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## COMPLAINT

complaint  
"Salmonese"),

1. From between approximately January 1996 and approximately March 1996, Fiore, Salmonese, DeCeglie, Lavender, and Restivo employed a variety of fraudulent sales practices, including misrepresentations and omissions of material fact, to defraud customers of Nationwide Securities Corporation (“Nationwide”), a registered broker-dealer, in connection

with the 1996 initial public offering ("IPO") of Thermo-Mizer Environmental Corp. ("Thermo-Mizer"). Specifically, at the direction and under the control of Fiore and Salmonese, the *de-facto* control persons at Nationwide's New York City branch office ("Nationwide-NY"), Nationwide registered representatives DeCeglie, Lavender, and Restivo: (i) fraudulently sold Thermo-Mizer securities to Nationwide customers and (ii) thereafter inflated artificially the market price of, and demand for, Thermo-Mizer securities in aftermarket trading so that the Defendants could sell their own holdings of Thermo-Mizer at inflated prices. Defendants' fraudulent sales practices included: (a) making baseless and inflated projections about the price that Thermo-Mizer stock would command in the aftermarket; (b) baselessly promising customers that Nationwide would purchase their Thermo-Mizer shares after the IPO if the price of those shares did not significantly increase; (c) offering and selling Thermo-Mizer securities to Nationwide customers prior to the effective date of Thermo-Mizer's IPO; (d) soliciting customer purchases of Thermo-Mizer securities in the aftermarket prior to the commencement of Thermo-Mizer's IPO -- almost always requiring customers who wanted IPO securities to agree to buy an equal number of aftermarket securities at a higher price; (e) executing unauthorized purchases of Thermo-Mizer securities in customer accounts; (f) refusing or otherwise failing to execute customer orders to sell Thermo-Mizer securities during aftermarket trading; and (g) executing customer sell orders for Thermo-Mizer securities in the aftermarket only if the sale could be paired with a purchase of Thermo-Mizer securities by another customer.

2. While engaging in this conduct, DeCeglie, Lavender, and Restivo, along with Fiore and Salmonese, retained undisclosed control over substantial positions in Thermo-Mizer securities by placing those securities in the names of nominees subject to arrangements that

gave the Defendants control over the sale of the securities and all or a portion of the sale proceeds. Fiore and Salmonese directed and encouraged the scheme, which resulted in substantial inflation in the value of Thermo-Mizer stock and warrants, and which yielded the Defendants aggregately at least \$720,000 in illegal profits.

3. Defendants, directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will again engage, in transactions, acts, practices, and courses of business that constitute violations of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. §§ 240.10b-5. Defendants, directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will again engage, in transactions, acts, practices, and courses of business that constitute violations of Rule 10b-6, as it was in effect at the relevant time. The relevant portions of Rule 10b-6 were superseded by, and incorporated into Regulation M, 17 C.F.R. § 242, which became effective on March 4, 1997. Unless they are enjoined and restrained, the Defendants will again engage, in transactions, acts, practices, and courses of business that constitute violations of Regulation M.

4. In addition, as control persons of Nationwide, Fiore and Salmonese are liable, pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), for DeCeglie's, Lavender's, and Restivo's violations of Sections 5(a) and (c) and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act, and Rules 10b-5 and 10b-6 thereunder.

5. Unless they are permanently restrained and enjoined by this Court, Fiore, Salmonese, DeCeglie, Lavender, and Restivo will continue to engage, or again engage, in the transactions, acts, practices, and courses of business alleged in this Complaint, and in

transactions, acts, practices, and courses of business of a similar type and object. By this action, the Commission seeks permanent injunctive relief; an accounting; disgorgement of ill-gotten gains plus prejudgment interest; the imposition of civil money 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); and such other relief as the Court shall deem just and proper.

### **JURISDICTION AND VENUE**

6. The Commission brings this action against Fiore, Salmonese, DeCeglie, Lavender, and Restivo pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

7. The Defendants, directly and indirectly, made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices and courses of business alleged herein.

8. Certain of the transactions, acts, practices, and courses of business alleged herein occurred within the Southern District of New York, including: (a) the offer and sale of Thermo-Mizer securities by the Defendants; (b) the making of misrepresentations and omissions of material facts by the Defendants in connection with the offer and sale of Thermo-Mizer securities; (c) employing devices, schemes and artifices to defraud; and (d) engaging in acts, practices and courses of business which have operated as a fraud or deceit upon purchasers of securities and other persons. Accordingly, this Court has jurisdiction over this action, and venue is proper in this district, pursuant to Sections 20(d) and 22(a) of the

Securities Act, 15 U.S.C. §§ 77t(d) and 77v(a), and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.

**DEFENDANTS**

9. **Fiore** is 34 years old and resides in Morganville, New Jersey. He was a registered representative of Nationwide and a *de-facto* control person at Nationwide-NY from at least September 1995 to April 1996.

10. **Salmonese** is 32 years old and resides in New York, New York. He was a registered representative of Nationwide and a *de-facto* control person at Nationwide-NY from at least October 1995 to April 1996.

11. **DeCeglie** is 39 years old and resides in Old Bridge, New Jersey. He was a registered representative of Nationwide and worked at Nationwide-NY from at least October 1995 to April 1996. DeCeglie is currently a registered representative at a New York branch office of National Securities Corporation.

12. **Lavender** is 31 years old and resides in New York, New York. He was a registered representative of Nationwide and worked at Nationwide-NY from at least January 1996 to April 1996. Lavender is currently a registered representative of Magnum Securities of New York, Inc.

13. **Restivo** is 29 years old and resides in Valley Stream, New York. He was a registered representative of Nationwide and worked at Nationwide-NY from at least November 1995 to April 1996. Restivo is currently a registered representative and manager of First Freedom Securities, LLC, located in Westbury, New York.

### **OTHER RELEVANT ENTITIES**

14. **Nationwide**, a Texas corporation with its principal place of business in Ft. Worth, Texas, has been registered with the Commission as a broker-dealer since January 29, 1992. The corporation records of the Texas Secretary of State's Office indicate that Nationwide was involuntarily dissolved in February 1997 for failure to maintain a registered agent in Texas. Nationwide maintained a branch office at 100 Wall Street, New York, New York, from at least September 1995 through April 9, 1996.

15. **Thermo-Mizer**, a Delaware corporation with its principal place of business in Ridgefield, New Jersey, designed, produced, and marketed products to monitor certain environmental conditions. In its IPO, which became effective on February 28, 1996, Thermo-Mizer offered 750,000 shares of common stock, offered at \$5.00 per share, and 1,500,000 redeemable common stock purchase warrants, offered at \$0.10 per warrant. Each warrant expired on February 26, 2001 and entitled the holder, commencing one year from the date of the prospectus, February 27, 1996, to purchase one share of common stock at \$6.00 per share. When its IPO became effective, Thermo-Mizer securities became listed on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") Small Capitalization Market.

### **FRAUDULENT CONDUCT BY THE DEFENDANTS**

#### **Fiore's and Salmonese's Control of Nationwide-NY**

16. During the Relevant Period, Nationwide-NY was operated and controlled by Fiore and Salmonese. Fiore hired, fired, and disciplined employees, determined brokers' compensation, conducted sales meetings, and generally oversaw the distribution of the

Thermo-Mizer IPO. Salmonese assisted Fiore in these tasks and recruited most of Nationwide-NY's registered representatives.

17. Beginning in approximately January 1996 at meetings with Nationwide-NY's registered representatives, including DeCeglie, Lavender, and Restivo, Fiore and Salmonese informed Nationwide-NY's registered representatives that Nationwide was the principal underwriter of Thermo-Mizer's IPO and that each registered representative was responsible for selling to investors, or otherwise disposing of, a specific number of Thermo-Mizer "units," consisting of one share of Thermo-Mizer common stock and one Thermo-Mizer redeemable common stock purchase warrant. At these meetings, Fiore and Salmonese further informed Nationwide-NY's registered representatives that all of the funds for purchases of Thermo-Mizer's IPO units had to be received from buyers before the effective date of the IPO, and that investors should be offered only a "packaged deal," *i.e.*, customers who wanted to buy IPO units had to agree to buy, and pay for in advance, the same number of aftermarket Thermo-Mizer shares at a price higher than the IPO price.

18. At the meetings discussed above, Fiore and Salmonese also informed Nationwide-NY's registered representatives, including DeCeglie, Lavender, and Restivo, that they would be compensated by being permitted to buy at the offering price substantial positions in Thermo-Mizer's shares or warrants, which would not be disclosed to Thermo-Mizer's investors and which they could sell directly, or through nominees, in aftermarket trading. The amount of shares they would be able to purchase was based on the volume of Thermo-Mizer securities that their customers purchased and held.

**Defendants' Fraudulent Conduct in Connection with Thermo-Mizer's IPO**

19. Beginning in or about early February 1996, Nationwide-NY's registered representatives, including DeCeglie, Lavender, and Restivo, began cold-calling potential investors or contacting existing Nationwide customers to sell Thermo-Mizer units. To induce investors to purchase Thermo-Mizer units, DeCeglie, Lavender, and Restivo, at the direction of Fiore and Salmonese, employed a variety of fraudulent sales practices, including making baseless and inflated projections about the price that Thermo-Mizer stock would command in the aftermarket. These baseless and inflated price predictions included telling customers that: (a) Thermo-Mizer's price would increase quickly to \$10 to \$12 per share, or even \$20 per share, in aftermarket trading; (b) if a customer bought Thermo-Mizer units, the customer would see his money double in a short time; and (c) Thermo-Mizer investors could sell their Thermo-Mizer securities in the aftermarket "right away." None of the Defendants had any basis, absent their own fraudulent practices, for predicting the aftermarket price of Thermo-Mizer stock or telling Thermo-Mizer investors that those investors would double their money after the IPO.

20. At the direction of Fiore and Salmonese, DeCeglie, Lavender, and Restivo employed additional fraudulent sales practices to sell Thermo-Mizer units, including:

(a) Unlawfully soliciting customers to purchase, and receiving payments for, Thermo-Mizer units prior to February 28, 1996, the effective date of the Thermo-Mizer offering;

(b) Baselessly promising customers that they were "protected" because Nationwide would repurchase their Thermo-Mizer shares if those shares did not significantly increase in price after the IPO, even though they knew that Nationwide would not do so; and



(c) Unlawfully requiring Nationwide customers, as a condition to receiving allocations of Thermo-Mizer IPO units, to purchase Thermo-Mizer securities in the aftermarket at more than the \$5.00 per share and \$0.10 per warrant IPO prices.

21. After Thermo-Mizer's IPO became effective, in an effort to increase artificially the price of Thermo-Mizer's securities in aftermarket trading, DeCeglie, Lavender, and Restivo, at the direction of Fiore and Salmonese, engaged in further fraudulent and manipulative practices as follows:

(a) DeCeglie, Lavender, and Restivo, at the direction of Fiore and Salmonese, refused, or failed to execute in a timely fashion, customer sell orders during aftermarket trading of Thermo-Mizer's securities. If the customer persisted in his desire to sell his Thermo-Mizer holdings, the Defendants would employ a number of techniques to avoid or delay a sale, including avoiding customer phone calls, transferring customers to another broker, failing to complete a sell ticket, or failing to give the sell ticket to a trader to be executed.

(b) At other times, DeCeglie, Lavender, and Restivo, at the direction of Fiore and Salmonese, effected unauthorized purchases of Thermo-Mizer securities in the accounts of existing Nationwide customers. This included causing Nationwide customers to purchase Thermo-Mizer securities when such purchases had not been authorized, or causing customers to purchase more Thermo-Mizer securities than the customer had authorized. Once a customer received a confirmation of an unauthorized purchase of Thermo-Mizer, DeCeglie, Lavender, and Restivo, at the direction of Fiore and Salmonese, frequently attempted to compel the customer to pay for the unauthorized purchase by persuading the customer that an investment in Thermo-Mizer would be profitable.

(c) On certain occasions, Fiore himself spoke with Thermo-Mizer investors who wanted to sell their Thermo-Mizer shares, and told the investors that they should not worry and stay invested in Thermo-Mizer because the price of its securities would increase.

(d) On almost all occasions, DeCeglie, Lavender, and Restivo, under instructions by Fiore and Salmonese, would not process a sale of Thermo-Mizer securities unless the sale was paired or "crossed" with a purchase of the same amount of Thermo-Mizer securities by another customer.

22. Fiore and Salmonese instructed the other Defendants to make, and approved of them making, all of the above misrepresentations and fraudulent practices. None of these misrepresentations or fraudulent practices was disclosed to customers at the time of their purchases of Thermo-Mizer securities or thereafter.

23. At the direction and under the control of Fiore and Salmonese, and as illustrated by examples set forth in paragraphs 24 through 30, *infra*, DeCeglie, Lavender, and Restivo each engaged in one or more of the above deceptive practices in connection with Thermo-Mizer's IPO.

#### *DeCeglie*

24. DeCeglie told one customer, Benet H., in early 1996 that Thermo-Mizer's IPO was a "hot issue," that there were many people ready to buy the stock in the aftermarket, that the price would increase quickly to \$10 to \$12 per share, and that the customer could sell his Thermo-Mizer securities in the aftermarket "right away." DeCeglie told Benet H. that, in order for DeCeglie to sell him IPO units of Thermo-Mizer, Benet H. needed to send his funds to DeCeglie before the IPO occurred and that Benet H. was required to buy Thermo-Mizer securities in the aftermarket.

25. Based on these misrepresentations by DeCeglie, Benet H. sent Nationwide a check for \$24,215 for the purchase of 2000 Thermo-Mizer units and 2000 aftermarket shares. Benet H., however, received only 500 Thermo-Mizer units and 500 aftermarket shares. Benet H. requested a refund of the balance of his funds from DeCeglie. While DeCeglie told Benet H. that he would refund Benet H.'s remaining funds, DeCeglie instead made an unauthorized purchase of Thermo-Mizer warrants. When Benet H. learned of this unauthorized purchase, Benet H. demanded that his Thermo-Mizer securities be sold and that all of his funds be returned. Even though DeCeglie told Benet H. that his Thermo-Mizer position would be liquidated and his money returned, Benet H. never received a refund of any of his funds.

*Lavender*

26. Lavender told one customer, David H., that there was "heavy interest" in Thermo-Mizer's IPO and "not enough to go around." In addition, Lavender told this customer that he would "see [his] money double" in a short time, that Thermo-Mizer stock could go as high as \$20 per share, and that if Thermo-Mizer did not increase significantly, the customer would be "protected" because Nationwide would "buy him out of his position."

27. Based on these misrepresentations by Lavender, David H. sent Nationwide a check for approximately \$6,000 and received 500 Thermo-Mizer IPO units and 500 Thermo-Mizer aftermarket shares. After seeing the price of Thermo-Mizer's securities increase over the first few days of aftermarket trading, David H. contacted Lavender and requested that his Thermo-Mizer position be liquidated. Lavender discouraged David H. from selling, said that Thermo-Mizer's shares would continue to increase in price, and again assured David H. that he was "protected." After a few more days, David H. again called Lavender and asked Lavender to sell his Thermo-Mizer securities. Lavender again discouraged David H. from

selling and told David H. that, at the first sign of a drop in Thermo-Mizer's price, Lavender would sell David H.'s shares.

28. Later, when a drop in Thermo-Mizer's price occurred and his shares were not sold, David H. called Lavender but was unsuccessful at reaching him. When David H. persisted in calling Nationwide, he was eventually directed to Fiore, who told David H. that he should not worry, urged him to stay invested in Thermo-Mizer, and told him that the price of its securities would increase. When Thermo-Mizer's price did not increase, David H. attempted to contact either Lavender or Fiore on numerous occasions, but was unsuccessful.

#### *Restivo*

29. Restivo called a Nationwide customer, Charles N., and solicited him to purchase Thermo-Mizer IPO units at \$5.10 per unit. After Charles N. initially agreed to buy 500 Thermo-Mizer units at \$5.10 per unit, Restivo told Charles N. that if he agreed to buy 1000 shares of Thermo-Mizer common stock in the aftermarket at \$7.00 per share, Restivo would allow Charles N. to buy an additional 500 Thermo-Mizer IPO units.

30. Based on these misrepresentations by Restivo, Charles N. sent Nationwide two checks totaling \$12,000. Thereafter Charles N. received confirmations from Nationwide indicating that he had bought only 1,500 shares of Thermo-Mizer common stock, of which 750 shares were bought at \$5.00 per share and the remainder at \$7.00 per share. After receiving these confirmations, Charles N. told Restivo to sell his Thermo-Mizer holdings. While Restivo repeatedly assured Charles N. that Restivo would sell his Thermo-Mizer shares, Restivo never did.

### **The Effects of Defendants' Actions on Thermo-Mizer's Securities**

31. As a result of Defendants' fraudulent and manipulative practices described above, Thermo-Mizer's common stock price closed at \$6.50 per share on February 28, 1996, the effective date of the offering, and reached \$7.75 per share, its highest closing price, the next day. Thermo-Mizer's common stock stayed consistently over \$6.125 per share during the first six trading days. On February 28, 1996, Thermo-Mizer warrants, offered at an initial price of \$0.10 per warrant, increased to over \$4.00 per warrant and remained consistently over \$4.00 during the first six trading days. The price of Thermo-Mizer warrants and shares began to decline on March 27, 1996 and April 1, 1996, respectively, decreasing to \$1.50 per share and \$0.125 per warrant by May 23, 1996.

### **Sales of Thermo-Mizer Securities By The Defendants**

32. For selling Thermo-Mizer's IPO units, Fiore and Salmonese paid DeCeglie, Lavender, and Restivo undisclosed compensation in the form of Thermo-Mizer warrants, the amount of which was calculated on the basis of the volume of Thermo-Mizer units that their Nationwide customers purchased and held. Fiore and Salmonese also compensated themselves with amounts of both shares of Thermo-Mizer common stock and Thermo-Mizer warrants.

33. Fiore, Salmonese, DeCeglie, Lavender, and Restivo placed the Thermo-Mizer securities that they received as compensation in the name of nominees, who included friends and relatives, to conceal their true ownership.

34. As the price of Thermo-Mizer's securities rose as a result of the Defendants' fraudulent acts, the Thermo-Mizer securities given to the respective nominees were sold and all, or a portion, of the profits were transferred to the Defendants, or made available for their beneficial use.

35. Fiore, Salmonese, DeCeglie, Lavender, and Restivo never disclosed to Nationwide customers, at the time of their purchases of Thermo-Mizer securities or thereafter, their arrangements for the sale of the Thermo-Mizer securities that the Defendants had received as compensation in the Thermo-Mizer IPO.

*Fiore*

36. Fiore received 6,000 shares of Thermo-Mizer common stock and 92,5000 Thermo-Mizer warrants and, on February 28, 1996, placed them in the names of his nominees. Over the first three weeks of Thermo-Mizer's aftermarket trading, Fiore sold 6,000 shares and 92,5000 warrants generating net profits of \$301,927.

*Salmonese*

37. Salmonese received up to 6,000 shares of Thermo-Mizer common stock and up to 114,673 warrants. On February 28, 1996, he placed both his common stock and warrants in the names of his nominees. Over the next five weeks of aftermarket trading, Salmonese sold up to 6,000 shares and up to 114,673 warrants generating net profits of up to \$365,075.

*DeCeglie*

38. DeCeglie received up to 3,000 shares of Thermo-Mizer common stock and up to 59,087 warrants. He placed these securities in the names of his nominees. Thereafter, DeCeglie sold all of these securities and generated profits of up to \$179,875.

*Lavender*

39. Lavender received 11,000 Thermo-Mizer warrants and placed them in the name of his nominee. Over the next six weeks, Lavender sold his warrants for net profits of \$30,551.

***Restivo***

40. Restivo obtained 7,000 Thermo-Mizer warrants, placing them in the name of his nominee. Thereafter, Restivo sold these warrants for net profits of \$22,818.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**Violations of Section 17(a) of the Securities Act,  
Section 10(b) of the Exchange Act and Rule 10b-5**

**(Against All Defendants)**

41. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 40, above.

42. From between approximately January 1996 and approximately March 1996, the Defendants, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, in the offer or sale and in connection with the purchase or sale of securities, knowingly or recklessly, have: (1) employed devices, schemes, and artifices to defraud; (2) obtained money or property by means of, or otherwise made, untrue statements of material fact, or 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 (3) engaged in acts, transactions, practices, and courses of business which have operated as a fraud or deceit upon purchasers of securities and other persons.

43. As part of and in furtherance of this fraudulent conduct, as alleged in paragraphs 1 through 42, above, Fiore and Salmonese, knowingly or recklessly, directly or indirectly, directed Nationwide registered representatives, including DeCeglie, Lavender, and Restivo, to

induce investors to purchase shares of Thermo-Mizer by employing fraudulent sales practices to: (i) sell Thermo-Mizer securities to customers of Nationwide and (ii) thereafter, in aftermarket trading, inflate artificially the market price of, and demand for, Thermo-Mizer securities so that Fiore, Salmonese, DeCeglie, Lavender, and Restivo could sell their own holdings of Thermo-Mizer at inflated prices. Such fraudulent sales practices include (1) making baseless price predictions and other material misrepresentations or omissions to induce customers to purchase Thermo-Mizer securities; (2) failing to execute customer orders to sell Thermo-Mizer securities; and/or (3) executing unauthorized purchases of Thermo-Mizer securities in customer accounts.

44. As part of and in furtherance of this fraudulent conduct, as alleged in paragraphs 1 through 43, above, Fiore, Salmonese, DeCeglie, Lavender, and Restivo, knowingly or recklessly, directly or indirectly, retained undisclosed control over substantial positions in Thermo-Mizer securities by placing those securities in the names of nominees subject to arrangements that gave them control over the sale of the securities and all or a portion of the proceeds.

45. At the time the representations described in paragraphs 19 through 30, above, were made, Defendants knew, or were reckless in not knowing, that the representations were false and misleading.

46. The misrepresentations and omissions described in paragraphs 19 through 30, above, were material and made with scienter.

47. By reason of the foregoing, the Defendants have, directly or indirectly, singly or in concert, violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act, and Rule 10b-5.



## **SECOND CLAIM FOR RELIEF**

### **Violations of Sections 5(a) and 5(c) of the Securities Act**

#### **(Against All Defendants)**

48. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 to 47, above.

49. Defendants Fiore, Salmonese, DeCeglie, Lavender, and Restivo, directly and indirectly, singly and in concert, have made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, to offer and sell securities through the use or medium of a prospectus or otherwise when no registration statement has been filed or was in effect as to such securities and when no exemption from registration was available.

50. As part of and in furtherance of this conduct, beginning before the February 28, 1996 effective date of Thermo-Mizer's registration statement and absent an exemption from registration, Fiore and Salmonese instructed Nationwide-NY registered representatives, including DeCeglie, Lavender, and Restivo, to sell and collect payment for Thermo-Mizer IPO securities. In addition, Fiore, Salmonese, DeCeglie, Lavender, and Restivo resold, through nominees, their shares into the market without those transactions being registered.

51. By reason of the foregoing, Defendants Fiore, Salmonese, DeCeglie, Lavender, and Restivo violated and, unless restrained and enjoined, will again violate, Sections 5(a) and 5(c) of the Securities Act.

### **THIRD CLAIM FOR RELIEF**

#### **Violations of Exchange Act Rule 10b-6**

##### **(Against All Defendants)**

52. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 51, above.

53. From between approximately January 1996 and approximately April 1996, during a distributions of securities in the IPO of Thermo-Mizer, while Nationwide was an underwriter, Fiore, Salmonese, DeCeglie, Lavender, and Restivo, directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly induced or attempted to induce persons to purchase such securities before Nationwide's distribution of Thermo-Mizer securities in the IPO was complete.

54. As part of and in furtherance of this violative conduct, as described in paragraphs 1 through 53, above, prior to the completion of the distribution of Thermo-Mizer securities in the IPOs, DeCeglie, Lavender, and Restivo, at the direction of Fiore and Salmonese, each attempted to induce and did induce customers to purchase such securities that were the subject of such distributions.

55. By reason of the foregoing acts, practices, and courses of business, Fiore, Salmonese, DeCeglie, Lavender, and Restivo, have, directly or indirectly, singly or in concert, violated Exchange Act Rule 10b-6.

#### **FOURTH CLAIM FOR RELIEF**

##### **Controlling Person Liability for Violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-6**

##### **(Against Fiore and Salmonese)**

56. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 55, above.

57. Fiore and Salmonese possessed, directly or indirectly, the power to direct or control, or cause the direction or control of Nationwide-NY's management and policies. Fiore and Salmonese were therefore controlling persons of Nationwide-NY pursuant to Section 20(a) of the Exchange Act.

58. From between approximately January 1996 and approximately March 1996, Nationwide registered representatives, including DeCeglie, Lavender, and Restivo, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, in the offer or sale and in connection with the purchase or sale of securities, knowingly or recklessly: (1) employed devices, schemes, and artifices to defraud; (2) obtained money or property by means of, or otherwise 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; and (3) engaged in acts, transactions, practices, and courses of business which have operated as a fraud or deceit upon purchasers of securities and other persons.

59. As alleged in paragraphs 1 through 58, above, beginning before the February 28, 1996 effective date of Thermo-Mizer's registration statement and absent an exemption from registration, Fiore and Salmonese instructed Nationwide-NY registered representatives, including DeCeglie, Lavender, and Restivo, to sell and collect payment for Thermo-Mizer IPO securities. In addition, Fiore, Salmonese, DeCeglie, Lavender, and Restivo resold, through nominees, their shares into the market without those transactions being registered.

60. As alleged in paragraphs 1 through 59, above, from January 1996 to April 1996, during a distribution of securities in the IPO of Thermo-Mizer, while Nationwide was an underwriter, Nationwide registered representatives, including DeCeglie, Lavender, and Restivo, directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly induced or attempted to induce persons to purchase such securities before Nationwide's distribution of securities in the IPO was complete.

61. By reason of the foregoing, Fiore and Salmonese are liable as controlling persons pursuant to Section 20(a) of the Exchange Act for DeCeglie's, Lavender's, and Restivo's violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-6.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Commission respectfully requests that this Court order the entry of a Final Judgment:

#### **I.**

Permanently enjoining Fiore, Salmonese, DeCeglie, Lavender, and Restivo, their officers, agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or

otherwise, and each of them, from violating, directly or indirectly, Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act, Rule 10b-5, and Regulation M.

## II.

Ordering Fiore, Salmonese, DeCeglie, Lavender, and Restivo to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount.

## III.

Ordering Fiore, Salmonese, DeCeglie, Lavender, and Restivo to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

## IV.

Ordering the Defendants each to file with this Court and serve upon the Commission verified written accountings, signed by each under penalty of perjury, of:

- a) All assets, liabilities, and property currently held, directly or indirectly, by, or for the benefit of, the Defendants, including, but not limited to, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, and its current location and amount;
- b) All money, property, assets, and other income received by the Defendants, or for their direct or indirect benefit, in or at any time from January 1996 to the date of the accounting, describing the source, amount, disposition, and current location of each of the items listed;
- c) The names and last known addresses of all bailees, debtors, and other persons

and entities which are currently holding the assets, funds, or property of the Defendants; and

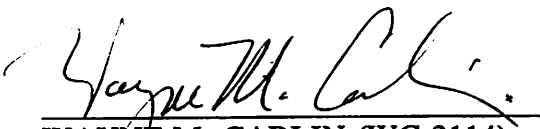
d) All assets, funds, securities, real or personal property received by the Defendants, or any other person controlled by them, from parties who provided money to the Defendants in connection with the purchase or sale of securities from January 1996 to the date of the accounting, and the disposition of such assets, funds, securities, real or personal property.

V.

Granting such other relief as the Court shall deem just and proper.

Dated: New York, New York  
December 12, 2000

Respectfully submitted,

By:   
WAYNE M. CARLIN (WC-2114)  
Regional Director

Attorney for Plaintiff  
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