price was not reasonably assured given the contingencies, the customer was not obligated to pay Fischer unless and until the contingencies were satisfied, the customer's obligation to Fischer would be changed by destruction or damage of the product, Fischer had significant obligations of future performance, and persuasive evidence of an arrangement did not exist.

2. Role of CEO Rivelli in Improper Revenue Recognition

38. Rivelli was the senior manager of Fischer's operations from the time he became the company's president in September 1999 through the time he resigned as CEO in April 2002. With respect to revenue recognition, Rivelli directed Fischer's practice of sending equipment to storage before customers were ready to take delivery, with the understanding that Fischer recognized revenue on these shipments.

39. At sales meetings, Rivelli regularly directed shipments of FOB Factory orders before customers' requested delivery dates to enable Fischer to improperly record revenue before customers were willing to accept delivery. Rivelli was typically aware of customers' requested delivery dates, or the fact that they had not provided requested delivery dates, through various sources including his regular sales meetings and his review and approval of internal Fischer documents that reflected customers' requested delivery dates. At Rivelli's direction, it was Fischer's general practice to ship and recognize revenue from every FOB Factory order as soon as it received sales documentation from the customer, regardless of the requested delivery date that appeared on the sales documents.

40. Rivelli was fully aware that when Fischer shipped orders before customers agreed to take delivery of the products, Fischer shipped them to warehouses controlled and paid for by Fischer. Rivelli was notified of specific orders Fischer was holding in storage when he received emails from a Fischer employee with lists of orders that had been shipped to Fischer controlled storage facilities. In a March 2002 email, Rivelli acknowledged that, over the preceding three years, Fischer almost always had twelve or more systems in storage and paid the storage costs for all but two orders. Moreover, Rivelli was personally involved in transactions in which he knew that the customers had not agreed to take delivery of the equipment and that Fischer recognized revenue when it shipped the equipment to a Fischer storage facility.

41. For example, in May 2001, Rivelli negotiated a transaction with EPMed Systems, Inc., of Mt. Arlington, New Jersey, who agreed to issue a purchase order for a Fischer system in anticipation of reselling it. Rivelli knew that in May 2001 EPMed did not provide a requested delivery date or location because it had not yet entered into an agreement with a customer to buy the system or even identified what customer would buy it. Rivelli also knew that Fischer was responsible for delivering the system directly to EPMed's customer when the customer requested delivery because EPMed never intended to take physical delivery of the equipment. Rivelli directed that Fischer ship this equipment to a Fischer controlled storage facility in May 2001 and Fischer recognized approximately $532,000 of revenue on the equipment, which accounted for about 31% of Fischer's net income for the quarter. This equipment was held in a Fischer controlled storage facility in Denver and was not installed until September 2002—16 months after Fischer recognized revenue. Rivelli further participated with Stevenson in the negotiation of a second contingent transaction with EPMed in December 2001, as discussed in paragraph 59,

and with Hoffman on a contingent transaction with Roper Hospital as discussed in paragraph 60, below.

42. Similarly, at the end of Fischer's second quarter ending March 31, 2001, Fischer shipped and recognized revenue from a sale to Arrowhead Hospital in Glendale, Arizona. The Arrowhead transaction was subject to a side letter that made the order contingent on Arrowhead's receipt of funding approval, and stated that if funding was not approved by July 13, 2001, the order would become "null and void with no cancellation penalties." Fischer shipped the equipment to a Fischer controlled storage facility in Denver and improperly recognized about $182,000 of revenue from this transaction, which accounted for approximately 14% of Fischer's reported net income for the second quarter of 2001. Rivelli sent an email on July 18, 2001, in which he acknowledged that the order from Arrowhead remained contingent.

3. Role of CFO Johnson in the Improper Revenue Recognition

43. Johnson, who is a CPA, was also aware that Fischer recognized revenue when it shipped equipment to storage facilities before customers had agreed to accept delivery through, among other things, his review and approval of internal Fischer documents that reflected customers' requested delivery dates and his participation in sales meetings. In December 2000, Stevenson sent an email to Johnson and others discussing charges for storing equipment which stated that "the product was shipped at Fischer's convenience" and the "storage charges are a result of Fischer forcing shipments." In June 2002, Stevenson sent an email to Johnson and other Fischer employees regarding mechanical problems with equipment that had been stored for extended periods of time, which stated that "the resolution is not to ship product until the customer is ready" and concluded that there was no reason "the manufacturer needs to ship and store for months or even a year."

44. Johnson, like Rivelli, was fully aware that when Fischer shipped and recognized revenue from orders before customers were ready to accept delivery, Fischer stored the equipment in Fischer controlled warehouses. In May 2002, Johnson received a letter from a bank auditor stating that the auditor had discovered that Fischer recorded sales when it shipped equipment "to a warehouse where the goods remained in control or at the discretion of [Fischer]." The bank auditor told Johnson that Fischer continued to insure equipment while it was in storage. Johnson also received lists of orders that Fischer held in storage and exchanged emails with Fischer employees about Fischer repairing equipment in warehouses and removing equipment from warehouses to use in trade shows. Johnson knew that Fischer had already recognized revenue from these orders because, among other reasons, he knew Fischer's policy of recognizing revenue when it shipped equipment to Fischer storage facilities, and he received and reviewed reports that showed orders shipped to storage as accounts receivable.

45. For example, on September 28, 2001, Diagnostic Imaging submitted a purchase order to Fischer for an electrophysiology system it expected to sell to Tulane Hospital in New Orleans, Louisiana. Diagnostic Imaging did not provide a delivery date. On September 29, 2001, just before the end of Fischer's third quarter, Fischer shipped the order to a Fischer controlled warehouse in Denver and recognized about $668,000 of revenue on the transaction, which accounted for approximately 35% of Fischer's reported net income for the quarter. Fischer paid for all of the storage fees while the equipment was in storage. On June 5 and June 6, 2002, Johnson received and responded to emails about the Tulane equipment being used by Fischer in a trade show but not functioning properly. On June 5, 2002, Johnson received an email titled "Units in Storage" that stated that Fischer had not yet received a delivery date for the equipment and which recommended against bringing the equipment "in house" to fix it until

Fischer knew it was within 90 days of delivery. In the fourth quarter of 2002, Diagnostic Imaging informed Fischer that its plan to sell the equipment to Tulane had fallen through. Fischer did not require Diagnostic Imaging to take delivery of or pay for the equipment. Fischer reversed the revenue from this transaction in December 2002—approximately one year and three months after the sale was purportedly completed and revenue recognized on the equipment.

46. Johnson also knew that Fischer fraudulently recognized revenue when it shipped orders to Fischer controlled storage facilities that were subject to contingencies. For example, with respect to the Arrowhead transaction described in paragraph 42, Johnson received emails in August 2001 that stated that the order had been shipped to storage and remained contingent. In October 2001, Fischer's sales administrator sent an email to Johnson that stated that the Arrowhead sale "is not a good order yet" and asked whether she should consequently "back out" the sale. Johnson's emailed response was "no." The equipment remained in storage and was not installed at Arrowhead until July 2002—over one year after Fischer recognized revenue on the equipment. With respect to the transaction with Baptist Hospital described in paragraph 61, in March 2002, six months after revenue had been recognized on a contingent transaction, Johnson received and read a letter from a member of Fischer's collections staff regarding the transaction which stated that "[t]he problem with the account is that the customer agreed to purchase a Mammotest System, but didn't need it until early April, 2002...Fischer, in order to generate sales, shipped the unit to storage and billed the customer (in September 2001)."

4. Role of Burke in the Improper Revenue Recognition

47. In March 2002, shortly before Rivelli resigned in April 2002, Burke was hired by Fischer's board of directors to work at Fischer's headquarters as a consultant and was charged with addressing various accounting issues about which the board had concerns. Burke knew

beginning early in his tenure as a consultant that it was Fischer's practice to recognize revenue on products shipped to Fischer storage facilities. In June 2002, Burke requested and received via email a spreadsheet that showed that Fischer had recognized revenue from seventeen systems that were currently in storage. The spreadsheet showed that the products had been stored for periods ranging from two months to over a year and accounted for over $4.3 million of Fischer's accounts receivable. At Ayers' direction, Burke completed an analysis of Fischer's storage practices while he was still acting as a Fischer consultant during 2002. Burke met with Fischer employees who explained to him the nature of Fischer's shipments to storage, including the fact that Fischer paid for storage costs. Burke reported to Ayers that Fischer paid for storage costs and insured products it had shipped to third party warehouses and on which it had recognized revenue.

48. In August 2002, Burke sent an email to Johnson, Ayers, and other Fischer employees which stated that $1.7 million of Fischer's accounts receivable were "Ship to Storage" systems, which Burke classified as "special situations" which Fischer is "constrained from collecting." Burke also received lists of orders Fischer held in storage, including one sent the day before he signed Fischer's 10-Q for the third quarter of 2002, which showed that Fischer had shipped nine systems to storage during that quarter.

49. Burke, who is a CPA, understood that it was improper for Fischer to recognize revenue on products shipped to the Fischer controlled warehouses because, among other reasons, he knew that Fischer continued to pay to store the equipment, insured it, and exercised control over it. Burke acknowledged that he knew that Fischer held equipment in storage for its customers when they did not yet want it delivered, and that Fischer retained responsibility for delivery of the stored equipment to customers' installation sites. Furthermore, Burke told at least

one Fischer employee while he was a consultant in 2002 that he was concerned that Fischer could be improperly recognizing revenue from shipments to storage.

5. Role of Ayers in the Improper Revenue Recognition

50. Ayers joined Fischer's board of directors in April 2002 and became the chair of Fischer's audit committee at the same time. In May 2002, Ayers became more involved in Fischer's management and operations and undertook to report directly to the other board members on various issues. Ayers thereafter spent about three and a half days a week at Fischer working on issues relating to accounting and operations through the end of September 2002. Ayers' responsibilities included reviewing Fischer's filings and making recommendations to the board regarding accounting and auditing issues.

51. During Fischer's second or third quarter of 2002, Ayers, who is a CPA, learned from Johnson that when Fischer's customers issued purchase orders before they were ready to take delivery of equipment, Fischer shipped the equipment to "Fischer warehouses" and recognized revenue. After learning this, Ayers requested that Burke complete an analysis of Fischer's storage practices during the second or third quarter of 2002. Burke reported to Ayers that Fischer insured and paid to store products Fischer shipped to third party warehouses. Ayers acknowledged that based on this information, she was concerned that the requirements for revenue recognition had not been met because customers had not accepted delivery of these products. In August 2002, Ayers received an email from Burke as discussed in paragraph 48, above, which disclosed that Fischer had over $1.7 million in accounts receivable attributable to warehoused products.

52. Rivelli, Johnson, and Burke signed, and Ayers reviewed and approved, various Fischer SEC filings when they knew or should have known that the financials contained in the

filings were materially false as a result of Fischer reporting revenue from shipments to Fischer controlled storage facilities.

6. Role of Stevenson and Hoffman in Improper Revenue Recognition

53. Stevenson and Hoffman were responsible for, and/or participated in, virtually all of the sales transactions involving Fischer equipment during their respective tenures as sales executives. They were responsible for offering incentives to customers to agree to FOB Factory orders with the understanding that such terms did not obligate the customers to accept delivery in the current quarter. Stevenson and Hoffman knew that the reason for obtaining these orders in the current quarter was to enable Fischer to improperly recognize revenue on the orders in the current quarter.

54. As part of the scheme to fraudulently boost Fischer's reported quarterly revenue, Stevenson, Hoffman, and lower level Fischer sales people under their management, induced Fischer customers to agree to sign purchase orders for Fischer equipment by entering into side agreements with the customers that contained material contingencies such as cancellation rights, provisions making payments contingent on resale of products, and rights of return. On some occasions, the contingent terms were incorporated into the purchase orders or sales contracts that customers signed. Stevenson and Hoffman knew that Fischer improperly recognized revenue on contingent transactions upon shipment of the orders to Fischer storage facilities.

55. Further, to enable Fischer to fraudulently recognize revenue from some shipments to Fischer warehouses, Hoffman, Stevenson, and lower level sales people under their management, also entered into side agreements that committed Fischer to bear the risk of loss of the equipment until customers received it, in exchange for the customers issuing purchase orders with false or misleading FOB Factory terms.

56. Stevenson participated in the following transactions, among others, on which Fischer fraudulently recognized revenue: at the end of Fischer's fourth quarter of 2000, Stevenson entered into a secret side agreement with All Saints Episcopal Hospital of Fort Worth, Texas. The agreement stated that if All Saints issued a purchase order by December 29, 2000, All Saints had the right to cancel the order if it was not approved at a January 25, 2001 board meeting. All Saints issued the purchase order, and Fischer recognized revenue on the transaction when it shipped the product to a Fischer controlled warehouse on December 29, 2000. All Saints' board of directors did not approve the transaction until the first quarter of 2001. Stevenson's side letter further required that All Saints keep the "special terms and conditions . . . confidential" and required All Saints to misrepresent the terms of the order to anyone who asked about it by stating that it was "a legitimate order without contingencies." Fischer improperly recognized approximately $510,000 of revenue from this transaction in the fourth quarter of 2000, which accounted for more than 10% of Fischer's reported net income for the entire year of 2000.

57. Also in the fourth quarter of 2000, Stevenson issued a side letter to St. Anne's Hospital in Fall River, Massachusetts, to enable Fischer to improperly recognize revenue upon shipment to a storage facility. St. Anne's originally gave Fischer a purchase order with FOB Destination terms. Stevenson drafted a side letter that requested that St. Anne's provide a revised purchase order which falsely stated that the order included FOB Factory terms. Stevenson's letter stated that Fischer understood that delivery should be scheduled for the third or fourth week of January, 2001, and that although title would purportedly transfer to St. Anne's when the product left Fischer, Fischer would bear the risk of loss of the equipment until it was delivered. Based upon these terms, St. Anne's provided the revised purchase order on December

7, 2000, and Fischer improperly recognized about $144,000 of revenue when it shipped the equipment to Fischer storage on December 18, 2000. This revenue accounted for approximately 7% of Fischer's net income for the quarter.

58. On March 28, 2001, two days before the end of Fischer's first quarter, Stevenson issued a side letter that gave Alpha Medical Equipment of New York a right to cancel an order it entered into at quarter end if it could not resell the equipment within 90 days. Alpha issued a purchase order and Fischer recognized revenue when it shipped the equipment to a Fischer controlled warehouse on March 30, 2001. Fischer improperly recognized approximately $142,000 from this transaction in the first quarter of 2001, and this sale accounted for about 33% of Fischer's reported net income for the quarter. This equipment was not delivered until, at the earliest, Fischer's third quarter of 2001.

59. During the last few days of Fischer's fourth quarter of 2001, Stevenson negotiated terms of a purported sale to EPMed Systems, Inc., of Mt. Arlington, New Jersey, a reseller of Fischer equipment. EPMed refused to issue a purchase order unless Fischer agreed that EPMed was not obligated to pay for the equipment, or for the equipment on which Fischer had earlier improperly recognized revenue in May 2001 as discussed in paragraph 41, unless and until EPMed received payment from its customer. EPMed sent a December 28, 2001, email to Stevenson listing additional terms for the proposed fourth quarter transaction, including the provision that if EPMed's customer cancelled its sales agreement or did not accept the system, EPMed would be "release[d] of the obligation to buy the system." Stevenson forwarded this email to Rivelli. Stevenson discussed the proposed terms with Rivelli, and at Rivelli's direction Stevenson agreed to them. EPMed issued a purchase order on December 31, 2001 and Fischer improperly recognized about $262,000 of revenue when it shipped the equipment to Fischer

controlled storage in Denver on the last day of its fourth quarter. This revenue accounted for approximately 7% of Fischer's reported net income for the quarter.

60. Hoffman also participated in transactions on which Fischer fraudulently recognized revenue, including the following: near the end of the second quarter of 2001, Hoffman issued a side letter to Roper Hospital in Charleston, South Carolina, that granted Roper a right to cancel its order if it did not receive state approval for its new facility and an unqualified right to cancel the order for a month after the end of the quarter. Rivelli told Hoffman to offer these terms because sales were "light" in the second quarter and Rivelli approved the letter before it was provided to Roper. After receiving the side letter, Roper signed a Fischer sales contract that did not reference these contingencies. Fischer shipped the order to a Fischer controlled warehouse and improperly recognized about $290,000 in revenue from this transaction in the second quarter of 2001, which accounted for about 22% of Fischer's reported net income for the quarter. The equipment was not actually delivered to Roper's facility until June 2002—nearly one full year after Fischer recognized revenue on the transaction.

61. Two days before the end of Fischer's third quarter of 2001, Hoffman entered into a side agreement with Baptist Hospital in Nashville, Tennessee. In a side letter, Hoffman acknowledged that he understood that Baptist needed board approval to enter into a formal purchase agreement for Fischer equipment. Hoffman stated that Baptist could instead "lock in pricing" and "reserve inventory" by signing a sales contract which it could later cancel without obligation. After receiving this letter, Baptist signed a sales contract that did not reference these terms. Fischer shipped the equipment to storage and improperly recognized $226,000 of revenue from this purported sale on the last day of Fischer's third quarter of 2001. This transaction accounted for about 11% of Fischer's reported net income for the quarter.

62. On September 27, 2001, a few days before the end of Fischer's third quarter of 2001, Charlotte Radiology of Charlotte, North Carolina, issued a purchase order that was contingent on board approval and requested that delivery coincide with their construction of space for the equipment. Fischer shipped the equipment to a Fischer controlled warehouse in Denver and improperly recognized $175,000 of revenue on September 29, 2001, which accounted for about 10% of Fischer's net income for the quarter. On October 26, 2001, Hoffman sent an email titled "contingency removal" to Rivelli, Johnson, and another Fischer employee that stated that "as promised" the contingency had been removed; however, the email showed that the contingency was not removed until October 24, 2001. The email also contained a forwarded email from Charlotte that stated that they are "still hoping for a December delivery." Fischer had already improperly recognized revenue on the transaction when it shipped the equipment to a Fischer controlled storage facility at the end of September 2001.

7. <u>Misstatements to Auditors Concerning Fischer's Revenue Recognition Practices</u>

63. Between January 2000 and September 2002, Rivelli and Johnson were both aware of side agreements and backdated sales orders related to purported sales on which Fischer improperly recognized revenue. Rivelli and Johnson never provided any of the side agreements to Fischer's independent auditors and never disclosed any side agreements or backdated sales orders to Fischer's independent auditors.

64. Rivelli, Johnson, Burke, and Ayers each met with Fischer's external auditors in connection with their reviews or audits of Fischer's financial statements and discussed accounting and reporting issues, including Fischer's revenue recognition practices. Rivelli, Johnson, Burke and Ayers knew that Fischer recognized revenue when it shipped equipment to

Fischer controlled warehouses and omitted to state this material fact to Fischer's external auditors.

65. Burke and Ayers told at least one of Fischer's external auditors that they had conducted a review of Fischer's revenue recognition practices and found that there were no problems. These statements were materially false or misleading because Burke and Ayers had discovered through their review that Fischer was improperly recognizing revenue on shipments to Fischer controlled warehouses.

66. Further, Rivelli and Johnson knowingly made materially false or misleading statements to Fischer's external auditors when they signed management representation letters that stated, among other things, that there were "no undisclosed side agreements or back dating of sales orders," that Fischer recognized revenue "when title and risk ownership passes to the customer," and that all material transactions were "properly recorded in the accounting records underlying the transactions."

67. Burke knowingly made materially false or misleading statements to Fischer's external auditors when he signed management representation letters that stated, among other things, that Fischer's reported sales were "valid sales, including that title has past to the customers upon shipment," and that "all material transactions have been properly recorded in the accounting records underlying the financial statements."

68. In addition, to hide Fischer's improper revenue recognition from orders shipped to Fischer controlled storage facilities, Fischer generated shipping documents that falsely stated that the orders had been shipped to Fischer's customers. Rivelli, Johnson, Burke, and Fischer employees directed by Rivelli, Johnson, and Burke, provided these materially false shipping

documents to Fischer's external auditors in connection with their reviews and audits of Fischer's financial statements.

69. Moreover, during their tenures at Fischer, Rivelli and Johnson directed a scheme to conceal contingencies and obtain false and misleading backdated documents after the end of every quarter in order to hide Fischer's fraudulent revenue recognition from Fischer's auditors. Several of Fischer's employees termed the time between the end of each quarter and the date on which Fischer's auditors arrived to perform audits or quarterly reviews the "clean up period." During the "clean up period," Rivelli and Johnson directed Fischer employees to "clear" contingencies that were unresolved at the end of the quarter. If sales documents referenced contingencies, Rivelli and Johnson directed Fischer employees to "clean them up" by obtaining backdated and altered purchase orders or sales contracts which did not reference the contingencies that were in effect. Further, in circumstances where customers had originally submitted purchase orders or sales contracts that contained FOB Destination terms, Rivelli and Johnson directed Fischer personnel to obtain backdated and altered sales documentation with false FOB Factory terms. Through their involvement in Fischer's "clean up" period, Rivelli and Johnson knew about, personally directed, and participated in, Fischer's concealment of contingencies and other material facts from Fischer's auditors and Fischer's creation and provision to the auditors of false and misleading documents.

70. For example, on July 18, 2001, Rivelli sent an email to Hoffman and other members of Fischer's sales staff which stated that "[o]n top of our poor sales this month, there remains numerous contingencies to clear from last. If we cannot clear last month's stuff...I'm afraid the new sales team's credibility will be an issue." Rivelli then listed several contingent transactions on which Fischer improperly recognized revenue in its second quarter 2001,

including the purported sales to Roper Hospital and Arrowhead Hospital. The contingent sales listed by Rivelli accounted for at least 51% of Fischer's reported net income for the second quarter of 2001.

71. One of the contingencies listed on Rivelli's July 18, 2001, email involved an order from St. Alexius Hospital in Hoffman Estates, Illinois. Near the end Fischer's second quarter of 2001, Fischer received a signed sales contract from St. Alexius; however, the customer had written on the contract that the order was "subject to corporate approval." The customer also sent a letter of intent with the signed contract that explained that it merely wanted to lock in pricing because it had not received corporate approval for the purchase. Fischer shipped the order to a third party warehouse in Denver on the last day of its second quarter and recognized about $189,000 of revenue, which accounted for about 15% of Fischer's reported net income for the quarter. During Fischer's "cleanup period," St. Alexius faxed Fischer a backdated signed contract that made no reference to the customer's need for corporate approval. Fischer's sales administrator and Johnson made a copy of the new contract, cutting off the fax line that showed its transmission date. Fischer's auditors tested and approved revenue recognition on this transaction, relying on this backdated version of the signed contract and a bill of lading created by Fischer employees that falsely indicated that the order was shipped to St. Alexius on June 30, 2001. Neither Johnson nor any other Fischer manager provided the original letter of intent, which disclosed the true terms of the transaction, to Fischer's auditors.

72. Fischer also improperly recognized approximately $195,000 of revenue from a purported sale to Shaw Medical Center in Edwards, Colorado when it shipped equipment to Fischer controlled storage in Denver during Fischer's second quarter of 2002. On July 11, 2002, after the end of Fischer's second quarter, Fischer's sales administrator sent an email to Johnson

that stated that Fischer employees had obtained a purchase order from Shaw on July 11, 2002, dated June 28, 2002. This backdated purchase order did not reflect the fact that the purchase order was contingent on the successful completion of another transaction. Johnson's emailed response was "YEAH!!!! One down, three to go", a reference to three other purported sales that the sales administrator had been directed by Johnson to ensure were "cleaned up."

73. Stevenson and Hoffman used side letters to deceive Fischer's accountants and Fischer's external auditors. Stevenson withheld and failed to disclose side letters to Fischer's sales administrator and accounting department because he knew that the terms contained in the side agreements made it improper for Fischer to recognize revenue. Stevenson also hid side agreements because he knew that if Fischer's external auditors were aware of them, Fischer would not be permitted to recognize revenue from the transactions. On at least one occasion, Stevenson contracted with a customer to keep the existence of a contingency contained in a side letter secret to prevent Fischer's auditors from finding out about it. On at least one occasion, Hoffman withheld and failed to disclose a side letter to Fischer's sales administrator and accounting department because he knew that it was wrong for Fischer to recognize revenue from the transaction as a result of the terms contained in the side agreement. Hoffman knew that when he did provide side agreements to Fischer's sales administrator, they were not provided to Fischer's external auditors because the auditors would not allow Fischer to recognize revenue from the transactions if they were aware of the terms contained in the side agreements.

74. Stevenson and Hoffman also participated in the "cleanup period" to gather false and misleading documents for Fischer's auditors. Stevenson and Hoffman knew that by procuring these documents, they were concealing Fischer's improper revenue recognition from its auditors.

C. FRAUDULENT INVENTORY VALUATIONS

75. Fischer materially overstated its inventory balance in its quarterly and annual filings for 2000, 2001, and the first three quarters of 2002 because it overvalued three categories of Fischer's inventory--excess and obsolete inventory, rework service inventory, and work in process inventory.

1. <u>Overvaluation of Excess and Obsolete Inventory</u>

76. GAAP requires companies to report inventory at a value equal to the lower of cost or market value. This principle requires an issuer to write down or reserve for its excess and obsolete inventory in the period in which there is evidence that the utility of the inventory, in its disposal in the ordinary course of business, will be less than its costs.

77. Nearly half of Fischer's reported gross inventory balance during 2000, 2001, and the first quarter of 2002, consisted of parts related to old and discontinued product lines. Fischer's inventory related to old and discontinued product lines represented about $10.8 million, or 47%, of Fischer's total $23.2 million reported gross inventory balance at the end of 2001. Fischer materially overstated the value of inventory related to old and discontinued product lines because Fischer reported it at cost when much of it actually had little or no market value.

78. Rivelli and Johnson were aware that Fischer overstated the value of its inventory related to old and discontinued product lines in its financial statements filed with the Commission. The amount of Fischer's inventory account attributable to old and discontinued product lines was easily identifiable by Rivelli and Johnson because it was segregated from Fischer's active inventory in a warehouse at Fischer's production facility, and was recorded in a separate inventory account in Fischer's general ledger, Although this inventory was purportedly retained to service old equipment, Rivelli and Johnson knew that the amount of inventory retained by Fischer far exceeded the amount that Fischer would actually use to service equipment

because Fischer used relatively little inventory in its service business. For example, although Fischer retained approximately $10.8 million of inventory to purportedly service old and discontinued product lines, its reported cost of sales for its entire service business, which included the cost of replacement parts for such service, was only $1.6 million in 2000 and $1.2 million in 2001. Rivelli and Johnson knew what the costs of sales were for Fischer's service business because they were broken out in the Form 10-Ks the two signed.

79. Rivelli and Johnson received reports throughout the relevant period that indicated that Fischer's inventory related to old and discontinued product lines was used and sold at extremely low rates. In addition, Rivelli received a report dated June 10, 1999, that stated "it is painfully obvious that [Fischer's] slow moving and obsolete materials far exceed the reserves" and suggests that "an additional $10 million in reserves may be required." Rivelli failed to take any steps to make the suggested increase in Fischer's excess and obsolete inventory reserve.

80. Rivelli and Johnson also both stated to at least one other person during their tenure at Fischer that they believed that Fischer's reported inventory was inaccurately high, but that they would not write down the inventory or increase Fischer's excess and obsolete inventory reserves because of the detrimental effect it would have on Fischer's reported financials or stock price.

81. In early 2002, Fischer's board of directors hired Burke as a consultant and he completed an inventory analysis dated July 31, 2002. Based on this analysis, Fischer reduced its inventory account by $10.8 million—about 40% of its inventory balance—in the second quarter of 2002. This write down included approximately $8 million of inventory related to old and discontinued product lines.

82. In its restatements, Fischer allocated this write down to prior reporting periods. According to Fischer's restatements, its excess and obsolete inventory reserve was understated by 23% in the first quarter of 2000, 18% in the second quarter of 2000, 22% in the third quarter of 2000, 60% in the fourth quarter and full year of 2000, 87% in the first quarter of 2001, 59% in the second quarter of 2001, 59% in the third quarter of 2001, 53% in the fourth quarter and full year of 2001, 50% in the first quarter of 2002, 38% in the second quarter of 2002, and 15% in the third quarter of 2002.

2. <u>Overvaluation of Rework Service Inventory</u>

83. During 2000, 2001, and the first three quarters of 2002, Fischer allowed customers to return malfunctioning parts in exchange for a discount in purchasing replacements. Fischer classified these returned parts as "rework service inventory." Fischer later refurbished some of these parts and either sold them or used them to service customer equipment. When Fischer received these returns, it entered the parts into Fischer's inventory at their standard cost—the same value Fischer gave to a similar, fully-functioning part that had never been sold.

84. Most of the parts that made up Fischer's rework service inventory did not function properly and therefore had minimal market value. Because inventory must be stated at the lower of cost or market value, Fischer overstated the value of its rework service inventory.

85. When he was Fischer's CFO, Johnson knew that Fischer valued defective rework service inventory at standard cost and failed to correct Fischer's valuation of rework service inventory by reducing it to market value.

86. Through his work related to Fischer's inventory during the second and third quarters of 2002, Burke had detailed knowledge of Fischer's inventory, and the way that it valued different types of inventory, including rework service inventory. When Burke became

Fischer's CFO, he failed to correct Fischer's improper valuation of rework service inventory by reducing it to market value.

87. According to Fischer's restated financial statements issued in April 2004, Fischer overstated its inventory by approximately $1.6 million in 2000, $2.1 million in 2001, and between $2.1 million and $3.3 million during the first three quarters of 2002, as a result of its overvaluation of rework service inventory.

3. Overvaluation of Work in Process Inventory

88. During all relevant periods, Fischer also overstated its inventory by double-counting certain parts. Fischer employees created work orders to trigger the purchase of additional parts by Fischer's inventory computer system. Upon the creation of these work orders, Fischer's computerized system allocated the value of these parts to Fischer's work-in-process ("WIP") inventory. However, the obtained parts were subsequently physically commingled with Fischer's raw materials. When Fischer performed physical cycle counts of its raw materials inventory, Fischer employees counted these parts and increased the raw materials inventory balance to reflect their value. However, they failed to make a corresponding entry to the WIP account to reduce the value of that account. As a result, the parts were double-counted in Fischer's reported inventory numbers.

89. The $10.8 million inventory write down in the second quarter of 2002 included a write off of approximately $1.3 million for this non-existent work-in-process inventory. This amount represented approximately 5% of Fischer's gross inventory balance at the time of the write down.

4. Misstatements by Rivelli, Johnson and Burke to Fischer's Auditors About Fischer's Inventory Valuation

90. Rivelli, Johnson, and Burke failed to disclose to Fischer's auditors Fischer's material overvaluation of its inventory.

91. Rivelli and Johnson made materially false or misleading statements to Fischer external auditors about Fischer's inventory valuation when they signed management representation letters to Fischer's external auditors that falsely stated, among other things, that "provision has been made to reduce excess or obsolete inventories to their net realizable value," that the "accounting records underlying the financial statements accurately and fairly reflect...the transactions of the Company," and that the "financial statements...are fairly presented in conformity with accounting principles generally accepted in the United States."

92. Burke made materially false or misleading statements to Fischer external auditors about Fischer's inventory valuation when he signed management representation letters to Fischer's external auditors that falsely stated, among other things, that "[i]nventories, including goods that are defective...are stated at amounts not in excess of their net realizable value," that "[a]ll material transactions have been properly recorded in the accounting records underlying the financial statements," and that the "financial statements have been prepared in conformity with accounting principles generally accepted in the United States."

D. FRAUDULENT OVERSTATEMENT OF GROSS PROFITS

93. In addition to selling products, Fischer installed and serviced medical imaging equipment. Fischer reported its revenue from its service business in a revenue line item titled "products and services." The only expense related to its service business that Fischer included in costs of sales was the cost of materials and parts used in performing service. Fischer improperly failed to include the costs of Fischer's technicians who performed the services or any other labor

and overhead costs relating to its service business in its costs of sales line item. Fischer instead included these expenses in a line item below Fischer's calculation of gross profit.

94. Accounting rules require that certain direct and indirect costs related to revenue producing activities be recorded as costs of sales. Because it failed to include labor and overhead costs associated with its service business in its cost of sales line, Fischer overstated its gross profits in each of its filings with the Commission during 2000, 2001, and the first three quarters of 2002.

95. Rivelli, Johnson, and Burke regularly received a report that showed "service expenses" as being excluded from the costs used to calculate the gross profit for Fischer's service business. However, Rivelli, Johnson, and Burke never did anything to determine whether Fischer was appropriately accounting for its costs of services. Rivelli, Johnson and Burke reviewed and signed Commission filings that contained materially misstated gross profits.

96. Moreover, Rivelli and Johnson actively touted Fischer's gross margin percentages as a measure of Fischer's financial success in press releases and earnings calls. However, these gross margin percentages, which are calculated by dividing gross profit by gross revenue, were materially overstated as a result of the misclassification of Fischer's service expenses.

97. For example, in a press release announcing Fischer's financial results for the third quarter of 2000, Rivelli stated, "[o]ur third quarter earning accomplishment is primarily the result of our gross margins, which set a company record at 51%. This is attributed to the achievement of higher efficiencies in essentially all aspects of our operations." If Fischer had properly classified its service expenses, its gross margin percentage would have been only 39%. In a press release announcing Fischer's financial results for its first quarter of 2001, Johnson stated, "[o]ur continued focus on our higher margin core business of breast care products . . . has

helped boost gross margins to 50% for the quarter". If Fischer had properly classified its service expenses, its gross margin percentage for the quarter would have been approximately 38%. If Fischer had properly classified its costs of services, it would have reported gross margin percentages of, on average, approximately 12% less than it did in each reporting period from the first quarter of 2000 through the third quarter of 2002.

E. FAILURE TO MAINTAIN ACCURATE BOOKS AND RECORDS AND INADEQUATE INTERNAL CONTROLS

98. Fischer failed to record transactions in accordance with GAAP during 2000, 2001, and the first three quarters of 2002. Specifically, Fischer prematurely recognized revenue, overvalued its inventory, and misclassified its service expenses. Fischer's improper accounting practices caused its books, records, and accounts to be false, in violation of Rule 13b2-1.

99. Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman aided and abetted Fischer's violations of the books and records provisions of the federal securities laws because they knowingly or extremely recklessly caused Fischer's books and records to be falsified. For example, each individual knew about and participated in Fischer's recognition of revenue from orders shipped to warehouses controlled by Fischer. Furthermore, Rivelli, Johnson, and Burke aided and abetted Fischer's violations of the books and records provisions through their knowing or reckless involvement in Fischer's inventory misstatements and misclassifications of service expenses.

100. Fischer violated the internal control provisions of the federal securities laws because it failed to establish and maintain sufficient internal controls to properly record its revenue, value its inventory, and classify its service expenses. Rivelli, Johnson and Burke aided and abetted Fischer's violations of the internal control provisions because they knowingly or

recklessly failed to implement a system of internal controls that ensured that Fischer reported its revenue, inventory, and service expenses in conformity with GAAP.

101. Through their participation in Fischer's fraudulent revenue recognition practices, Rivelli, Johnson, Burke, Stevenson, and Hoffman knowingly or recklessly circumvented the internal controls Fischer did have and falsified Fischer's revenue figures in direct violation of the internal control provisions of the federal securities laws.

F. MATERIALLY FALSE STATEMENTS

1. False Statements

102. Rivelli knew or was reckless in not knowing that his violations resulted in various materially false statements, including Fischer's reported revenue, net income, inventory, and gross profit, contained in the following SEC filings: Fischer's annual filings on Form 10-K for the years ended December 31, 2000 and December 31, 2001 which Rivelli reviewed and signed; Fischer's quarterly filings on Form 10-Q for the quarters ended April 2, 2000, July 2, 2000, and October 1, 2000, which Rivelli reviewed and signed, Fischer's filings on Form 10-Q for the quarters ended April 1, 2001, July 1, 2001, September 30, 2001, and March 31, 2002, which Rivelli reviewed and approved; and Fischer's registration statement signed by Rivelli and filed on Form S-8 on March 16, 2001, which incorporates Fischer's periodic filings with the Commission. Rivelli's violations also resulted in materially false statements in Management Representation Letters signed by Rivelli and issued to Fischer's external auditors in connection with audits and reviews of Fischer's filings on Forms 10-K and 10-Q; Fischer's earnings releases issued May 3, 2000, August 14, 2000, October 31, 2000, February 14, 2001, April 26, 2001, August 13, 2001, November 1, 2001, and February 13, 2002; and Fischer's earnings conference calls conducted on August 14, 2001 and February 13, 2002.

103. Johnson knew or was reckless in not knowing that his violations resulted in various materially false statements, including Fischer's reported revenue, net income, inventory, and gross profit, contained in the following SEC filings: Fischer's annual filings on Form 10-K for the years ended December 31, 2000 and December 31, 2001 which Johnson reviewed and signed; Fischer's quarterly filing on Form 10-Q for the quarter ended October 1, 2000, which Johnson reviewed, Fischer's filings on Form 10-Q for the quarters ended April 1, 2001, July 1, 2001, September 30, 2001, March 31, 2002, which Johnson reviewed and signed, Fischer's filing on Form 10-Q for the quarter ended June 30, 2002, which Johnson reviewed and signed and Fischer filed on September 17, 2002, as well as Johnson's certification of that report; and Fischer's registration statement signed by Johnson and filed on Form S-8 on March 16, 2001, which incorporates Fischer's periodic filings with the Commission. Johnson's violations also resulted in materially false statements in Management Representation Letters signed by Johnson and issued to Fischer's external auditors in connection with audits and reviews of Fischer's filings on Forms 10-K and 10-Q; Fischer's earnings releases issued October 31, 2000, February 14, 2001, April 26, 2001, August 13, 2001, November 1, 2001, February 13, 2002, and April 30, 2002; and Fischer's earnings conference calls conducted on August 14, 2001, February 13, 2002, and May 1, 2002.

104. Burke knew or was reckless in not knowing that his violations resulted in various materially false statements, including Fischer's reported revenue, net income, inventory, and gross profit, contained in the following SEC filings: Fischer's amended filing on Form 10-Q for the quarter ended June 30, 2002, which Burke reviewed and signed and Fischer filed on November 14, 2002, and Fischer's quarterly filing on Form 10-Q for the quarter ended September 29, 2002, which Burke reviewed and signed; and Burke's certifications of those

quarterly filings. Burke's violations also resulted in materially false statements in Management Representation Letters signed by Burke and issued to Fischer's external auditors in connection with their reviews of Fischer's filings on Form 10-Q listed above; and Fischer's earnings release issued on November 13, 2002.

105. Ayers' knew or was reckless in not knowing that her violations resulted in various materially false statements, including Fischer's reported revenue and net income contained in: Fischer's quarterly filing on Form 10-Q for the quarter ended June 30, 2002, which Ayers reviewed and approved and Fischer filed on September 17, 2002, Fischer's amended quarterly filing on Form 10-Q for the quarter ended June 30, 2002, which Ayers reviewed and approved and Fischer filed on November 14, 2002, and Fischer's quarterly filing on Form 10-Q for the quarter ended September 29, 2002, which Ayers reviewed and approved.

106. Hoffman knew or was reckless in not knowing that his violations resulted in various materially false statements, including Fischer's reported revenue and net income contained in the following SEC filings: Fischer's annual filings on Form 10-K for the years ended December 31, 2000 and December 31, 2001; Fischer's quarterly filings on Form 10-Q for the quarters ended April 1, 2001, July 1, 2001, September 30, 2001, March 31, 2002, June 30, 2002, and September 29, 2002; and Fischer's registration statement filed on Form S-8 on March 16, 2001, which incorporates Fischer's periodic filings with the Commission.

107. Stevenson knew or was reckless in not knowing that his violations resulted in various materially false statements, including Fischer's reported revenue and net income contained in the following SEC filings: Fischer's annual filings on Form 10-K for the years ended December 31, 2000 and December 31, 2001; Fischer's quarterly filings on Form 10-Q for the quarters ended October 1, 2000, April 1, 2001, July 1, 2001, September 30, 2001, March 31,

2002, June 30, 2002, and September 29, 2002; and Fischer's registration statement filed on Form S-8 on March 16, 2001, which incorporates Fischer's periodic filings with the Commission.

2. Materiality

108. According to Fischer's restatements, its originally reported results in its SEC filings were overstated (understated) by the following percentages by period:

Fiscal Period	Revenue	Gross Profit	Net Income/ Loss	Inventory[1]
1Q00	(13%)	10%	(81%)	30%
2Q00	5%	59%	171%	35%
3Q00	(2%)	56%	178%	31%
4Q00	(8%)	75%	244%	49%
FY 2000	(6%)	47%	138%	49%
1Q01	4%	43%	138%	54%
2Q01	17%	40%	173%	61%
3Q01	28%	51%	64%	78%
4Q01	12%	56%	148%	68%
FY 2001	15%	47%	272%	68%
1Q02	(4%)	88%	146%	78%
2Q02	(13%)	(673%)	(43%)	55%
3Q02	(15%)	93%	12%	81%

109. Because Fischer's revenue recognition fraud involved improperly accelerating revenue recognition, the figures shown for Fischer's quarterly revenue misstatements depict for each quarter the net result of moving revenue into the quarter from earlier quarters, and out of the quarter to later quarters. As a result, even though Fischer improperly recognized revenue in every quarter, Fischer actually understated its revenue for some quarters in its original filings.

110. In connection with its restatements, Fischer determined that during 2000, 2001, and the first three quarters of 2002, Fischer recognized approximately $45 million or 49% of its product revenue and 38% of its total revenue one or more quarters before the equipment was

[1] These numbers represent the cumulative adjustment to the inventory balance attributable to the three categories of inventory misstatements discussed in this complaint. These figures would vary somewhat if all adjustments to the inventory balance, including adjustments relating to Fischer's improper revenue recognition, were considered collectively.

installed at customer sites. Of that amount, about $23 Million or 25% of Fischer's product revenue and 18% of its total revenue was recognized two quarters or more before the equipment was installed.

G. PERSONAL PROFIT

111. Each of the Defendants received substantial personal profits as a result of their participation in Fischer's material misstatements, or as a direct result of the impact of Fischer's material misstatements on their compensation from Fischer or on Fischer's stock price.

112. Rivelli received quarterly bonuses tied to Fischer's reported net income totaling at least $400,000 during 2000 and 2001. Rivelli exercised options and sold Fischer stock near its all time high during the third and fourth quarters of 2001 for a net profit of at least $2.15 million.

113. Johnson received bonus payments of approximately $34,000 during 2001 and 2002. Johnson exercised options and sold Fischer stock for a net profit of about $191,000 in August 2001 and December 2002.

114. Burke received a $49,000 bonus for his performance as Fischer's CFO in May 2003.

115. Ayers received $60,000 for her work as Fischer's lead director during the second and third quarters of 2002. Ayers also received $5,000 in quarterly director retainer fees for each of these quarters and an additional $2,000 for each in person board meeting she attended

116. Stevenson received a $20,000 bonus in lieu of sales commissions for the year from July 2000 through July 2001. Stevenson also exercised options and sold Fischer stock for a net profit of approximately $141,000 in August 2001.

117. Hoffman received bonuses of at least $80,000 related to his performance during 2002. Hoffman exercised options and sold Fischer stock near its all time high in November 2001 for a net profit of about $81,000. Hoffman

FIRST CLAIM FOR RELIEF
Fraud – Violations of Securities Act Section 17(a)(1)
[15 U.S.C. § 77q(a)(1)]

118. The SEC repeats and realleges paragraphs 1 through 117 above.

119. Defendants Rivelli, Johnson, Stevenson, and Hoffman, directly and indirectly, with scienter, in the offer or sale of Fischer securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud.

120. Defendants Rivelli, Johnson, Stevenson, and Hoffman, violated, and unless restrained and enjoined will in the future violate Section 17(a)(1) of the Securities Act.

SECOND CLAIM FOR RELIEF
Fraud – Violations of Securities Act Sections 17(a)(2) and 17(a)(3)
[15 U.S.C. § 77q(a)(2) and (3)]

120. The SEC repeats and realleges paragraphs 1 through 117 above.

121. Defendants Rivelli, Johnson, Stevenson, and Hoffman, directly and indirectly, in the offer or sale of Fischer securities, by use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of Fischer securities.

122. Defendants Rivelli, Johnson, Stevenson, and Hoffman, violated, and unless restrained and enjoined will in the future violate Sections 17(a)(2) and (a)(3) of the Securities Act.

THIRD CLAIM FOR RELIEF
Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

123. The SEC repeats and realleges paragraphs 1 through 117 above.

124. Defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

125. Defendants Rivelli, Johnson, and Burke violated, and unless restrained and enjoined will in the future violate Section 10(b) of the Exchange Act and Rule 10b-5. Defendants Ayers, Stevenson, and Hoffman violated or alternatively aided and abetted Fischer's violations of, and unless restrained and enjoined will in the future violate or aid and abet violations of Section 10(b) of the Exchange Act and Rule 10b-5.

FOURTH CLAIM FOR RELIEF
Falsified Books and Records - 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]

126. The SEC repeats and realleges paragraphs 1 through 117 above.

127. Defendants Rivelli, Johnson, Burke, Stevenson, and Hoffman, knowingly circumvented or knowingly failed to implement a system of internal accounting controls, knowingly falsified books, records, or accounts and directly or indirectly falsified or caused to be falsified books, records or accounts described in Section 13(b)(2) of the Exchange Act. Ayers

directly or indirectly falsified or caused to be falsified books, records or accounts described in Section 13(b)(2)(A) of the Exchange Act.

128. Defendants Rivelli, Johnson, Burke, Stevenson, and Hoffman violated, and unless restrained and enjoined will in the future violate Section 13(b)(5) of the Exchange Act and Rule 13b2-1. Defendant Ayers violated, and unless restrained and enjoined will in the future violate Rule 13b2-1 of the Exchange Act.

FIFTH CLAIM FOR RELIEF
Deceit of Auditors - Exchange Act Rule 13b2-2
[17 C.F.R. § 240.13b2-2]

129. The SEC repeats and realleges paragraphs 1 through 117 above.

130. Defendants Rivelli, Johnson, Burke, and Ayers made materially false or misleading statements, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to Fischer's accountants and independent auditors in connection with an audit or examination of Fischer's financial statements or in the preparation or filing of Fischer's documents or reports filed with the SEC.

131. Defendants Rivelli, Johnson, Burke, and Ayers violated, and unless restrained and enjoined will in the future violate Exchange Act Rule 13b2-2.

SIXTH CLAIM FOR RELIEF
False SEC Filings - Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, 13a-13 and 13a-14
[15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13 and 240.13a-14]

132. The SEC repeats and realleges paragraphs 1 through 117 above.

133. Defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman aided and abetted Fischer, in that they provided knowing and substantial assistance to Fischer, which as an issuer of a security registered pursuant to Section 12 of the Exchange Act, filed materially

misleading annual and quarterly reports with the SEC and failed to file with the SEC, in accordance with rules and regulations the SEC has prescribed, information and documents required by the SEC to keep current information and documents required in or with an application or registration statement filed pursuant to Section 12 of the Exchange Act and annual reports and quarterly reports as the SEC has prescribed.

134. Defendants Rivelli, Johnson, Stevenson, and Hoffman aided and abetted, and unless restrained and enjoined will in the future aid and abet violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13. Defendants Burke and Ayers aided and abetted, and unless restrained and enjoined will in the future aid and abet violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder. Defendants Johnson and Burke additionally violated Rule 13a-14 thereunder.

SEVENTH CLAIM FOR RELIEF
False Books and Records - Exchange Act Section 13(b)(2)
[15 U.S.C. § 78m(b)(2)]

135. The SEC repeats and realleges paragraphs 1 through 117 above.

136. Defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman aided and abetted Fischer's failure to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets and failure to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements.

137. By reason of the foregoing, Fischer violated Section 13(b)(2) of the Exchange Act, and Defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman aided and abetted Fischer's violations. Unless restrained and enjoined, Defendants Rivelli, Johnson, Burke, Ayers,

Stevenson, and Hoffman will in the future aid and abet violations of Section 13(b)(2) of the Exchange Act.

PRAYER FOR RELIEF

The SEC respectfully requests that this Court:

I.

Find that defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman committed the violations alleged.

II.

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman from violating, directly or indirectly, or aiding and abetting violations of the law and rules alleged in this complaint.

III.

Order defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman to disgorge all ill-gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint, plus pre-judgment and post judgment interest.

IV.

Order defendants Rivelli, Johnson, Burke, Ayers, Stevenson, and Hoffman to pay third tier civil penalties, including post-judgment interest, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] as to Rivelli, Johnson, Stevenson, and Hoffman and Exchange Act Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] as to all defendants.

V.

Order pursuant to Exchange Act Section 21(d)(2), as amended by Section 305 of the

Sarbanes-Oxley Act [15 U.S.C. § 78u(d)(2)], or pursuant to the equitable authority of the court, that defendants Rivelli, Johnson, Burke, and Ayers be permanently barred from serving as an officer or director of any public company.

VI.

Order such other relief as is necessary and appropriate.

DATED: June 7, 2005.

Respectfullly submitted,

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