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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MERCANTILE BANCORP, INC., TED AWERKAMP and MICHAEL McGRATH, Defendants.	**EQUITABLE RELIEF IS SOUGHT** Civil Action No. 3:13-cv-3341

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("SEC"), states as follows:

NATURE OF THE ACTION

1. Mercantile Bancorp, Inc. ("Mercantile"), its CEO, Ted Awerkamp ("Awerkamp") and its CFO, Michael McGrath ("McGrath"), failed to disclose a probable, material loan loss in a securities registration statement the bank filed with the SEC in the fall of 2010. Mercantile, Awerkamp and McGrath also failed to recognize that loss in the bank's third quarter financial statements that Mercantile filed with the SEC in November 2010.

2. Based on information known by CEO Awerkamp and CFO McGrath, generally accepted accounting principles ("GAAP") required Mercantile to recognize the loss in its third quarter financial statements. Because it did not do so, Mercantile was able to (i) falsely state that its main subsidiary bank had met certain capital ratio thresholds required by the Federal Deposit

Insurance Corporation ("FDIC"); (ii) understate its net loss for the quarter and the nine months ending September 30, 2010 as $7.5 million and $11 million (instead of at least $12.78 million and at least $16.28 million); and (iii) falsely state that its main subsidiary bank had net income of $1.8 million for first nine months of 2010 when it actually had a net loss of at least $3.48 million during that period.

JURISDICTION

3. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(e) and 78aa].

4. The acts, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Central District of Illinois and elsewhere.

5. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

THE DEFENDANTS

6. Mercantile Bancorp, Inc. ("Mercantile"), is a Delaware corporation and bank holding company with its principal place of business in Quincy, Illinois. During the relevant time period, Mercantile conducted a consumer and commercial banking business and its securities were registered with the SEC pursuant to Section 12(b) of the Exchange Act and traded on the NYSE Amex under the symbol MBR. In late 2011, Mercantile voluntarily withdrew and deregistered its common stock. Subsequently, the FDIC closed two of Mercantile's three subsidiary banks. On June 27, 2013, Mercantile filed a bankruptcy petition.

7. Ted Awerkamp ("Awerkamp"), age 55, resides in Amarillo, Texas. He was employed by Mercantile from 1994 until his departure from the company in August 2011. During the relevant time period, he was Mercantile's CEO.

8. Michael McGrath ("McGrath"), age 59, resides in Quincy, Illinois. He was employed by Mercantile from 1986 until his departure in 2012. During the relevant time period, he was Mercantile's CFO.

THE FACTS

I. MERCANTILE'S PARTICIPATION IN THE BANNING LEWIS LOAN

9. During the relevant time period, Mercantile's main subsidiary bank was Mercantile Bank.

10. In 2007, Mercantile Bank participated in a Shared National Credit ("SNC") loan called Banning Lewis Ranch ("Banning Lewis")—a loan that provided funds for a large residential real estate development to be built in Colorado Springs.

11. A SNC loan is a loan that is at least $20 million, where multiple banks share the risk of loss on the loan. Every year, SNC loans are reviewed by the relevant federal regulators and particular loans are subject to regulatory criticism or classification. For sampled credits, a risk rating is assigned during the annual SNC exam by an interagency team and reported to each participant bank by its federal banking supervisor. In this case, the FDIC communicated the annual SNC exam results to Mercantile Bank.

12. Like many other residential real estate projects, Banning Lewis did not perform well during the financial crisis. In mid-2009, Mercantile Bank downgraded the loan to substandard to match that year's SNC exam rating, a decision that increased the bank's internal scrutiny of the loan. Through selling a portion of its participation in the Banning Lewis loan and

due to additional equity injected by the borrower, Mercantile Bank's exposure on the loan was reduced to approximately $8.4 million by the end of 2009 (12% of the total $70 million SNC loan). Even so, Banning Lewis remained one of Mercantile's largest problem loans.

II. THE 2010 APPRAISAL AND THE FDIC'S DETERMINATION OF A $5.28 MILLION LOSS ON THE BANNING LEWIS LOAN

13. In March 2010, a new appraisal valued the collateral for the Banning Lewis loan at $26 million, which represented a 63% decrease in value from the initial appraisal dated December 2006. Mercantile Bank informed KeyBank (the lead bank on this SNC loan) that it believed the appraisal was flawed because it did not assign any value to certain metro-district reimbursements. These reimbursements had been valued at approximately $34 million in the December 2006 appraisal.

14. In mid-August 2010, Mercantile received from the FDIC the results of the 2010 annual SNC exam ("2010 SNC Exam"). In its cover letter, the FDIC told Mercantile Bank and the other participating banks that it expected them to charge off approximately 63% of the Banning Lewis loan as a loss (*i.e.*, $44 million of the total $70 million loan). Following the FDIC's expectation would have required Mercantile Bank to recognize a $5.28 million loss on the Banning Lewis loan (*i.e.*, 12% of the total $44 million loss), which would have had a material impact on Mercantile's financial statements.

15. Before a Mercantile Bank Board meeting in late August 2010, Awerkamp and McGrath were aware of the March 2010 appraisal, the 2010 SNC Exam results and the FDIC's expectation that Mercantile recognize the $5.28 million loss.

16. Under GAAP, loan losses must be recognized when, based on information available prior to the issuance of the financial statements, it is probable the loan has been

impaired at the date of the financial statements and the amount of the loss can be reasonably estimated.

17. Based on the March 2010 appraisal and the issues noted in the 2010 SNC Exam—the development's poor lot sales, insufficient operating cash flow, inadequate collateral coverage, and questionable continued guarantor support—it was probable that there was a loss on the Banning Lewis loan. The loss was also reasonably estimable. Mercantile Bank, however, did not record any loss, nor take any specific reserve, on the Banning Lewis loan at that time.

18. The March 2010 appraisal valued the Banning Lewis loan at $44 million less than the December 2006 appraisal of that loan. Even if the March 2010 appraisal had valued the metro-district reimbursements at $34 million (the value of those reimbursements from the December 2006 appraisal), it still would have been probable that there was a loss on the Banning Lewis loan of at least $10 million.

III. MERCANTILE DID NOT DISCLOSE THE PROBABLE LOSS ON THE BANNING LEWIS LOAN IN ITS SHAREHOLDERS' RIGHTS OFFERING

19. In an attempt to raise money to assist its subsidiary banks in meeting capital requirements set by the FDIC, Mercantile offered for sale to its shareholders "units" consisting of common stock and warrants to acquire additional common stock. In mid-July 2010, Mercantile filed a registration statement with the SEC on Form S-1 to register those units. In response to questions from the SEC, Mercantile amended that registration statement three times before it became effective. On September 23, 2010, Mercantile filed a notification of effectiveness for the offering and then offered the units to investors. The offering expired on October 29, 2010 and, on November 3, 2010—twelve days before it filed its next Form 10-Q—Mercantile announced that it had determined not to accept any subscriptions that were exercised.

20. In its S-1 filings, Mercantile represented that one of the stated purposes of the offering was to raise money so its subsidiary banks could achieve capital ratio thresholds set by the FDIC and that its main subsidiary bank—Mercantile Bank—had exceeded those capital requirements as of the end of the previous quarter. As explained above, before a Mercantile Bank Board meeting in late August 2010, Awerkamp and McGrath knew about the March 2010 appraisal and the FDIC's expectation that Mercantile Bank take a $5.28 million loss on the Banning Lewis loan, the recognition of which would have (i) negatively affected the bank's ability to meet its required capital ratio thresholds, and (ii) wiped out approximately 25% of the $21.8 million Mercantile hoped to raise from the offering. Mercantile Bank did not take that loss at that time, nor did Mercantile disclose that probable loss in its amended S-1 filings dated August 20, August 26 or September 20.

21. In connection with the amended S-1 dated August 26, 2010, Mercantile had to obtain a consent letter from BKD, LLP ("BKD"), its outside auditor. Awerkamp and McGrath understood that, in connection with providing that consent letter, BKD had asked them whether there had been any internal board or committee discussions about any issues that would have a material effect on the financial statements after July 31, 2010. At that time, Awerkamp and McGrath knew that: (i) both the Mercantile Bank Board of Directors and the Mercantile Bank Directors' Loan Committee had just discussed the 2010 SNC Exam results which told Mercantile to record a $5.28 million loss on the Banning Lewis loan; and (ii) a $5.28 million loss on the Banning Lewis loan would have a material impact on Mercantile's financial statements. Nevertheless, Awerkamp and McGrath did not disclose to BKD that there had been such discussions.

IV. IN SEPTEMBER AND OCTOBER 2010, THE BANNING LEWIS LOAN CONTINUED TO DETERIORATE

22. At a September 29, 2010 Mercantile Bank Director's Loan Committee meeting attended by Awerkamp, a loan officer informed the committee that the Banning Lewis borrower stated to KeyBank (the lead bank on the SNC loan) that it was unwilling or unable to commit the necessary funds to continue the Banning Lewis project.

23. Following this meeting, Mercantile did not recognize any loss or record any specific reserve on the Banning Lewis loan in its financial statements.

24. In early October 2010, the borrower on the Banning Lewis loan did not make its monthly interest payment on the loan. Later that same month, the Banning Lewis borrower declared bankruptcy.

25. As soon as he learned that the Banning Lewis borrower missed an interest payment and declared bankruptcy, the CEO of Mercantile Bank (Mercantile's main subsidiary bank) provided that information to Awerkamp. Awerkamp and/or others informed McGrath about the missed interest payment and the bankruptcy before the end of October 2010.

V. MERCANTILE DID NOT PROPERLY RECORD A LOSS ON THE BANNING LEWIS LOAN IN ITS FORM 1O-Q FOR THE THIRD QUARTER OF 2010 AND MERCANTILE MADE FALSE AND MISLEADING STATEMENTS ABOUT THE BANK'S FINANCIAL PERFORMANCE IN ITS RELATED FORM 8-K

26. During the relevant time period, Awerkamp and McGrath were members of Mercantile's Disclosure Committee. As set forth above, the CEO of Mercantile Bank promptly told Awerkamp negative information about the Banning Lewis loan and McGrath was told the same information before the end of October 2010. As described below, however, Awerkamp and McGrath did not provide that information to BKD.

27. Awerkamp and McGrath separately met with BKD during the auditor's quarterly review for third quarter of 2010. At the time of those meetings, Awerkamp and McGrath knew

the information described in Paragraphs 9 through 26 of this Complaint. Neither Awerkamp nor McGrath told BKD during those quarterly reviews about the recent events regarding the Banning Lewis loan, including, but not limited to, the 2010 SNC Exam, the missed interest payment or the bankruptcy.

28. Under GAAP, events that occur after the balance sheet date but before the financial statements are issued should be reflected in those financial statements if those events provide additional evidence about conditions that existed as of the balance sheet date.

29. In November 2010, Awerkamp and McGrath provided signed management representation letters to BKD in connection with the filing of Mercantile's 10-Q for the third quarter 2010. By signing those letters, Awerkamp and McGrath falsely represented to BKD that "there are no… [e]vents occurring subsequent to the balance sheet date [of September 30, 2010] requiring adjustment or disclosure in the financial statements," and that they "fully and truthfully responded to all your inquiries."

30. On November 15, 2010, Mercantile filed its Form 10-Q for the third quarter of 2010 (*i.e.*, the period ending September 30, 2010). Awerkamp and McGrath certified the accuracy of Mercantile's Form 10-Q for the third quarter of 2010.

31. In its Form 10-Q for the third quarter of 2010, Mercantile did not recognize a loss on the Banning Lewis loan. Nor did Mercantile disclose the negative events regarding that loan that occurred after the balance sheet date (*i.e.*, the missed interest payment and the bankruptcy).

32. Because it did not recognize the Banning Lewis loss, Mercantile, in its Form 10-Q: (i) misstated that Mercantile Bank had met certain capital ratio thresholds required by the FDIC; and (ii) understated its net loss for the quarter and the nine months ending September 30th as $7.5 million and $11 million (instead of at least $12.78 million and at least $16.28 million).

33. In connection with the filing of its Form 10-Q, Mercantile issued a press release announcing its third quarter financial results. This press release was included in a Form 8-K filed with the SEC signed by Awerkamp. The press release understated Mercantile's net loss for the third quarter and the nine months ending September 30, 2010 and falsely reported that Mercantile Bank achieved the capital ratio thresholds set by the FDIC (the same misstatements contained in the Form 10-Q), and also falsely reported that Mercantile Bank had net income of $1.8 million for the first nine months of 2010 when, in truth, it experienced a net loss of at least $3.48 million for that time period.

VI. SHORTLY AFTER FILING THE FORM 10-Q, MERCANTILE RECORDED A $5.28 MILLION LOSS ON THE BANNING LEWIS LOAN

34. Eight days after it filed its Form 10-Q for the third quarter of 2010, Mercantile recognized on its books a $5.28 million loss on the Banning Lewis loan.

35. In December 2010, the FDIC and the Illinois Division of Financial Institutions ("IDFI") conducted a joint exam of Mercantile. After learning that Mercantile Bank had ignored the FDIC's previous communication to charge off approximately 63% of the Banning Lewis loan, the FDIC/IDFI sent a letter directing the bank to amend its September 30, 2010 call report to include a $5.28 million charge off for the Banning Lewis loan and a $894,000 charge off on another loan and to re-evaluate its deferred tax asset calculation. By recording these losses on its amended September 30, 2010 call report, Mercantile Bank dropped below all three capital ratio thresholds set by the FDIC (*i.e.*, the bank reported a Tier 1 leverage ratio of 7.4%, a Tier 1 risk-based capital ratio of 9.9% and a total risk-based capital ratio of 11.1%).

36. On December 28, 2010, Mercantile announced that it recorded additional noncash losses of $16.3 million for the third quarter of 2010, representing approximately $6.2 million in additional loan losses on two commercial loans (the $5.28 million loss on the Banning Lewis

loan and a smaller loss on another loan) and an additional valuation allowance related to its deferred tax asset of approximately $10.1 million. Mercantile publicly amended its third quarter financial results when it filed a Form 10-Q/A with the SEC on February 7, 2011. Like the amended call report, Mercantile's restated financial statements disclosed that Mercantile Bank failed to achieve the capital ratio thresholds set by the FDIC.

COUNT I

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)]

37. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

38. At all relevant times, Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)] made it unlawful for any person in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon purchasers of securities.

39. By reason of the conduct described above, Defendants Mercantile, Awerkamp and McGrath, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon purchasers and/or prospective purchasers of securities.

40. By reason of the foregoing, Defendants Mercantile, Awerkamp and McGrath violated Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)].

COUNT II

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

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

41. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

42. At all relevant times, Section 10(b) [15 U.S.C. § 78j(b)] of the Exchange Act and Rule 10b-5 [17 U.S.C. § 240.10b-5] thereunder made it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons, in connection with the purchase or sale of any security.

43. By reason of the conduct described above, in violation of Section 10(b) [15 U.S.C. § 78j(b)] of the Exchange Act and Rule 10b-5(b) [17 U.S.C. § 240.10b-5(b)] thereunder, Defendants Mercantile, Awerkamp and McGrath, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, knowingly or recklessly, made untrue statements of material facts 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.

44. Further by reason of the conduct described above, in violation of Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)] thereunder, Defendants Mercantile, Awerkamp and McGrath, directly or indirectly, in connection with the

purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, knowingly or recklessly (i) employed devices, schemes or artifices to defraud, and (ii) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

45. By reason of the foregoing, Defendants Mercantile, Awerkamp and McGrath violated 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.

COUNT III

REPORTING VIOLATIONS

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

46. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

47. As alleged above, Defendant Mercantile filed with the SEC a materially false and misleading Form 10-Q for the third quarter of 2010 and a related false and misleading Form 8-K.

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

COUNT IV

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

49. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

50. As alleged above, Defendant Mercantile violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 C.F.R § 240.12b-20] and 13a-13 [17 C.F.R § 240.13a-13] thereunder by filing with the SEC a materially false and misleading Form 10-Q for the third quarter of 2010.

51. Defendant Awerkamp knowingly or recklessly provided substantial assistance to Defendant Mercantile in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 C.F.R § 240.12b-20], 13a-11 [17 C.F.R § 240.13a-11] and 13a-13 [17 C.F.R § 240.13a-13].

52. Defendant McGrath knowingly or recklessly provided substantial assistance to Defendant Mercantile in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 C.F.R § 240.12b-20] and 13a-13 [17 C.F.R § 240.13a-13].

53. Accordingly, Defendants Awerkamp and McGrath aided and abetted the violations described above and, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendants Awerkamp and McGrath are liable for such violations.

COUNT V

RECORD-KEEPING VIOLATIONS

Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]

54. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

55. As alleged above, Defendant Mercantile failed to make or keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of assets, including Mercantile's failure to properly and timely record a loss on the Banning Lewis loan.

56. By reason of the foregoing, Defendant Mercantile violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

COUNT VI

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]

57. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

58. As alleged above, Defendant Mercantile violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by failing to make or keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of assets, including Mercantile's failure to properly and timely record a loss on the Banning Lewis loan.

59. Defendants Awerkamp and McGrath knowingly or recklessly provided substantial assistance to Mercantile in its violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

60. Accordingly, Defendants Awerkamp and McGrath aided and abetted the violations described above and, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendants Awerkamp and McGrath are liable for such violations.

COUNT VII

INTERNAL CONTROLS VIOLATIONS

Violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]

61. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

62. As alleged above, Defendant Mercantile failed 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 or any other criteria applicable to such statements, including Mercantile's failure to have an adequate accounting policy regarding subsequent events.

63. By reason of the foregoing, Defendant Mercantile violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

COUNT VIII

Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]

64. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

65. As alleged above, Defendant Mercantile violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by failing 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 or any other criteria applicable to such statements, including Mercantile's failure to have an adequate accounting policy regarding subsequent events.

66. Defendant McGrath knowingly or recklessly provided substantial assistance to Mercantile in its violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

67. Accordingly, Defendant McGrath aided and abetted the violations described above and, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendant McGrath is liable for such violations.

COUNT IX

FALSIFICATION OF RECORDS

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

68. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

69. As alleged above, Defendants Awerkamp and McGrath knowingly circumvented Mercantile's internal accounting controls and falsified or caused to be falsified Mercantile's books, records and/or accounts as those terms are used in Section 13(b)(2) of the Exchange Act.

70. By reason of the foregoing, Defendants Awerkamp and McGrath violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] promulgated thereunder.

COUNT X

FALSE STATEMENTS TO ACCOUNTANTS

Violations of Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2]

71. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

72. As alleged above, Defendants Awerkamp and McGrath, directly or indirectly, (i) made, or caused to be made, materially false or misleading statements or (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review or examination of financial statements or the preparation or filing of a document or report required to be filed with the SEC.

73. By reason of the foregoing, Defendants Awerkamp and McGrath violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

COUNT XI

CERTIFICATION VIOLATIONS

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

74. Paragraphs 1 through 36 are realleged and incorporated by reference herein.

75. As alleged above, Defendants Awerkamp and McGrath violated Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] by signing the certifications included with Mercantile's Form 10-Q for the third quarter of 2010, falsely certifying, among other things, that the quarterly report fully complied with the requirements of the Exchange Act and fairly presented, in all material respects, the financial condition and results of operations of the company, when, in fact, the report contained untrue statements of material fact, omitted material

information necessary to make the report not misleading and did not fairly present Mercantile's financial condition and results of operations.

76. By reason of the foregoing, Defendants Awerkamp and McGrath violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

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

II.

Issue an Order of Permanent Injunction, in a form consistent with Federal Rule of Civil Procedure 65(d), restraining and enjoining Defendant Mercantile and its 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, and each of them, from violating Section 17(a)(3) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-11 and 13a-13 thereunder.

III.

Issue an Order of Permanent Injunction, in a form consistent with Federal Rule of Civil Procedure 65(d), restraining and enjoining Defendant Awerkamp and his officers, agents, servants, employees and attorneys, and those persons in active concert or participation with

them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 17(a)(3) of the Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

IV.

Issue an Order of Permanent Injunction, in a form consistent with Federal Rule of Civil Procedure 65(d), restraining and enjoining Defendant McGrath and his officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 17(a)(3) of the Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

V.

Order Defendants Awerkamp and McGrath each to pay a civil penalty 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)].

VI.

Order that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendants Awerkamp and McGrath are prohibited from acting as an officer or director 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. § 78o(d)].

VII.

Grant such other and further relief as may be necessary and appropriate.

VIII.

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.

Respectfully submitted,

DATED: September 24, 2013

s/Jake Schmidt_____

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