

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREG A. GADEL and
DANIEL J. SKRYPEK,

Defendants.

CIVIL ACTION
FILE NO.

COMPLAINT

Plaintiff, United States Securities and Exchange Commission (“Commission”) alleges as follows:

NATURE OF THE ACTION

1. This case concerns fraud and other misconduct by two former officers of Buca, Inc. (“Buca”), a publicly traded, Minneapolis-based Italian restaurant company. Greg A. Gadel (“Gadel”), Buca’s former Chief Financial Officer and Daniel J. Skrypek (“Skrypek”), Buca’s former Controller, helped preside over a corporate culture at Buca that allowed fraud to flourish. Gadel and Skrypek participated in drafting Buca’s proxy statements that materially understated the compensation of both Gadel and Joseph P. Micatrotto, Sr. (“Micatrotto”), Buca’s former Chief Executive Officer, President, and Chairman of the Board of Directors. Gadel and Skrypek helped prepare and review financial statements and proxy statements filed with the Commission that failed to disclose a significant related party transaction involving Micatrotto and a series of

related party transactions involving Gadel. Finally, Gadel and Skrypek directed the preparation of financial statements that materially overstated Buca's pre-tax income as a result of Gadel's and Skrypek's scheme to meet earnings targets through the improper capitalization of expenses.

2. From 2000 until 2004, Micatrotto, Gadel, and others treated the company as a vehicle through which they could obtain money to pay for personal expenses. Under Gadel and Skrypek's watch, and often with their direct consent, Micatrotto took advantage of Buca's lax accounting culture to improperly obtain reimbursement from Buca for personal expenses totaling nearly \$850,000. Gadel and Skrypek approved many of Micatrotto's reimbursement requests, even though they knew, or were reckless in not knowing, that some of the requests contained personal expenses. Although Gadel and Skrypek knew of Micatrotto's improper reimbursements and helped prepare Buca's proxy statements, Buca's proxies never reported the payment of these personal expenses as compensation to Micatrotto for the years 2000 through 2003. As a result of Gadel and Skrypek's failure to ensure disclosure of this information, Buca's proxy statements for the years 2000 through 2003 understated Micatrotto's annual compensation in amounts ranging from 27% to 74%.

3. Gadel improperly charged Buca for such things as family vacations and visits to strip clubs. Skrypek routinely approved Gadel's improper reimbursement requests. From 2000 to 2003, Gadel received more than \$96,000 in compensation arising from improper reimbursement requests. As a result, Gadel's compensation, like Micatrotto's, was materially understated in Buca's proxy statements.

4. Micatrotto also participated in a related party transaction that Buca never disclosed in its financial statements or proxy statements, despite Gadel's and Skrypek's knowledge of the transaction. Micatrotto and a Buca vendor bought an Italian villa in 2001 and

billed Buca for the purchase and for certain improvements to the villa. Gadel and Skrypek knew of the purchase and approved payments in connection with the purchase of the villa.

5. Likewise, Buca never disclosed a series of related-party transactions involving Gadel in its financial statements or proxy statements. In 2000 and 2001, Gadel was a director and 10% shareholder of a small information technology company that engaged in a series of transactions involving Buca that totaled more than \$1 million. Skrypek knew that Gadel had this ownership interest in the information technology company. Nonetheless, neither Gadel nor Skrypek ensured disclosure of these related party transactions in Buca's financial statements or proxy statements for the years 2000 and 2001.

6. Gadel and Skrypek also directed a scheme to meet Buca's earnings targets through the improper capitalization of expenses. Buca disclosed in a 2005 restatement that it had improperly capitalized nearly \$12 million in expenses from 2000 until 2004, which had the effect of inflating Buca's reported pre-tax income in amounts ranging between 18.8% and 36.9% per year.

JURISDICTION AND VENUE

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

8. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

THE DEFENDANTS

9. Greg A. Gadel is 47 years old and a resident of Eden Prairie, Minnesota. From 1997 until February 2005, Gadel was the CFO and an executive vice president of Buca. Gadel announced his resignation from Buca in December 2004, and left the company in February 2005.

10. Daniel J. Skrypek is 33 years old and a resident of Rosemount, Minnesota. He is a certified public accountant who holds an inactive license to practice in Minnesota. From 1999 until March 2005, Skrypek was Buca's Controller. From 2001 until 2005, he was also a vice president of Buca. In addition, Skrypek was Buca's interim CFO for a short period in 2005. Buca terminated Skrypek's employment in May 2005.

FACTS

11. Buca is a publicly traded company incorporated in Minnesota in 1996 and headquartered in Minneapolis. Buca is the holding company for two restaurant chains, Buca di Beppo and Vinny T's of Boston. Buca conducted an initial public offering of its stock in 1999. Since then, Buca's stock has been traded on NASDAQ. As a public company, Buca is required to file certain documents with the Commission, including annual reports on Forms 10-K, quarterly reports on Forms 10-Q, and proxy statements. From 2000 through 2004, Buca also filed with the Commission several S-8 registration statements in connection with offerings of its securities. These registration statements incorporated by reference Buca's financial statements and certain other Commission filings.

12. Gadel and Skrypek each played a significant role in preparing and ensuring the accuracy of Buca's annual and quarterly reports, financial statements and proxy statements filed with the Commission. Skrypek, as the Controller, created the first working draft of Buca's

Commission filings, including consulting with his staff on the accounting numbers contained in those filings. Gadel also reviewed drafts of Buca's quarterly and annual reports, financial statements and proxy statements before they were filed with the Commission. Gadel, along with Micatrotto, had the final authority on the content of Buca's Commission filings. In addition, as an executive officer of Buca, Gadel completed proxy questionnaires each year in connection with the preparation of Buca's proxy statements. Buca used proxy questionnaires as one means of verifying compensation and related party transactions involving its executive officers. Gadel signed all of Buca's quarterly and annual filings with the Commission during his tenure as CFO and certified the accuracy of Buca's Forms 10-K, and the financial statements included in those reports, for the years 2002 and 2003. Additionally, Gadel and Skrypek signed Buca's management representation letters to Buca's independent auditors in connection with their annual audits of Buca's financial statements. Through these management representation letters, Gadel and Skrypek represented, among other things, the accuracy and completeness of Buca's financial statements.

13. Gadel and Micatrotto showed little regard for sound corporate governance and helped create an environment that was conducive to fraud. In addition, Skrypek, as Controller, facilitated the fraudulent conduct that occurred. For example, from 2000 until late 2004, Buca had very few policies regarding billing travel and entertainment expenses ("T&E") to the company. During this time, Gadel, Skrypek, and their subordinates regularly received and approved requests for the reimbursement of personal expenses, including requests accompanied by little or no supporting documentation. Gadel and Micatrotto took full advantage of the lax culture that they had created by regularly billing Buca for a wide variety of personal expenses.

Gadel and Micatrotto Obtained Undisclosed Compensation

14. Gadel and Skrypek played substantial roles in Buca materially understating the compensation of Micatrotto and Gadel for the years 2000 to 2003.

15. Gadel abused T&E to obtain reimbursement for numerous personal expenses from 2000 to 2003. For instance, Gadel obtained reimbursement for expenses incurred during visits to strip clubs. In one such instance, Gadel and others incurred approximately \$19,000 worth of charges during a strip club visit in 2002, charges which Gadel placed on his personal charge card and for which Gadel received reimbursement from Buca. Gadel also obtained reimbursement for several vacations with his family, including a Caribbean cruise, a trip to London, and a trip to Hawaii. Gadel sought and received reimbursement for numerous other personal expenses such as an excessive car allowance, gasoline, and meals. Skrypek approved many of these improper reimbursements. At a minimum, Gadel received \$96,630.41 in compensation through such means from 2000 to 2003 that Buca failed to disclose in its proxy statements.

16. Micatrotto improperly obtained reimbursement for personal expenses from Buca, with the assistance of Gadel and Skrypek. From 2000 through 2003, Micatrotto submitted for reimbursement virtually all of his expenses, both personal and business, and obtained numerous cash advances from Buca. Micatrotto also submitted and received reimbursement for the same expenses multiple times. Gadel and Skrypek routinely approved the reimbursement of these expenses, despite the fact that many of them were suspect on their face. The amount of unsupported, duplicate, or personal expenses reimbursed to Micatrotto from 2000 to 2003 totaled approximately \$849,100. As a result, Buca's proxy statements for this time period understated Micatrotto's annual compensation by amounts ranging from 27% to 74%.

17. Micatrotto also used Buca's expense reimbursement system to award himself an unauthorized housing allowance. From 2001 to 2002, Micatrotto submitted expense forms for housing allowances of \$11,500 per month, for a total of \$152,996. Micatrotto's employment contract, which was an appendix to Buca's proxy statements during this time period, did not provide for such a housing allowance. Again, Gadel and Skrypek approved these improper allowances, but failed to ensure their disclosure in Buca's 2001 and 2002 proxy statements.

18. Buca's proxy statements and Forms 10-K for the years 2000 through 2003 materially understated both Gadel's and Micatrotto's compensation. Buca was required to report in its proxy statements the executive compensation of certain officers, including Gadel and Micatrotto. Buca's Forms 10-K incorporated by reference the executive compensation section of its proxy statements.

Micatrotto's Purchase of an Italian Villa

19. In December 2001, Micatrotto and an individual who was one of Buca's wine vendors jointly purchased and held title to a villa in Sermenino, Italy. The villa was titled in the name of Micatrotto and his wife. To obtain reimbursement from Buca, Micatrotto submitted a series of check requests reflecting the property's purchase price of approximately \$167,000. Gadel and Skrypek approved the check requests without obtaining any evidence that Buca owned the villa, and Buca reimbursed Micatrotto and the vendor for the purchase. Thereafter, Micatrotto ordered extensive renovations to the villa, and obtained reimbursement from Buca for renovation expenses totaling approximately \$45,000. Gadel and Skrypek continued to approve these requests.

20. Buca, as a public company, was required to report the villa purchase as a related party transaction in its proxy statements and financial statements and Forms 10-K. Gadel and Skrypek failed to identify the transaction in Buca's management representation letters to its independent auditors in

connection with their audits of Buca's financial statements, letters which they signed. Gadel and Skrypek also failed to ensure that the transaction was disclosed in Buca's Forms 10-K. As a result, Micatrotto's purchase of the villa was not disclosed in Buca's proxy statements for 2001 and 2002, or in its financial statements and Forms 10-K for the same years.

Undisclosed Related Party Transactions Between Buca and Vendor in Which Gadel Had Substantial Involvement

21. Gadel had substantial involvement in High Wire Networks, Inc. ("High Wire"), a small information technology company that engaged in a series of transactions involving Buca between 2000 and 2001. High Wire was established in October 2000 by a group that included Gadel and two of the primary owners of EDP, which was one of Buca's major information technology vendors. High Wire provided voice-over internet protocol primarily to companies other than Buca. High Wire ceased operations in late 2001. During the relevant time period, Gadel was a director of High Wire and had a 10% equity interest in the company. Gadel also was one of the two authorized signatories on High Wire's checking account and served as one of High Wire's Buca contacts.

22. Buca essentially funded High Wire's operations, despite the fact that High Wire provided most of its services to companies other than Buca. High Wire had its offices in a portion of Buca's office complex and Buca paid nearly \$98,000 to build out the office space occupied by High Wire. Further, EDP billed Buca for salary payments totaling \$1,394,775 made to High Wire employees, even though many of these High Wire employees spent little or no time working for Buca.

23. The transactions discussed in the previous paragraph raised suspicions among the more junior members of Buca's accounting staff. A Buca assistant controller discussed with Skrypek that these payments appeared to represent related party transactions requiring disclosure. In fact, the assistant controller later met with Gadel and Skrypek on the issue, and suggested that they contact Buca's auditors. Gadel, however, stated that there was nothing improper with the relationship and

Skrypek agreed. Neither Gadel nor Skrypek ever took steps to ensure disclosure of the related-party transactions between Buca and High Wire in Buca's proxy statements or in its Forms 10-K for the years 2000 and 2001.

The Financial Fraud Scheme

Background

24. As a way for Buca to meet analyst earnings estimates, Gadel orchestrated a scheme to inflate income through improper capitalization, which Skrypek helped to execute. Gadel and Skrypek together had the ultimate responsibility at Buca for whether an item should be capitalized. The scheme to inflate Buca's income involved taking ordinary expenses (which should be expensed in the period in which they are incurred) and treating them as capital expenditures (which may be expensed over time). Beginning in 2000, Gadel and Skrypek would preliminarily assess Buca's financials at the close of each quarter and then determine how much income they needed to "find" in order to meet analysts' earnings estimates for Buca. Gadel and Skrypek found a number of different ways to inflate Buca's income by decreasing expenses through improper capitalization, including the ways detailed in paragraphs 25 through 34 below.

Sham Donations from Vendors Billed Back to the Company

25. Buca improperly capitalized at least \$713,000 in expenses incurred in connection with an elaborate bill-back arrangement with certain vendors. The bill-back scheme concerned an annual conference for Buca store managers called the "Paisano Partners Conference." Buca ostensibly funded the Paisano Partners Conference through contributions from its vendors. In reality, certain Buca vendors made contributions to the Paisano Partners Conference with the express understanding that they could bill the contribution amount back to Buca. Gadel focused the bill-back scheme on vendors, such as construction and information technology vendors, that

provided goods and services that, under more appropriate circumstances, could be capitalized. Specifically, the Buca vendors involved in the scheme would pay contributions to Buca to help fund the Paisano Partners Conferences. These capital vendors would then bill back the amount of the contribution by burying the contribution amount in a subsequent inflated invoice to Buca. Buca, in turn, would characterize the inflated invoices as capital expenditures. As a result, Buca effectively capitalized the expense of the conference.

26. Gadel orchestrated the bill-back scheme. For example, he directed Buca's construction manager to request that Buca's construction vendors make contributions to the Paisano Partners Conference and then bill back the contribution amount. Construction vendors that participated in the bill-back scheme typically billed for the contribution amount in vaguely-worded change orders and invoices, or inflated project bids. Gadel explained to the construction manager that this arrangement would allow Buca to capitalize the vendor's bill-back, and that any Buca vendor with questions about the arrangement could call him directly.

27. Skrypek helped implement this bill-back scheme. Several times, Skrypek instructed employees as to whether certain Paisano Partners contributions should be billed back to Buca through a change order, or whether the amount should be built into the vendor's bid on a Buca project. Although Buca's assistant controller raised with Skrypek concerns about the vague change orders used by vendors making sham donations, Skrypek continued authorizing payment of such orders.

Everyday Repairs and Maintenance

28. Buca improperly capitalized at least \$4.67 million in repair and maintenance expenses, as well as general and administrative expenses. Gadel and Skrypek targeted repair and maintenance expenses as a way to make up the difference between analyst earnings expectations and Buca's

preliminary financial results. Gadel and Skrypek directed Buca employees at quarter end to review repair and maintenance account invoices over \$1,000 to find invoices that could be capitalized in a sufficient quantity to meet an earnings target. Many of the capitalized invoices did not represent properly capitalizable expenses. Although a Buca assistant controller advised Skrypek that he was uncomfortable with the practice of searching for items to capitalize at the end of each quarter in view of earnings targets, neither Skrypek nor Gadel did anything to change the practice. As the scheme went on, the improper capitalization of repair and maintenance invoices significantly expanded. First, Buca employed a practice of capitalizing most repair and maintenance invoices over \$1,000 so that there was no need to review invoices at quarter end for capitalization purposes. Later, at Gadel's direction, Buca set up a capitalization account for invoices under \$1,000. Gadel and Skrypek eventually allowed Buca accounting employees to put any small repair or maintenance invoice that the company received into this account, regardless of whether the invoice represented a capital expense.

Invoices from Vendors Related To Buca

29. Gadel and Skrypek also exploited Buca's unusual relationship with High Wire and EDP to improperly capitalize expenses. Buca, through Gadel and Skrypek, improperly capitalized at least \$1.5 million worth of invoices submitted as part of an arrangement involving High Wire and EDP. First, EDP billed Buca for salary payments totaling \$1,394,775 made to High Wire employees, even though many of these High Wire employees spent little or no time working for Buca. Gadel and Skrypek approved capitalization of these salary payments despite having no documentation supporting such accounting treatment. Second, at Gadel's direction and with Skrypek's knowledge, Buca used an inflated invoice from EDP to improperly capitalize at least \$130,000 of ordinary expenses, including Buca's monthly telephone bill. Finally, High Wire occasionally submitted invoices to Buca in the round amount of \$100,000 with no description of the goods or services provided. Gadel and Skrypek

authorized payment of these vague invoices and approved the capitalization of the invoice payments. They did so even though Buca's assistant controller had raised questions with Skrypek about the nature of various vaguely-worded invoices submitted by High Wire and EDP.

30. Because of his close personal involvement in High Wire, Gadel knew, or was reckless in not knowing, that Buca's payments to EDP for High Wire employee salaries and office space were not legitimate capital expenses. Likewise, although Skrypek suspected that Buca might be funding High Wire employees through payments to EDP, he simply authorized payment of EDP's bills and approved the capitalization of those payments. As such, Skrypek knew, or was reckless in not knowing, that EDP's High-Wire-related charges were not genuine capital expenses.

Payments to Independent Contractors

31. Buca, through Gadel and Skrypek, improperly capitalized at least \$1 million in payments to independent contractors. The improperly capitalized payments involved both the mischaracterization of certain Buca employees as independent contractors and the mischaracterization of the work of genuine independent contractors as a capital expense.

32. Buca improperly characterized certain employees as independent contractors so that it could capitalize payments to them. For example, in 2002, a portion of the salary of Buca's assistant controller was capitalized. Skrypek told the assistant controller that he would be an independent contractor for his first three months of employment. Since Buca was in the process of acquiring another restaurant chain at this time, Buca capitalized the assistant controller's salary payments as part of the acquisition.

33. In another example, Buca laid off its vice president of real estate but then immediately hired her as an independent contractor. Gadel instructed the assistant controller to pay the former vice president of real estate a \$100,000 "finder's fee" for two leases she had previously negotiated. Paying

the vice president this way for the lease negotiations allowed Buca to effectively capitalize her severance payments.

34. Buca also mischaracterized the invoices of genuine independent contractors as capital expenses. For example, Buca, through Gadel and Skrypek, capitalized payments totaling approximately \$572,000 made to an independent contractor who provided permitting services for Buca restaurants, despite having no basis to do so. The invoices from this independent contractor contained no itemization of her time or work. The permitting contractor's work mainly concerned the ongoing operations of Buca's restaurants, expenses which are not appropriate for capitalization.

Meeting with Gadel About Accounting Abuses

35. A group of Buca's senior accounting personnel, including the assistant controller, the tax director, and Skrypek, met with Gadel in June 2003 to confront him about some of the accounting abuses identified above. When questioned about the capitalization of expenses, Gadel acknowledged that some of his accounting methods were aggressive, but denied any wrongdoing. When asked specifically about relationships with vendors like High Wire and EDP, Gadel responded that no problems with these relationships existed. Neither Gadel nor Skrypek took any remedial action based on the issues raised at the meeting.

Effect on Buca's Income

36. After conducting an internal investigation, Buca restated its financial statements for the 2000 to 2003 fiscal years and for the first three quarters of fiscal 2004. In its 2004 10-K, filed on July 25, 2005, Buca disclosed that, because of the improper capitalization, it had overstated its pre-tax income by approximately \$11.9 million for the fiscal years 2000 through 2003 and the first three quarters of fiscal 2004. The improper capitalization inflated Buca's reported pre-tax annual income from 2000 to 2003 in amounts ranging from 18.8% to 36.9%.

37. The improper capitalization of expenses had a material impact on Buca's reported pre-tax income, as illustrated in the table below:

(Numbers in 1000s)	Fiscal Year			
	2000	2001	2002	2003
Reported Income (Loss), Pre-Tax	11,206	10,655	12,545	(16,341)
Impact on Pre-Tax Income (Loss) of Improper Capitalization of Expenses	2,106	3,934	2,796	3,828
Improper Capitalization as a Percentage of Pre-Tax Income (Loss)	18.8%	36.9%	22.3%	23.4%

Gadel and Skrypek Sold Buca Stock During the Financial Fraud

38. Gadel and Skrypek profited from the financial fraud at Buca. Gadel, by exercising options and selling Buca stock, realized at least \$546,000 in profits from 2000 through 2002. Skrypek's profits from sales of Buca stock between 2000 and 2002 totaled at least \$40,027.

COUNT I

**Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]
[Against Defendants Gadel and Skrypek]**

39. Paragraphs 1 through 38 are realleged and incorporated by reference herein.

40. At the times alleged in this Complaint, Defendants Gadel and Skrypek, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have employed devices, schemes and artifices to defraud.

41. Buca filed several S-8 registration statements with the Commission in connection with the offerings of its securities. These registration statements incorporated by reference Buca's financial statements and other Commission filings.

42. In the offer and sale of securities and as part of the scheme to defraud, Gadel and Skrypek made false and misleading statements of material fact and omitted to state material facts to investors and prospective investors regarding: (1) Micatrotto's and Gadel's executive compensation; (2) Micatrotto's and Gadel's involvement in related-party transactions; and (3) Buca's inflated pre-tax income, as more fully described above.

43. Gadel and Skrypek knew or were reckless in not knowing of the facts and circumstances described above.

44. By reason of the activities described above, Defendants Gadel and Skrypek violated Section 17(a) of the Securities Act.

COUNT II

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder [Against Defendants Gadel and Skrypek]

45. Paragraphs 1 through 44 are realleged and incorporated by reference as set forth fully herein.

46. At the times alleged in this Complaint, Defendants Gadel and Skrypek, in connection with the purchase and sale of securities described above, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, have employed devices, schemes, and artifices to defraud; have made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged in acts, practices, and courses of business which have operated

and will operate as a fraud and deceit upon purchasers and sellers of such securities, all as more fully described above.

47. Defendants Gadel and Skrypek knew or were reckless in not knowing of the activities described above.

48. By reason of the activities described above, Defendants Gadel and Skrypek violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

COUNT III

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 [17 C.F.R. 240.13b2-1 and 240.13b2-2] Promulgated Thereunder [Against Defendants Gadel and Skrypek]

49. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

50. Defendants Gadel and Skrypek violated Section 13(b)(5) of the Exchange Act by knowingly circumventing or knowingly failing to implement a system of internal accounting controls at Buca, or knowingly falsifying Buca's books, records, or accounts. Additionally, Gadel and Skrypek violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified, the books, records, and accounts of Buca subject to Section 13(b)(2)(A) of the Exchange Act. Furthermore, Gadel and Skrypek violated Exchange Act Rule 13b2-2 by making, or causing to be made, materially false or misleading statements or omissions to an accountant or auditor.

51. By reason of the activities described above, Gadel and Skrypek violated these provisions.

COUNT IV

Violations of Rule 13a-14 [17 C.F.R. 240.13a-14] [Against Defendant Gadel]

52. Paragraphs 1 through 51 are realleged and incorporated by reference herein.

53. On March 26, 2003 and March 12, 2004, acting under Section 302 of the Sarbanes-Oxley Act of 2002 and Rule 13a-14 promulgated thereunder, Gadel certified Buca's 2002 and 2003 Forms 10-

K. Specifically, Gadel certified that he had reviewed the report and that, based on his knowledge, the filings did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and based on his knowledge, the financial statements and other financial information included in the reports fairly presented in all material respects the financial condition, results of operation, and cash flows of Buca of, and for, the periods presented in the annual reports.

54. Gadel knew that the reports he certified contained untrue statements of material fact and omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

55. By reason of the activities described above, Gadel violated Rule 13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002.

COUNT V

Aiding and Abetting Buca's violations of Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 promulgated thereunder [Against Defendants Gadel and Skrypek]

56. Paragraphs 1 through 55 are realleged and incorporated by reference herein.

57. Section 14(a) of the Exchange Act requires registrants that solicit any proxy or consent or authorization in connection with any security registered pursuant to Section 12 of the Exchange Act (other than an exempted security), to comply with such rules as the Commission may promulgate. Rule 14a-3 provides that no solicitation of a proxy may occur unless each person solicited is concurrently furnished or has previously been furnished with a proxy statement containing the information specified in Schedule 14A. Rule 14a-9 prohibits, among other things, the use of proxy statements which omit to state any material fact necessary in order to make the statements therein not false or misleading.

58. Gadel and Skrypek knowingly provided substantial assistance to Buca in its 2001 to 2003 proxy violations. In those years, Skrypek prepared, and Gadel approved, proxy statements containing executive compensation tables which they knew materially understated Gadel's and Micatrotto's executive compensation and failed to disclose Micatrotto's and Gadel's related party transactions.

59. By reason of the activities described above, Gadel and Skrypek aided and abetted Buca's violations of Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder.

COUNT VI

**Aiding and Abetting Buca's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]
and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. 240.12b-20, 240.13a-1, and 240.13a-13]
Promulgated Thereunder
[Against Defendants Gadel and Skrypek]**

60. Paragraphs 1 through 59 are realleged and incorporated by reference herein.

61. Based on the conduct alleged herein, Buca violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

62. Defendants Gadel and Skrypek, in the manner set forth above, knowingly provided substantial assistance to Buca, as an issuer of a security registered pursuant to Section 12 of the Exchange Act, in its failing to file with the Commission, in accordance with rules and regulations the Commission has prescribed, information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act and annual reports and quarterly reports as the Commission has prescribed.

63. By reason of the activities described above, Gadel and Skrypek aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

COUNT VII

**Aiding and Abetting Buca's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)-(b)(2)(B)]
[Against Defendants Gadel and Skrypek]**

64. Paragraphs 1 through 63 are realleged and incorporated by reference herein.

65. Based on the conduct alleged herein, Buca violated Section 13(b)(2)(A) of the Exchange Act by keeping books and records with fraudulent entries related to capitalization of expenses, compensation of officers, and related party transactions. Buca violated Section 13(b)(2)(B) of the Exchange Act by maintaining a system of internal controls that permitted Micatrotto and Gadel to obtain a significant amount of unreported compensation and to conceal related party transactions, and permitted Gadel and Skrypek to engage in a scheme to improperly capitalize ordinary expenses.

66. Defendants Gadel and Skrypek, in the manner set forth above, knowingly provided substantial assistance to Buca in connection with its failure to make and keep books and records, and accounts, which, in reasonable detail, accurately and fairly reflected Buca's transaction and dispositions of its assets.

67. Defendants Gadel and Skrypek, in the manner set forth above, knowingly provided substantial assistance to Buca in connection with its failure to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

68. By reason of the activities described above, Gadel and Skrypek aided and abetted violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Defendants Gadel and Skrypek committed the alleged violations.

II.

Issue an Order of Permanent Injunction restraining and enjoining:

- i. Defendants Gadel and Skrypek and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violations of Sections 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78j(b) and 15 U.S.C. § 78m(b)(5)] and Rules 10b-5, 13b2-1, and 13b2-2 thereunder [17 C.F.R. 240.10b-5, 17 C.F.R. 240.13b2-1, and 17 C.F.R. 240.13b2-2];
- ii. Defendant Gadel from violations of Rule 13a-14 of the Exchange Act [17 C.F.R. 240.13a-14]; and
- iii. Defendants Gadel and Skrypek from aiding or abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. § 78m(a), 15 U.S.C. 78m(b)(2)(A)-(b)(2)(B), and 15 U.S.C. § 78n(a)] and Rules 12b-20, 13a-1, 13a-13, 14a-3, and 14a-9 thereunder [17 C.F.R. 240.12b-20, 17 C.F.R. 240.13a-1, 17 C.F.R. 240.13a-13, 17 C.F.R. 240.14a-3, and 17 C.F.R. 240.14a-9].

III.

Issue an Order requiring Defendants Gadel and Skrypek to disgorge all ill-gotten gains that they have received as a result of the acts complained of herein, with prejudgment interest thereon.

IV.

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

V.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] prohibiting Defendants Gadel and Skrypek from acting as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VI.

Retain jurisdiction of this action to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

