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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICHARD P. SMYTH,
ARNOLD E. JOHNS, JR.,
MICHAEL J. BECKER, and
ALAN T. DAVIS,

Defendants.

CIVIL ACTION NO.

1:01-CV-1344

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

It appears to Plaintiff, Securities and Exchange Commission ("Commission"), and it alleges that:

OVERVIEW

1. This matter involves the: (1) efforts by senior management employees to overstate Vista 2000, Inc.'s ("Vista") revenues, income, earnings per share ("EPS") and assets by failing to comply with generally accepted accounting principles ("GAAP") from 1994 through 1996, (2) improper and undisclosed use of proceeds from Vista's initial public offering ("IPO") during 1994 and 1995, (3) issuance of ten false and/or misleading press releases from 1994 through 1996, (4) misappropriation of \$481,000 by Vista's chief executive officer ("CEO") during 1996, (5) illegal insider selling of Vista common stock by three of Vista's senior officers and one of its outside auditors during 1995 and 1996 resulting in approximately \$1.2 million of losses avoided,

(6) illegal insider tipping and trading by Vista's outside auditor during 1995 of a company to be acquired by Vista resulting in \$5,656 of ill-gotten gains, (7) certification of Vista's 1994 annual financial statements by auditors who were not independent and failed to conduct their audit in accordance with generally accepted auditing standards ("GAAS"), (8) failure to file Forms 3, 4 and/or 5 by two of Vista senior officers from 1994 through 1996, and (9) violation of the short sale laws by Vista's CEO during 1996.

2. On October 25, 1994, Vista completed its IPO. From that point on, Vista's CEO and other senior managers engaged in a pattern of inflating Vista's revenues, income, EPS and assets in virtually every Vista financial report filed with the Commission during fiscal years 1994 through 1996. The affected filings were Vista's: October 1994 IPO on Form SB-2; February 1995 Form SR (Report of Sale of Securities and Use of Proceeds Thereon); September 1994 Form 10-KSB; December 1994, March 1995, June 1995 and September 1995 reports on Form 10-QSB; and December 1994, October 1995 and June 1996 reports on Form 8-K. Additionally, ten press releases that were issued during the period November 8, 1994, through March 26, 1996, were similarly affected.

3. During this time, certain Vista officers also engaged in illegal insider trading, improperly used Vista's IPO proceeds, misappropriated funds, failed to file certain stock ownership reports, and illegally sold short Vista stock.

4. Vista misstated its revenues, income, EPS and assets during the relevant periods by various amounts ranging up to 83,592%, and in most periods Vista reported income when it was, in fact, experiencing losses. Vista was under pressure to match descriptions made in media reports, influenced by Vista's CEO, that it was a fast-growing small-cap company.

5. Vista departed from GAAP when it overstated its revenues, income and assets by (1) improperly recognizing revenues, income and assets from fictitious sales, goods which had not been shipped, transactions that lacked economic substance, or barter transactions, (2) improperly recording pending acquisitions by prematurely consolidating companies which had not yet been acquired, and (3) failing to record certain expenses. Generally, Vista was required by GAAP to refrain from recognizing revenue until the revenue was (1) realized or realizable, and (2) earned. Vista also miscalculated its quarterly EPS.

6. Various Vista reports on Forms 8-K, 10-QSB, 10-KSB and SR, Vista's IPO on Form SB-2, and various Vista press releases were false and misleading because of the defendants' manipulation of Vista's income, EPS, and assets in violation of the antifraud, reporting, books and records, and internal accounting controls provisions of the federal securities laws. Additionally, Vista filed a report on Form 8-K in December 1994 which falsely announced the hiring of a multi-national accounting firm. Vista's CEO also lied to or concealed factual information from Vista's auditors.

7. The misstatements contained in Vista's financial statements were material and caused Vista's registration statement on Form SB-2 and numerous reports on Forms 8-K, 10-QSB, and 10-KSB to be false and misleading. The failure to properly record revenues, income, EPS and assets misled investors and the NASDAQ stock market as to the true results of operations and financial condition of Vista during the relevant periods.

VIOLATIONS

8. Defendant Richard P. Smyth ("Smyth") has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will

constitute violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. 77q(a)], Sections 10(b), 13(b)(5), 16(a) and 16(c) of the Exchange Act [15 U.S.C. 78j(b), 78m(b)(5), 78p(a) and 78p(c)] and Rules 10b-5, 13b2-1, 13b2-2, 16a-2 and 16a-3 thereunder [17 C.F.R. 240.10b-5, 240.13b2-1, 240.13b2-2, 240.16a-2 and 240.16a-3], and is liable as a control person for violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13].

9. Defendant Arnold E. Johns, Jr. (“Johns”) has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 (“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 78m(b)(5)] and Rules 10b-5 and 13b2-1 thereunder [17 C.F.R. 240.10b-5 and 240.13b2-1], and is liable as a control person for violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-11 and 240.13a-13].

10. Defendant Alan T. Davis (“Davis”) has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Sections 10(b), 13(b)(5) and 14(e) of the Exchange Act [15 U.S.C. 78j(b), 78m(b)(5) and 78n(e)] and Rules 10b-5, 13b2-1 and 14e-3 thereunder [17 C.F.R. 240.10b-5, 240.13b2-1 and 240.14e-3].

11. Defendant Michael J. Becker (“Becker”) has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will

constitute violations of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

JURISDICTION AND VENUE

12. The Commission brings this action to enjoin such acts and practices, for civil penalties, and for other relief, pursuant to Sections 20(b), 20(d) and 20(e) of the Securities Act [15 U.S.C. 77t(b), 77t(d) and 77t(e)], and Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78u-1].

13. This Court has jurisdiction of this action under Sections 20(b), 20(d), 20(e) and 22(a) of the Securities Act [15 U.S.C. 77t(b), 77t(d), 77t(e) and 77v], and Sections 21(d), 21(e), 21A and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e), 78u-1 and 78aa].

14. Certain of the acts and practices constituting violations of the Exchange Act have occurred within the Northern District of Georgia and were perpetrated through the use of the mails and the means and instrumentalities of interstate commerce. Furthermore, at least two of the four defendants reside within the Northern District of Georgia.

THE DEFENDANTS

15. **Richard P. Smyth** of Fernandina Beach, Florida, was a co-founder of Vista and was its CEO and a director since July 1992. He was appointed chairman of the board on February 1, 1995. On April 15, 1996, Smyth involuntarily resigned his positions. From on or about December 7, 1998 through August 23, 1999, Smyth was the chairman of the board, CEO and held 83% of the stock of Lahaina Acquisitions Inc. ("Lahaina"), a Colorado corporation headquartered in Alpharetta, Georgia, that operates real estate development and mortgage financing groups. Currently, Smyth is a consultant to Lahaina. Lahaina's stock is quoted on the

OTC Bulletin Board. Smyth received a B.S./B.A. degree from the University of South Florida and completed the Executive Management Institute Program at Stanford University. Smyth filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the Middle District of Florida on or about May 9, 2001.

16. **Arnold E. Johns, Jr.** of Atlanta, Georgia, became Vista's president, secretary and a director on or about February 15, 1995. Johns was Vista's president until approximately June 7, 1996 and a director until approximately July 13, 1996. Johns shared responsibility with Becker for, among other things, ensuring that Vista's financial statements complied with GAAP, and prior to Becker's employment in August 1995, Johns was Vista's principal financial officer. Beginning in July 1999, Johns was a consultant to SIMEX Technologies, Inc., a publicly-held company that trades on the OTC Bulletin Board. From on or about November 19, 1999 through October 2, 2000, Johns was the president and a director of SIMEX. Prior to joining Vista, Johns held various senior management positions: officer in charge of the merger and acquisition department of a publicly-held bank, president of a broker-dealer, and executive vice-president and CFO of another broker-dealer. Johns has held Series 7 (securities representative), 24 (principal), 27 (FINOP) and 63 (state) licenses. Johns has a B.A. degree in Economics from the University of North Carolina.

17. **Michael J. Becker** of Marietta, Georgia, was Vista's vice president of finance and administration from on or about August 8, 1995 through March 8, 1996. Becker was responsible for Vista's compliance with GAAP, internal accounting controls, books and records, and external financial reporting. As chief financial officer ("CFO"), Becker also supervised Vista's bookkeeper and its controller.

18. Alan T. Davis of Gainesville, Georgia, is a CPA and a member of the American Institute of Certified Public Accountants and the Georgia Society of Certified Public Accountants. He also has a masters degree in accountancy. Davis, in a joint venture-partnership with another CPA, audited Vista's 1994 annual financial statements at a time when he owned 23,333 shares of Vista common stock. Subsequent to his audit, Davis was engaged by Vista to provide accounting consulting services which included assisting Vista in preparing its reports on Form 10-QSB. Davis provided his accounting services to Vista until approximately mid-1996.

THE CORPORATE VEHICLE

19. Vista 2000, Inc. was a Delaware corporation based, during the relevant periods, in Roswell, Georgia, which designed, developed, manufactured and marketed consumer products including trigger guards for firearms and carbon monoxide detectors for homes. Vista successfully conducted its IPO on October 25, 1994. Vista's common stock, which was registered pursuant to Section 12(g) of the Exchange Act, was traded on the NASDAQ SmallCap Market until it became listed on the NASDAQ National Market on February 13, 1996. Vista's stock was delisted on May 31, 1996. In November 1995, Vista sold its interests in subsidiary Promotional Marketing Inc. During 1997, Vista sold its interests in subsidiaries Intellock Technologies, Inc., Alabaster Industries, Inc., and American Consumer Products, Inc. On December 7, 1998, Vista changed its name to Boss Holdings, Inc. and is now located in Kewanee, Illinois.

VISTA'S FALSE AND MISLEADING REPORTS, AND MISREPRESENTATIONS AND OMISSIONS

Background

20. On or about October 25, 1994, Vista completed its IPO. From that point on, Smyth and other senior managers engaged in a pattern of inflating Vista's revenues, income, EPS and assets in virtually every Vista financial report filed with the Commission during fiscal years 1994 through 1996.

21. The affected filings were Vista's: October 1994 Form SB-2; September 1994 Form 10-KSB; December 1994, March 1995, June 1995 and September 1995 reports on Form 10-QSB; and December 1994, October 1995 and June 1996 reports on Form 8-K. Additionally, ten press releases that were issued during the period November 8, 1994 through March 26, 1996, were similarly affected. Vista also filed false and misleading reports on Form 8-K in December 1994 and on Form SR in February 1995.

22. During this time, Smyth, Johns, Davis, and Becker also engaged in illegal insider trading. Further, Smyth improperly used Vista's IPO proceeds, misappropriated funds, failed to file certain stock ownership reports, and illegally sold short Vista stock.

23. Vista misstated its revenues, income, EPS and assets during the relevant periods by various amounts ranging up to 83,592%, and in most periods it reported income when it was, in fact, experiencing losses. For example, during the quarter ended June 30, 1995, Vista reported \$2.8 million of net sales when it should not have reported any sales.

24. Vista was under pressure to match descriptions made in media reports, influenced by Smyth, that it was a fast-growing small-cap company.

25. Vista departed from GAAP when it overstated its revenues, income and assets by (1) improperly recognizing sales revenue and assets from fictitious sales, goods which had not been shipped, transactions that lacked substance, or barter transactions, (2) improperly recording pending acquisitions by prematurely consolidating companies which had not yet been acquired, and (3) failing to record certain expenses. Vista also miscalculated its quarterly EPS.

26. Becker, Davis, Smyth and Johns violated or caused Vista to violate the antifraud, reporting, books, records and/or internal accounting controls provisions of the Securities Act and/or the Exchange Act, by directly or indirectly recording or approving the recording of these transactions in contravention of GAAP, by engaging in insider trading, and/or by either filing false or failing to file certain reports with the Commission. The defendants owned Vista stock, stock options and/or stock warrants during the relevant periods.

27. During the relevant time, Vista was applying for listing on the NASDAQ National Market. Vista had become recognized by the media and financial analysts as a fast-growing small-cap company due, in part, to self-generated exaggerated claims of increased sales and successful acquisitions. Not unexpectedly, the trading price of Vista stock increased steadily as Vista's claims were disseminated to and absorbed by investors. Vista's common stock substantially decreased in value when the stock was delisted in May 1996.

VISTA'S INITIAL PUBLIC OFFERING

VISTA INITIAL PUBLIC OFFERING ON FORM SB-2

28. On October 25, 1994, Vista's IPO registration statement on Form SB-2 (the "Form SB-2") was declared effective. The offering consisted of the sale of 1 million units at \$5.50 per unit, for a total of \$5.5 million of gross proceeds, with each unit comprised of one share of

common stock and two common stock purchase warrants. Vista received approximately \$4,464,980 of net proceeds from the offering, excluding proceeds from the overallotment option exercised by the underwriters of the IPO in December 1994.

29. Smyth participated in the preparation of the Form SB-2 and signed the registration statement in his capacities of president, CEO and a director of Vista.

VISTA REPORTS AND RECORDS FICTITIOUS SALES

30. The Form SB-2 included Vista's unaudited financial statements for the nine-month period ended June 30, 1994. The Form SB-2 reported that Vista had \$764,360 of net sales while incurring a \$657,229 net loss, and a \$.29 net loss per share during this period. However, \$635,000 or 82% of the reported net sales were fictitious.

31. The fictitious transactions involved four different customers in five purported transactions from on or about December 31, 1993 through March 23, 1994 and were not recorded in conformity with GAAP. Smyth orchestrated these transactions and falsely recorded these transactions on Vista's books as sales causing Vista to misstate its net sales, net loss and net loss per share by 490%, 49% and 81%, respectively.

32. Smyth signed the management representation letter provided to Vista's auditors related to the Form SB-2. This letter falsely stated that there had been no irregularities involving management who had significant roles in Vista's internal accounting control structure, there were no material transactions that had not been properly recorded in the accounting records, and all sales transactions were final with no agreements or terms allowing for the return of merchandise.

33. Smyth knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding fictitious sales transactions in

Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

34. As a result of failing to record the preceding transactions in conformity with GAAP, Vista's net sales, net loss and loss per share were materially misstated in its books and in its Form SB-2. Vista should have reported approximately \$129,360 of net sales, a \$1,292,229 net loss and \$.57 loss per share, rather than the reported \$764,360 of net sales, \$657,229 net loss, and \$.29 net loss per share for the quarter ended June 30, 1994.

35. On or about May 1, 1997, Vista filed its report on Form 10-QSB for the quarter ended June 29, 1996 (the "June 1996 Form 10-QSB"). The June 1996 Form 10-QSB disclosed, among other things, that Vista's net sales for the period ended June 30, 1994 had been reduced by \$635,000.

IMPROPER USE OF IPO PROCEEDS

36. On or about November 2, 1994, Vista diverted, at Smyth's direction, \$1,325,388, or 30% of the net proceeds from its IPO, to purchase 189,200 of its IPO units in the open market. The units were repurchased at approximately \$7.00 per unit. Vista's Form SB-2 did not disclose that any portion of the proceeds from the offering would be used to repurchase its securities. In fact, the Form SB-2 disclosed that until the proceeds of this IPO were used for the stated purposes, Vista might "invest them temporarily in interest-bearing securities such as certificates of deposit, United States government obligations or money market funds or instruments."

37. Smyth failed to cause Vista to file a post-effective amendment to the Form SB-2 to disclose a fundamental change in the use of proceeds information disclosed in the IPO.

38. On or about November 8, 1994 and November 10, 1994, Vista, through Smyth, issued press releases that announced the completion of its IPO. These press releases, similar to disclosures in the IPO, falsely stated that the proceeds of the offering would be used for offering-related expenses, sales and marketing support, product development, acquisitions, and debt repayment. In fact, at the time these releases were issued, approximately 30% of the IPO proceeds had been utilized by Vista to repurchase its securities, representing a material change from the use of proceeds disclosed in the IPO.

39. On or about November 15, 1994, Vista resold 150,000 of the units it had purchased on November 2, 1994. These units were sold at \$4.4375 per unit resulting in a \$659,771.30 loss on these transactions, or approximately 15% of the net proceeds received from the IPO.

40. The above repurchase and resale by Vista of its units was not disclosed until Vista, through Smyth, filed a report on Form SR (Report of Sale of Securities and Use of Proceeds Thereon) with the Commission on February 10, 1995 (the "1995 Form SR"). However, the 1995 Form SR contained numerous false and misleading statements regarding these transactions as well as Vista's and Smyth's knowledge and authorization of the transactions. The 1995 Form SR falsely stated that Vista was unaware that Greenway had conducted the purchase and sale transactions until January 27, 1995, and that the funds used to purchase the securities had been previously designated by Vista to be used to acquire certificates of deposit, U.S. Government obligations or money market funds or instruments. In fact, on or about November 2, 1994, Smyth, on behalf of Vista, directed the execution of these transactions. Additionally, Smyth had previously sent Vista's broker, through whom the Vista units were repurchased, a

corporate resolution which stated that the funds could be used to acquire marketable securities such as stocks, bonds and other equities.

41. Smyth knowingly, intentionally and/or with severe recklessness, falsely diverted Vista's IPO proceeds, and falsely disclosed and omitted material facts regarding the actual use of Vista's IPO proceeds.

VISTA'S 1994 FORM 8-K

42. On or about December 12, 1994, Vista filed a report on Form 8-K (the "1994 Form 8-K") which disclosed the dismissal of KPMG Peat Marwick LLP ("KPMG") as Vista's independent accountants.

43. The 1994 Form 8-K falsely stated that Grant Thornton LLP ("Grant Thornton") had been engaged as Vista's independent accountants. In fact, Grant Thornton declined to accept the engagement to become Vista's auditors.

44. Smyth participated in the preparation of the the 1994 Form 8-K and signed the report in his capacities as Vista's CEO and president.

45. Smyth knowingly, intentionally and/or with severe recklessness, reported and caused Vista to falsely report in the 1994 Form 8-K that Grant Thornton had been engaged as Vista's independent accountants.

VISTA'S 1994 FORM 10-KSB

46. On or about February 1, 1995, Vista filed with the Commission an annual report on Form 10-KSB for the year ended September 30, 1994 (the "1994 Form 10-KSB"). The 1994 Form 10-KSB included Vista's financial statements for the year ended September 30, 1994.

47. Smyth participated in the preparation of the 1994 Form 10-KSB and signed the report in his capacities as president, CEO and a director of Vista. Smyth, as president and CEO, signed the management representation letter that was provided to the accountants who audited Vista's September 30, 1994 financial statements.

THE \$1.2 MILLION PMI TRANSACTION

48. In its 1994 Form 10-KSB, Vista reported that on September 15, 1994 it sold marketing rights to its trigger guard products for firearms to Promotional Marketing, Inc. ("PMI") in exchange for a \$1.2 million note. PMI was a telemarketing company principally for the resort and cruise industries with no experience in selling firearm or other products.

49. Prior to September 1994, Vista and Smyth attempted to recognize this transaction; however, Vista's auditors at the time, KPMG, objected to the recognition of revenue from this transaction.

50. During December 1994, Vista solicited Grant Thornton to become its auditors. At their initial meeting, Smyth told Grant Thornton that he intended to have Vista immediately recognize income from the PMI transaction. Smyth then asked Grant Thornton for its views regarding the accounting issues for this transaction. Grant Thornton told Smyth that the transaction would be material to Vista's reported income and assets and that this transaction would be an audit issue.

51. Subsequent to their initial meeting, Grant Thornton called Smyth and told him that it did not appear appropriate to record this transaction because it lacked economic substance and because of the uncertainty surrounding the collectibility of the note. Grant Thornton explained to Smyth the recognition criteria that prohibited the transaction from being recognized

as a sale under GAAP. Among other reasons, Grant Thornton told Smyth that the product to be sold by PMI had yet to be manufactured and had no proven market demand or acceptance. Further, the receivable would only be collectable if PMI resold the product as it was financially unable to repay the note from its other operations.

52. Davis, serving as Vista's outside auditor along with Roemmich & Seymour, P.A. ("R&S") for the 1994 audit, knew these same facts and that there was no evidence that an executed note receivable existed.

53. Vista's CFO also told Smyth that it would be inappropriate for Vista to record revenue from this transaction prior to the sale of the products and without the collectibility of the note receivable being assured.

54. Subsequently, Grant Thornton declined the opportunity to become Vista's auditors in 1994 because, among other reasons, they believed that it would be inappropriate to record revenue from this transaction.

55. In or about November 1994, Vista lent PMI \$125,000.

56. Prior to filing the September 1994 Form 10-KSB, Smyth attempted to persuade Vista's new auditors, R&S, that this was a valid transaction. Smyth claimed that on November 23, 1994, PMI, with Vista's consent, transferred the above marketing rights to Dixie Sales Consultants ("Dixie Sales") which had replaced PMI as the purchaser of the marketing rights and as the payer of the note.

57. The Dixie Sales transaction also lacked economic substance and under GAAP, should not have been considered in determining whether to record the purported \$1.2 million sale of rights by Vista to PMI. The Dixie Sales deal was a purported separate transaction that

occurred after Vista's fiscal year had ended and could not be recognized in Vista's 1994 annual financial statements.

58. The Dixie Sales transaction itself was a sham. Dixie Sales did not exist, the agreement to transfer the marketing rights to it from PMI was never executed, the \$1.2 million promissory note--which only obligated Dixie Sales to pay PMI, rather than Vista, for the note--was never executed, and Dixie Sales did not have the ability or intent to repay the note.

59. In the management representation letter he provided to R&S for the 1994 audit, Smyth vouched for Dixie Sales's ability to repay the note to Vista in a false and misleading manner. Neither PMI or Dixie Sales ever made any payments on the note. At December 31, 1994, Vista classified the note as delinquent.

60. Smyth knew that this transaction was not recorded in conformity with GAAP because it lacked economic substance, the collectibility of the receivable was dependent upon the resale of the products by PMI, and no portion of the note receivable was reserved as an allowance for doubtful accounts.

61. Smyth knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding PMI transaction in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

62. As a result, Vista improperly reported \$1.2 million as other income on its income statement and \$1,155,000 as a receivable from PMI for this transaction. The \$1.2 million of income represented 61% of Vista's total revenues of \$1,971,678 for the year ended September 30, 1994 and the receivable represented 45% of Vista's total reported assets of \$2,584,709.

63. Davis audited the \$1.2 million PMI transaction, which was already on Vista's books. Davis violated GAAS when he concurred with Vista's recognition of the sale of the marketing rights to PMI notwithstanding the existence of numerous "red flags" which contradicted his conclusion that this transaction had been recorded in conformity with GAAP. For example, Davis was unable to verify the existence of Dixie Sales and was unable to verify the collectibility of the note from PMI. In fact, Davis prepared PMI's December 31, 1994 financial statements which showed that PMI still owed Vista approximately \$1,200,000.

64. This purported sale of marketing rights was not recorded in conformity with GAAP, for among other reasons, because it lacked any economic substance and the note receivable was falsely recorded as being fully collectible. For example, the product to be sold by PMI had yet to be manufactured by Vista and had no proven market demand or acceptance. Further, the receivable would only be collectible if PMI resold the product as it was financially unable to repay the note from its other operations.

65. Davis failed to contact Vista's predecessor auditors (KPMG) prior to becoming Vista's auditor. Had he had done so, he would have been alerted to the disallowance of the PMI transaction by the predecessor auditors.

66. Davis violated GAAS by failing to exercise due professional care; failing to obtain sufficient competent evidential matter to verify the existence and validity of this transaction; and failing to maintain a healthy degree of skepticism when he audited the PMI transaction. Davis also violated the reporting standards of GAAS by causing an unqualified audit opinion to be issued because Davis knew or should have known that the PMI transaction

had not been recorded by Vista in conformity with GAAP. As a result, Vista improperly reported \$1.2 million of income and a \$1,155,000 receivable from this transaction.

67. Davis knowingly, intentionally and/or with severe recklessness, participated in the preparation and issuance of an audit opinion which falsely stated that the audit of Vista's 1994 annual financial statements had been conducted in accordance with GAAS and that Vista's 1994 annual financial statements conformed with GAAP.

68. Johns was aware of this transaction with PMI. Upon commencing his employment with Vista, Smyth told Johns that Vista had acquired PMI in late-1994. Johns reviewed Vista's 1994 Form 10-KSB and believed that this transaction was material to Vista's 1994 annual financial statements. Johns was not aware whether PMI had ever sold any physical products.

69. Johns and Smyth discussed PMI's ability to repay the \$1.2 million note. Johns became aware by May 1995 or June 1995 that the note purportedly assigned to Dixie Sales was delinquent. Subsequently, additional evidence surfaced that Dixie Sales never owed Vista any funds from this purported transaction.

70. PMI and Resorts Sales Group, Inc. ("Resort Sales") were both controlled by William "Willie" L. Biles ("Biles") and another client of Davis's CPA practice. On or about December 6, 1995, Johns and Davis became aware that Resort Sales would assume PMI's \$1.2 million debt to Vista.

71. On or about December 1995, Becker told a subordinate that the PMI note was a joke and that there was no substance to it.

72. On or about March 5, 1996, Biles wrote a letter to Johns discussing the \$1.2 million note PMI owed to Vista.

RECORDING AND REPORTING OF FICTITIOUS SALES

73. For the year, Vista reported \$771,678 of net sales, of which \$635,000 or 82% were fictitious. The fictitious transactions involved four different customers in five purported transactions over the period December 31, 1993 through March 23, 1994 and were not recorded in conformity with GAAP. Smyth orchestrated these transactions and falsely recorded these transactions on Vista's books as sales causing Vista to materially misstate its net sales, net loss and net loss per share. The recording of these "sales" overstated Vista's actual net sales by 351% for the year ended September 30, 1994.

74. On or about January 23, 1995, Smyth signed a management representation letter in which he falsely stated that there had been no irregularities involving management or employees who had significant roles in Vista's internal accounting control structure and that there were no material transactions that had not been properly recorded in Vista's accounting records. This letter was provided to Vista's auditors.

75. Smyth knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding fictitious transactions in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

FALSE AND MISLEADING DISCLOSURE REGARDING VISTA'S 1994 REPURCHASE OF ITS IPO UNITS

76. In a note to Vista's 1994 annual financial statements, Vista falsely disclosed that it had been unaware of its broker's repurchase of the IPO units executed on Vista's behalf, until

January 27, 1995. In fact, Smyth, on behalf of Vista, had previously directed its broker to repurchase the IPO units in November 1994.

77. Smyth knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding repurchase by Vista of its IPO units in Vista's financial statements in a manner which did not conform with GAAP.

VISTA RESTATES ITS SEPTEMBER 1994 ANNUAL FINANCIAL STATEMENTS

78. As a result of failing to record the preceding transactions in conformity with GAAP, Vista's net sales, net loss, loss per share and assets were materially misstated in its books and in its 1994 Form 10-KSB. Vista should have reported approximately \$181,678 of total revenues, a \$2,119,500 net loss, a \$.99 loss per share and assets of \$1,429,709, rather than the reported \$1,971,678 of revenues, \$329,000 net loss, \$.15 net loss per share and \$2,584,709 of assets for the year ended September 30, 1994. Vista originally misstated these amounts by 985%, 84%, 85%, and 81%, respectively.

79. On or about June 6, 1996, Vista filed a report on Form 8-K to restate its September 30, 1994 annual financial statements to: (a) reverse \$1,155,000 of other income from the PMI transaction because there was no business substance to the PMI transaction and to the related note receivable, and (b) to reverse the \$635,000 of fictitious sales, in order to conform with GAAP.

DECEMBER 31, 1994 FORM 10-QSB

80. On or about March 31, 1995, Vista filed with the Commission a report on Form 10-QSB for the quarter ended December 31, 1994 (the "December 1994 Form 10-QSB"). The

December 1994 Form 10-QSB included Vista's financial statements for the three month period ended December 31, 1994.

81. Smyth participated in the preparation of the December 1994 Form 10-QSB and signed the report in his capacities as CEO and a director of Vista.

82. Johns participated in the preparation of the December 1994 Form 10-QSB and signed the report in his capacities as president, principal financial officer and a director of Vista.

83. Davis participated in the preparation of the December 1994 Form 10-QSB.

IMPROPER CONSOLIDATION OF PMI'S FINANCIAL STATEMENTS

84. In the December 1994 Form 10-QSB, Vista reported that it had acquired PMI.

85. Smyth directed Vista's bookkeeper to consolidate PMI's financial statements with Vista's financial statements in the December 1994 Form 10-QSB in a manner which did not conform with GAAP.

86. Johns read the note to Vista's financial statements which described this transaction, and he discussed this transaction with Smyth and Davis.

87. Vista departed from GAAP by improperly recording \$818,763, \$230,709 and \$1,796,023 of PMI's net sales, net income, and assets, respectively, for this quarter when it consolidated PMI and Vista's financial statements as of November 1, 1994.

88. This was improper because the acquisition of PMI by Vista was not closed until May 18, 1995 at which time Vista, Resort Sales, and PMI executed a stock purchase agreement whereby Vista purchased PMI from Resort Sales.

89. Previously, on or about February 14, 1995, Smyth, acting as the sole director of Vista, issued a board consent that authorized himself and Johns to consummate the acquisition of PMI.

90. Davis reviewed this February 14, 1995 board consent.

91. Smyth issued, and Johns read, a press release dated February 15, 1995 which stated that Vista's negotiations towards acquiring PMI were continuing at a satisfactory pace and that on January 10, 1995 Vista signed an agreement in principle to acquire PMI.

92. After joining Vista in February 1995, Johns became aware that a definitive agreement to acquire PMI had never been prepared and signed, and that there had been no final closing; Johns did not know when a definitive contract would be signed and when the closing would occur.

93. Prior to the closing in May 1995, Johns was aware of times that attempts to complete the acquisition of PMI had been significantly delayed. Johns knew that the proposed acquisition almost fell apart on several occasions during the spring of 1995 because, among other reasons, PMI did not believe the transaction was complete or that Vista controlled it.

94. On or about April 25, 1995, PMI sent a memo to Johns and Davis discussing various issues concerning the proposed sales agreement.

95. Johns took action to obtain a definitive acquisition agreement including meeting with Biles and participating in acquisition negotiations. Johns's actions contributed to the consummation of a final agreement in May 1995. Johns negotiated the closing of the PMI acquisition on behalf of Vista.

96. On or about May 19, 1995, Smyth and Johns signed a board consent that, among other things, ratified an amended agreement for Vista to acquire PMI.

97. Johns, who signed the closing documents on behalf of Vista, and Davis, both attended the May 1995 closing of this acquisition.

98. Davis knew that the closing had not occurred by the conclusion of his 1994 Vista audit in February 1995, and he was aware that negotiations relating to finalizing this transaction were delayed. At least one month prior to May 18, 1995, Davis, who at the time was also providing his services to Resort Sales, reviewed drafts of the acquisition agreement.

99. Although Davis knew that the acquisition did not close until May 18, 1995, he participated in the recording and reporting of PMI's and Vista's financial statements on a fully consolidated basis during the quarter ended December 31, 1994. This accounting treatment did not conform with GAAP because the deal did not close and Vista did not control PMI until May 18, 1995.

100. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding PMI transaction in Vista's financial statements in a manner which did not conform with GAAP.

OTHER MISSTATED ASSETS AND ITEMS OF INCOME

101. Vista improperly recorded other costs, including various selling, general and administrative costs (e.g., professional fees), uncollectible receivables, costs incurred from the IPO, income from a barter transaction, and deferred charges during this quarter. The net effect of these misstatements was to overstate Vista's net sales by approximately \$282,981 and to overstate income by \$1,008,470.

102. After becoming employed by Vista in or about February 1995, Johns came to understand that in connection with KPMG's dismissal as Vista's independent accountants, Vista and KPMG had disagreed over Vista's accounting for barter transactions.

103. Smyth knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding transactions in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

104. Johns failed to record and report, and caused Vista to fail to record and report the preceding transactions in Vista's books, records and in its financial statements in conformity with GAAP.

105. Vista also misstated various assets (e.g., note receivable from PMI, marketable securities, trade receivables, inventories, property and equipment, and deferred offering charges) by \$3,699,634, including \$294,601 from the improper reporting of barter income as more fully discussed below.

106. Smyth knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding transactions in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

107. Johns failed to record and report, and caused Vista to fail to record and report the preceding transactions in Vista's books, records and in its financial statements in conformity with GAAP.

108. Previously, during the fiscal year ended September 30, 1994, Vista entered into agreements with an advertising brokerage organization for the sale of certain Vista products held

in Vista's inventory, in exchange for payment in the form of purchase credits to be applied toward future advertising costs.

109. Initially, Vista improperly recorded \$585,878 of income from this barter transaction in its September 1994 annual financial statements. After reviewing the barter transaction during the September 1994 year end audit, Vista's auditors (R&S) insisted that Vista reverse out this income to record revenue only to the extent of the cost of the inventory exchanged, without recognition of any gain.

110. Previously, during the IPO process, KPMG told Smyth that it would not allow Vista to recognize revenue from a barter transaction with this same third party. As a result, Vista's IPO properly reflected this transaction at Vista's inventory cost with the excess of credits over such cost (\$585,878) being recorded as a deferred asset to be recognized as a reduction in future advertising costs, as the credits were actually utilized.

111. Subsequently, during the quarter ended December 31, 1994, Smyth directed Vista's bookkeeper to record barter transactions contrary to what Vista's then auditor had told Smyth at year end, contrary to what KMPG had previously told Smyth, and in a manner which did not conform with GAAP. Consequently, Vista overstated its income and assets each by \$294,601 during the quarter ended December 31, 1994.

112. At December 31, 1994, Vista reported that \$1,222,385 of its total assets of \$5,296,865 consisted of cash and marketable securities. However, these amounts were overstated by \$795,783 because Vista improperly recorded the repurchase of its IPO units through its brokerage investment account, as discussed above, as marketable securities instead of recording the repurchase as treasury stock (a contra-stockholders' equity account).

113. Smyth knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding repurchase of Vista's IPO units in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

VISTA'S EPS WAS OVERSTATED

114. Vista's EPS was materially overstated in the December 1994 Form 10-QSB because Smyth and Davis directed Vista's bookkeeper to calculate EPS using the annual weighted average number of shares outstanding. This method did not conform with GAAP. Instead, Vista's EPS should have been calculated using the weighted average number of shares of common stock outstanding during this quarter to conform with GAAP.

115. Smyth and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding EPS amount in Vista's financial statements in a manner which did not conform with GAAP.

116. Additionally, the EPS reported in the December 1994 Form 10-QSB was materially overstated due to the misstatements of Vista's income during this quarter as described above.

VISTA RESTATES ITS DECEMBER 31, 1994 QUARTERLY FINANCIAL STATEMENTS

117. As a result of failing to record the preceding transactions in conformity with GAAP, Vista's net sales, net loss, loss per share and assets were materially misstated in its books and in its December 1994 Form 10-QSB. Vista should have reported approximately \$1,318 of net sales, a \$1,022,099 net loss, a \$.36 loss per share and assets of \$1,597,231, rather than the reported \$1,103,062 of net sales, \$217,080 net income, \$.10 earnings per share and \$5,296,865 of

assets for the quarter ended December 31, 1994. Vista originally misstated these amounts by 83,592%, 121%, 128%, and 232%, respectively.

118. On June 10, 1996, Vista filed a report on Form 8-K with the Commission. Among other things, this Form 8-K included Vista's restated financial statements for the quarter ended December 31, 1994 to: (1) reverse the recognition of sales and income attributable to the improper consolidation of PMI's financial statements and (2) reverse the improper recording of various revenues, expenses and assets in conformity with GAAP, as discussed above.

MARCH 31, 1995 FORM 10-QSB

119. On or about May 16, 1995, Vista filed with the Commission a report on Form 10-QSB for the quarter ended March 31, 1995 (the "March 1995 Form 10-QSB"). The March 1995 Form 10-QSB included Vista's financial statements for the three month period ended March 31, 1995.

120. Smyth participated in the preparation of the March 1995 Form 10-QSB and signed the report in his capacity as CEO of Vista.

121. Johns participated in the preparation of the March 1995 Form 10-QSB and signed the report in his capacities as president and principal financial officer of Vista.

122. Davis participated in the preparation of the March 1995 Form 10-QSB.

IMPROPER CONSOLIDATION OF PMI'S FINANCIAL STATEMENTS

123. As discussed above, Vista improperly consolidated PMI's financial statements during the quarter ended December 31, 1994. Vista continued to improperly consolidate the financial statements of PMI and Vista during this quarter in a similar manner, causing Vista's March 31, 1995 quarterly financial statements to be materially misstated.

124. Smyth directed Vista's bookkeeper to consolidate the financial statements of PMI and Vista in a manner that did not conform with GAAP. As a result, Vista improperly included \$1,650,000, \$165,000 and \$2,015,605 of PMI's net sales, net income and total assets, respectively, in Vista's March 31, 1995 financial statements.

125. Johns knew that if the deal was not consummated, the March 31, 1995 Vista's consolidated financial statements would have to be restated to eliminate PMI's financial statements.

126. Johns and Davis discussed the PMI transaction.

127. Although Davis knew that the acquisition did not close until May 18, 1995, he participated in the recording and reporting of PMI's and Vista's financial statements on a fully consolidated basis during the quarter ended March 31, 1995. This accounting treatment did not conform with GAAP because the deal did not close and Vista did not control PMI until May 18, 1995.

128. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding PMI transaction in Vista's financial statements in a manner which did not conform with GAAP.

IMPROPER RECORDING AND REPORTING OF BARTER INCOME

129. During the March 1995 quarter, Vista again improperly recorded income and assets from barter transactions, which involved Vista exchanging its inventory for advertising credits. Smyth directed Vista's bookkeeper to record these transactions at a value which exceeded the carrying value of the inventory when he knew it was improper and did not conform with GAAP.

130. Previously, during the review of Vista's IPO, Vista's outside auditors (KPMG) objected to the recognition of revenue from these transactions. Similarly, during the preparation of the September 1994 10-KSB, Vista's outside auditors (R&S) objected to Vista's attempt to recognize income from this transaction.

131. Although Smyth was aware of these objections, he directed Vista's bookkeeper to record barter transactions that did not conform with GAAP during the March 1995 quarter. Consequently, Vista overstated its income and assets \$149,000 and \$451,513, respectively, during the quarter ended March 31, 1995.

132. Subsequently, on July 24, 1995, Vista's counsel sent a letter to Smyth and Johns, warning that Vista's most recently reported EPS (i.e., for the quarter ended March 31, 1995) might be misstated because of Vista's recognition of income from barter transactions.

133. The letter acknowledged issues regarding Vista's revenue recognition practices from barter transactions raised by Johns. Vista's counsel stated its concerns that such recognition might be of the type "that were specifically disallowed by the SEC on Vista's initial public offering" and the effect thereof on Vista's reported March 1995 EPS. Vista's counsel also stated that this issue "could have an extremely serious adverse effect on Vista." The letter

continued to describe the possible civil and criminal liabilities from making materially misleading public statements.

134. On or about July 24, 1995, Johns read and discussed this letter with Vista's counsel.

135. On or about July 25, 1995, Smyth faxed a written response to Vista's counsel after marking up a copy of Vista's counsel's July 24, 1995 letter. Smyth's written response to the barter issue included telling Vista's counsel to "Go F.U."

136. Smyth gave Johns a copy of this letter. Johns disagreed with Smyth's responses to this letter.

137. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding barter transactions in Vista's financial statements in a manner which did not conform with GAAP.

OTHER MISSTATED ASSETS AND ITEMS OF INCOME

138. During the quarter ended March 31, 1995, Vista failed to record various other expenses, costs and assets in conformity with GAAP. The net effect of these misstatements was to overstate Vista's income and assets by \$1,110,232 and \$1,935,565, respectively, during the March 1995 quarter.

139. For example, during the March 1995 quarter, Vista's wholly-owned subsidiary, Family Safety Products, Inc. ("FSPI"), understated its cost of goods sold by failing to record a \$199,000 increase to its inventory reserves. This occurred when Smyth, without any justification, directed Vista's bookkeeper to arbitrarily calculate Vista's cost of goods sold at

approximately 50% of net sales. At the time, Vista lacked a system of internal accounting controls to record its cost of goods sold in conformity with GAAP.

140. Johns was aware that Vista used estimated costs without comparison to actual costs to determine its costs of goods sold. Johns believed that Smyth directed the use of the percentages to arrive at a gross margin consistent with projections previously provided to financial analysts.

141. Smyth knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding transactions in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

142. Johns failed to record and report, and caused Vista to fail to record and report the preceding transactions in Vista's books, records and in its financial statements in conformity with GAAP.

VISTA'S EPS WAS OVERSTATED

143. Vista's EPS was materially overstated in the March 1995 Form 10-QSB because, among other reasons, Smyth and Davis directed Vista's bookkeeper to calculate EPS using the annual weighted average number of shares outstanding. This method did not conform with GAAP. Instead, Vista's EPS should have been calculated using the weighted average number of shares of common stock outstanding during this quarter to conform with GAAP.

144. Smyth, Johns, Becker and Davis failed to take action to correct the misstated EPS even after having been alerted by Vista's counsel. During November 1995, shortly after Vista filed its report on Form 10-QSB for the quarter ended September 1995, Smyth, Johns and Becker became aware from Vista's counsel that Vista's quarterly EPS reported in the March 1995 Form

10-QSB was materially false and misleading because the number of shares used to calculate EPS was incorrect.

145. As a result, Vista, using its original formula to calculate EPS, should have reduced EPS from \$.11 to \$.08. However, as described below, even this amount would have been materially incorrect because it did not take into account all of Vista's misstatements during this quarter.

146. On or about July 24, 1995, Vista's counsel sent a letter to Smyth and Johns, warning that Vista's most recently reported EPS (i.e., for the quarter ended March 31, 1995) might be misstated because of Vista's recognition of income from barter transactions.

147. The July 24, 1995 letter acknowledged issues regarding Vista's revenue recognition practices from barter transactions previously raised by Johns. Vista's counsel stated its concerns that such recognition might be of the type "that were specifically disallowed by the SEC on Vista's initial public offering" and the effect thereof on Vista's reported March 1995 EPS. Vista's counsel also stated that this issue "could have an extremely serious adverse effect on Vista." The July 24, 1995 letter continued to describe the possible civil and criminal liabilities from making materially misleading public statements.

148. On or about July 24, 1995, Johns read and discussed this letter with Vista's counsel.

149. On or about July 25, 1995, Smyth faxed a written response to Vista's counsel after marking up a copy of Vista's counsel's July 24, 1995 letter.

150. Smyth gave Johns a copy of this letter. Johns disagreed with Smyth's responses to this letter.

151. If only the barter transaction was misstated and the amount of shares used to calculate EPS was correct, Vista's originally reported EPS should have been reduced from \$.11 to \$.04.

152. However, when all of Vista's misstatements are considered, EPS should have been reduced from \$.11 to a \$.37 loss.

153. In or about December 1995, Vista's counsel told Becker, Johns and Smyth that trading was occurring in Vista's stock based on information which might be misleading, and Vista appeared to have significantly overstated its EPS which presented a problem to be dealt with quickly and decisively by issuing a corrective press release and restating previously filed Forms 10-QSB. Becker believed this error was material and both he and Johns agreed that a restatement was necessary.

154. By February 1996, Vista's counsel again, in writing, expressed concerns to Smyth and Johns that amended Forms 10-QSB and corrective press releases had still not been filed. At the same time, Becker told Johns that an amended Form 10-QSB for the March 1995 quarter needed to be filed promptly. No corrective amendments or press releases were filed or issued.

155. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding EPS amount in Vista's financial statements in a manner which did not conform with GAAP.

VISTA RESTATES ITS MARCH 31, 1995 QUARTERLY FINANCIAL STATEMENTS

156. As a result of failing to record the preceding transactions in conformity with GAAP, Vista's net sales, net loss, loss per share and assets were materially misstated in its books and in its March 1995 Form 10-QSB. Vista should have reported approximately \$38,000 of net

sales, a \$1,344,000 net loss, a \$.37 loss per share and assets of \$1,393,000, rather than the reported \$1,836,891 of net sales, \$279,232 net income, \$.11 earnings per share and \$5,795,683 of assets for the quarter ended March 31, 1995. Vista originally misstated these amounts by 4,734%, 121%, 127%, and 316%, respectively.

157. On or about May 1, 1997, Vista filed its March 1996 Form 10-QSB which, among other things, included Vista's restated financial statements for the quarter ended March 31, 1995. Vista's March 31, 1995 financial statements were restated to record: (1) the PMI acquisition, (2) the barter transaction, (3) FSPI's sales and cost of goods sold, and (4) other miscellaneous items, each in conformity with GAAP.

JUNE 30, 1995 FORM 10-QSB

158. On or about August 21, 1995, Vista filed with the Commission a report on Form 10-QSB for the quarter ended June 30, 1995 (the "June 1995 Form 10-QSB"). The June 1995 Form 10-QSB included Vista's financial statements for the three month period ended June 30, 1995.

159. Johns participated in the preparation of the June 1995 Form 10-QSB and signed the report in his capacity as president and principal financial officer of Vista.

160. Smyth participated in the preparation of the June 1995 Form 10-QSB.

161. Davis participated in the preparation of the June 1995 Form 10-QSB.

162. Johns and Davis discussed the PMI transaction.

163. Johns and Davis discussed the Alabaster transaction.

OVERSTATEMENT OF FSPI'S SALES REVENUE

164. Vista recorded fictitious sales during the quarter ended June 30, 1995. These sales were not recorded in conformity with GAAP.

165. As a result, Vista improperly included approximately \$334,371 of net sales and \$244,000 of net income in Vista's June 30, 1995 financial statements.

166. Smyth and Johns failed to record and report, and caused Vista to fail to record and report the preceding fictitious sales transactions in Vista's books, records and in its financial statements in conformity with GAAP.

IMPROPER RECORDING OF THE ALABASTER INDUSTRIES, INC. ACQUISITION

167. Vista's June 1995 Form 10-QSB disclosed that Vista had acquired all of the stock of Alabaster in May 1995. Alabaster was a company which manufactured injection molded plastic products for the housewares industry.

168. Vista disclosed that it had accounted for this transaction using the purchase method of accounting and that Alabaster's results of operations subsequent to April 30, 1995 were included in Vista's consolidated financial statements.

169. Smyth and Johns knew that Vista did not acquire Alabaster until on or about July 31, 1995-which was during the subsequent quarter.

170. After consulting with Davis, Smyth and Johns directed Vista's bookkeeper to prematurely consolidate Alabaster and Vista.

171. Vista did not acquire Alabaster until on or about July 31, 1995, after the June 30, 1995 quarter closed, resulting in a material overstatement of Vista's consolidated assets, net sales and net income.

172. Vista failed to conform with GAAP when it included \$9,766,283, \$1,585,747 and \$472,820 of Alabaster's assets, net sales and net income, respectively, in the June 1995 Form 10-QSB.

173. At the time they were preparing Vista's books, records and financial statements, Smyth, Johns, Becker and Davis were each familiar with the on-going status of the proposed acquisition, including objections raised by various parties as to claims by Vista as to when the deal was consummated.

174. Johns knew that Smyth selected May 1, 1995 as the date to record the acquisition of Alabaster on Vista's books rather than the actual closing date of July 31, 1995.

175. The acquisition did not close until on or about July 31, 1995, although the final agreement stated the effective date of the acquisition was May 31, 1995. Smyth, against the advice of Vista's counsel, insisted upon making May 31, 1995 the effective date of the acquisition. Vista's counsel repeatedly told Smyth that another client had attempted to use the effective rather than the closing date of an acquisition, and the SEC had rejected such accounting. Notwithstanding these dates, Vista consolidated Alabaster's financial statements as if the merger occurred on May 1, 1995.

176. On or about May 29, 1995, Johns and Smyth signed a Vista board consent that authorized them to negotiate and consummate the acquisition of Alabaster. Johns knew at that time of filing the June 1995 Form 10-QSB that the Alabaster acquisition had not closed until on or about July 31, 1995, that Vista had not acquired all of the stock of Alabaster, and that there was no deal because there was no enforceable agreement against Alabaster.

177. Johns also knew that the financial statements of Alabaster and Vista had been consolidated in the June 1995 Form 10-QSB. Although he discussed this transaction with Smyth and Davis, Johns was still concerned about reporting the transaction because of Smyth's pattern of taking aggressive positions on this and prior transactions.

178. Johns and Davis knew that a final contract had not yet been signed between the parties nor had there been a change in management control. Johns knew that the contract contained a contingency that could have voided the contract, and no change in management control occurred until after the closing.

179. Vista's counsel told Johns that they disagreed with Davis's position. Johns signed the June 1995 Form 10-QSB after ignoring Vista's counsel and his own belief that the financial statements of Alabaster and Vista should be not be consolidated.

180. On or about July 5, 1995, Vista issued a press release that announced that Vista completed the acquisition of Alabaster, although the acquisition agreement had not yet been drafted and the acquisition had not been finalized.

181. Johns told Smyth and Davis that he objected to the press release because Vista had not yet closed on this acquisition.

182. On or about July 6, 1995, Vista's counsel, Alabaster's president, and Alabaster's counsel read the July 5, 1995 press release issued by Vista.

183. Johns and Vista's counsel were concerned because the press release falsely disclosed that Vista had already acquired Alabaster, and because Alabaster's attorneys objected to the press release because Alabaster's unions and employee stock option plan had not approved the acquisition.

184. Alabaster's president and ESOP trustee told Johns of the concern expressed by Alabaster's counsel that Vista prematurely reported that the acquisition had occurred.

185. Alabaster's president told Johns that the July 5, 1995 press release should be retracted, to which Johns agreed.

186. Johns knew that shareholders would incorrectly infer that this transaction had been completed.

187. Although Davis knew that the acquisition did not close until July 31, 1995, he participated in the premature recording and reporting of Alabaster's and Vista's financial statements on a fully consolidated basis during the quarter ended June 30, 1995. This accounting treatment did not conform with GAAP because the deal did not close and Vista did not control Alabaster until on or about July 31, 1995.

188. On or about July 6, 1995, Vista's counsel sent Smyth and Johns a letter, which followed up a conversation between Johns and Vista's counsel earlier in the day. In the letter, Vista's counsel stated that the statement that the acquisition had been completed was incorrect and materially misleading, and urged that a corrective press release immediately be issued.

189. Vista's counsel also stated in the letter, "Under the Federal Securities Laws, the public dissemination of materially misleading information must be promptly corrected through the dissemination of clarifying information." "In all honesty, this is the stuff of which class action lawsuits and SEC enforcement actions are made. That is to say, one of the leading areas of SEC and private litigant securities actions is incorrect information surrounding mergers and acquisitions by a public company."

190. On or about July 7, 1995, Alabaster's president told Johns that Vista's July 5, 1995 press release was incorrect and potentially misleading.

191. On or about July 7, 1995, Alabaster's president and Alabaster's counsel contacted Smyth and Johns and told them that Vista's July 5, 1995 press release should be retracted.

192. On or about July 17, 1995, Alabaster's president faxed a letter to Johns regarding Vista's July 5, 1995 press release. The July 5, 1995 press release disclosed the Vista's proposed acquisition of Alabaster had been completed.

193. The July 17, 1995 letter was a follow-up to the above July 7, 1995 conversation between Alabaster's president and Johns and, among other reasons, was issued to memorialize Alabaster's alerting Vista that the July 5, 1995 press release was incorrect and potentially misleading. The July 17, 1995 letter concluded by stating that Alabaster was currently reviewing Vista's latest draft of the proposed acquisition.

194. On or about July 24, 1995, Vista's counsel sent a letter to Smyth and Johns following up Vista's counsel's July 6, 1995 letter. This letter stated that the acquisition agreement between Vista and Alabaster had still not been signed nor had a closing occurred, in direct contravention to Vista's July 5, 1995 press release regarding the completion of the acquisition.

195. Vista's counsel stated that Vista must issue a corrective press release as previously requested.

196. This letter also stated that this issue "could have an extremely serious adverse effect on Vista," and described the possible civil and criminal liabilities from making materially misleading public statements.

197. Johns saw and discussed the July 24, 1995 letter with Vista's counsel, and knew that Vista's counsel was unhappy that a corrected press release had not been issued and that Vista's counsel was continuing to insist that a corrected press release be issued.

198. By July 24, 1995, Smyth and Johns knew that Vista's counsel believed that the July 5, 1995 press release was incorrect and misleading because no acquisition had occurred.

199. On or about July 25, 1995, Smyth faxed a written response to Vista's counsel by marking up a copy of Vista's counsel's July 24, 1995 letter.

200. Smyth's response stated that Vista's position was that the Alabaster acquisition had been completed. Smyth's written response to the Alabaster issue included telling Vista's counsel to "Go F.U."

201. Smyth gave Johns a copy of this letter. Johns disagreed with Smyth's responses to this letter.

202. In a press release dated August 15, 1995, Smyth is quoted as stating, "This quarter was particularly meaningful for Vista...". "First, we reported our fourth consecutive quarter of growth and profitability..., secondly, we completed two strategic acquisitions in the quarter. The value of these transactions is reflected in our balance sheet with total assets over \$20 million."

203. Johns objected to Smyth that the Alabaster acquisition had not actually been completed. In addition, during the quarter ended June 30, 1995, far from being profitable, Vista actually incurred a \$1.372 million loss.

204. On or about October 11, 1995, Vista's counsel expressed concern to Johns that Vista had improperly recognized Alabaster's revenues and advised that the revenues not be recorded prior to the actual closing date of the acquisition.

205. On or about October 13, 1995, prior to filing the September 1995 Form 10-QSB, Vista filed a Form 8-K, signed by Johns, which disclosed that as previously reported in Vista's June 1995 Form 10-QSB, Vista had acquired all of the outstanding stock of Alabaster when the acquisition closed on July 31, 1995, pursuant to an acquisition agreement dated and effective on May 31, 1995. This disclosure was false and misleading because the June 1995 Form 10-QSB disclosed that Vista acquired the stock of Alabaster in May 1995, not July 31, 1995, and Alabaster's results of operations were consolidated as of May 1, 1995, not the effective date of May 31, 1995.

206. Johns knew that the May 31, 1995 agreement that he signed on behalf of Vista and provided to Smyth was consummated subsequent to May 31, 1995 because of the existence of material conditions.

207. Davis participated in deciding Vista's accounting for the Alabaster acquisition. Davis discussed the acquisition with Alabaster's CFO and with Johns, including discussions of whether to use the purchase or pooling method of accounting.

208. During the period from on or about early-August 1995 through December 1995, Smyth, Johns, Becker, Davis and J. Allen Seymour ("Seymour"), a partner with R&S, discussed on multiple occasions what date to use to account for the acquisition of Alabaster and to determine when Alabaster was being controlled or reporting to Vista.

209. During a meeting in or about December 1995, the Grant Thornton manager assigned to the Vista audit told Becker that Vista had improperly recorded the Alabaster acquisition. The next day, Becker communicated Grant Thornton's position to Johns.

210. Within a week, Johns set up a meeting with himself, Becker, Davis and Grant Thornton to discuss the issue. Grant Thornton maintained its belief that the Alabaster acquisition had been materially misstated.

211. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding Alabaster transaction in Vista's financial statements in a manner which did not conform with GAAP.

IMPROPER RECORDING OF THE PMI ACQUISITION

212. As discussed above, Vista improperly consolidated PMI's financial statements during the quarters ended December 31, 1994 and March 31, 1995. Vista continued to improperly consolidate the financial statements of PMI and Vista during this quarter in a similar manner causing Vista's June 30, 1995 quarterly financial statements to be materially misstated.

213. Johns and Davis directed Vista's bookkeeper to consolidate the financial statements of PMI and Vista during this quarter in a manner that did not conform with GAAP.

214. As a result, Vista's financial statements improperly included \$886,580 and \$313,982 of net sales and net income, respectively, during the quarter ended June 30, 1995.

215. Although Davis knew that the acquisition did not close until on or about May 18, 1995, he participated in the recording and reporting of PMI's and Vista's financial statements on a fully consolidated basis during the quarter ended June 30, 1995. This accounting treatment did not conform with GAAP because the deal did not close and Vista did not control PMI until on or about May 18, 1995.

216. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding PMI transaction in Vista's financial statements in a manner which did not conform with GAAP.

IMPROPER RECORDING OF THE INTELLOCK ACQUISITION

217. On or about July 7, 1995, Vista acquired Intellock Technologies, Inc. ("Intellock"), a manufacturer of digital lock mechanisms.

218. Intellock's assets, approximating \$3,248,888, were improperly included in Vista's consolidated financial statements for the quarter ended June 30, 1995 in a departure from GAAP.

219. Johns and Davis directed Vista's bookkeeper to consolidate the financial statements of Intellock and Vista, and Smyth assisted in recording this transaction, although they were each aware that Vista had not yet acquired Intellock.

220. Johns knew that the Intellock acquisition had not closed until in or about the end of July 1995. Further, Johns signed Internal Revenue Service Form 8023-A (Corporate Qualified Stock Purchases) on or about April 11, 1996, that, among other things, reported that Vista acquired Intellock on July 7, 1995.

221. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding Intellock transaction in Vista's financial statements in a manner which did not conform with GAAP.

OTHER MISSTATED ASSETS AND ITEMS OF INCOME

222. During the quarter ended June 30, 1995, certain operating expenses totaling \$546,000 and \$258,062 of non-operating expenses were improperly recorded causing net income to be overstated by an additional \$804,062.

223. Similarly during the quarter ended June 30, 1995, certain assets were improperly recorded which caused Vista's reported assets to be overstated by an additional \$3,219,663.

224. Johns failed to record and report, and caused Vista to fail to record and report the preceding transactions in Vista's books, records and in its financial statements in conformity with GAAP.

OVERSTATEMENT OF VISTA'S EPS

225. Vista's EPS was materially overstated in the June 1995 Form 10-QSB because Smyth and Davis directed Vista's bookkeeper to calculate EPS using the annual weighted average number of shares outstanding. This method did not conform with GAAP. Instead, Vista's EPS should have been calculated using the weighted average number of shares of common stock outstanding during this quarter to conform with GAAP.

226. At the time it filed the June 1995 Form 10-QSB, if Vista had used the correct amount of shares in its calculation, its then reported EPS would have decreased by 36% from \$.14 to \$.09. However, even this result would have been incorrect.

227. Smyth, Johns, Becker and Davis failed to take action to correct the misstated EPS even after having been alerted by Vista's counsel. During November 1995, shortly after Vista filed its September 1995 Form 10-QSB, Smyth, Johns and Becker became aware from Vista's counsel that Vista's quarterly EPS reported in the June 1995 Form 10-QSB was materially false and misleading because the number of shares used to calculate EPS was incorrect.

228. In or about December 1995, Vista's counsel told Becker, Johns and Smyth that trading was occurring in Vista's stock based on information which might be misleading, and Vista appeared to have significantly overstated its EPS which presented a problem to be dealt

with quickly and decisively by issuing a corrective press release and restating previously filed by Vista on Forms 10-QSB. Becker believed this error was material and both he and Johns agreed that a restatement was necessary.

229. By February 1996, Vista's counsel again, in writing, expressed concerns to Smyth and Johns that amended reports on Forms 10-QSB and corrective press releases had still not been filed. At the same time, Becker told Johns that an amended Form 10-QSB for the June 1995 quarter needed to be filed promptly. No corrective amendments or press releases were filed or issued.

230. The EPS reported in the June 1995 Form 10-QSB was also materially overstated due to the misstatements of Vista's income during this quarter as described above.

231. For the quarter ended June 30, 1995, Vista should have reported a loss per share of \$.28 rather than the reported \$.14 EPS.

232. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding EPS amount in Vista's financial statements in a manner which did not conform with GAAP.

VISTA RESTATES ITS JUNE 30, 1995 QUARTERLY FINANCIAL STATEMENTS

233. As a result of failing to record the preceding transactions in conformity with GAAP, Vista's net sales, net loss, loss per share and assets were materially misstated in its books and in its June 1995 Form 10-QSB. Vista should have reported no net sales, and an approximate \$1,372,000 net loss, a \$.28 loss per share and assets of \$4,460,000, rather than the reported \$2,806,698 of net sales, \$462,864 net income, \$.14 earnings per share and \$20,694,834 of assets

for the quarter ended June 30, 1995. Vista originally misstated these amounts by a mathematically incalculable percentage, 134%, 150%, and 364%, respectively.

234. On or about May 1, 1997, Vista filed its June 1996 Form 10-QSB. Among other things, the June 1996 Form 10-QSB included Vista's restated financial statements for the quarter ended June 30, 1995, which were restated to properly account for the: (1) Alabaster acquisition, (2) PMI acquisition, (3) Intelock acquisition, (4) fictitious sales transactions, and (5) other miscellaneous items, each in accordance with GAAP.

SEPTEMBER 30, 1995 FORM 10-QSB

235. On or about November 20, 1995, Vista filed with the Commission a report on Form 10-QSB for the quarter ended September 30, 1995 (the "September 1995 Form 10-QSB"). The September 1995 Form 10-QSB included Vista's financial statements for the three month period ended September 30, 1995.

236. Smyth participated in the preparation of the September 1995 Form 10-QSB and signed the report in his capacity as CEO and chairman of Vista.

237. Johns participated in the preparation of the September 1995 Form 10-QSB and shared primary responsibility for ensuring this report was prepared in accordance with GAAP.

238. Becker participated in the preparation of the September 1995 Form 10-QSB and shared primary responsibility for ensuring this report was prepared in accordance with GAAP. Becker told Johns that he would not sign the September 1995 Form 10-QSB because he disagreed with the date used to record the ACPI acquisition, the amount of cost of goods sold recorded by FSPI, and the continuing deferral of certain expenses on FSPI's books. Becker communicated his concerns to Davis on or about November 20, 1995.

239. Davis participated in the preparation of the September 1995 Form 10-QSB.

OVERSTATEMENT OF SALES REVENUE

240. During the September 1995 quarter, Vista improperly recorded numerous sales from the purported shipment of products by FSPI. Smyth and Becker directed Vista's bookkeeper to record these sales even though they knew the goods had not been shipped until after the quarter.

241. As a result, Vista improperly included approximately \$604,851 and \$287,304 of net sales and net income, respectively, in Vista's September 30, 1995 financial statements.

242. On or about December 28, 1995, Vista's controller told Becker that it appeared that the \$604,851 of sales were material and had been improperly recorded in the September 1995 Form 10-QSB because the goods had not been shipped by September 30, 1995. Becker agreed with the controller's statements. Vista's controller also told Becker that the transaction was a "crock." Becker agreed with the controller's conclusion.

243. Becker knew that no one at Vista ever checked to verify that sales revenue had been recorded in accordance with GAAP. For example, no one checked to ensure that revenue had only been recorded for products that had been shipped or that customers could pay for the products they received by, for example, performing credit checks.

244. Smyth knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding fictitious sales transactions in Vista's financial statements in a manner which did not conform with GAAP.

UNDERSTATEMENT OF COST OF GOODS SOLD

245. Vista understated its cost of goods sold during the quarter ended September 30, 1995 by \$317,547 thereby overstating income by a like amount, because Smyth directed Becker, with Johns' knowledge, to record an unsubstantiated amount of cost of goods sold by arbitrarily using approximately 50% of sales as the amount to record as cost of goods sold.

246. Becker knew that no cost programs existed to determine cost of goods sold in conformity with GAAP. Becker also knew that no one ever compared cost estimates to actual costs.

247. Johns was aware that Vista used estimated costs without comparison to actual costs to determine its costs of goods sold. Johns believed that Smyth directed the use of the percentages to arrive at a gross margin consistent with projections previously provided to financial analysts.

248. Smyth and Johns knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding cost of goods sold amounts in Vista's financial statements in a manner which did not conform with GAAP.

IMPROPER RECORDING OF THE AMERICAN CONSUMER PRODUCTS, INC. ACQUISITION

249. On or about September 30, 1995, Vista acquired ACPI. ACPI was a Solon, Ohio company engaged primarily in the manufacture, distribution and sale of specialty consumer products.

250. Vista did not conform with GAAP because it consolidated ACPI's results of operations for this quarter with Vista's results. As a result, Vista improperly included

approximately \$11,166,000 and \$801,000 of ACPI's net sales and net income, respectively, in Vista's September 30, 1995 financial statements.

251. In or about late-June 1995, Smyth met with ACPI to disclose Vista's interest in acquiring ACPI. On or about August 2, 1995, Vista and ACPI entered into a confidentiality agreement.

252. After being engaged by Vista to perform due diligence work for Vista for a possible acquisition, Davis met on or about August 3, 1995 with Seymour, who had similarly been hired by Vista to perform the same due diligence work, to discuss the purchase of an Ohio corporation by Vista.

253. From on or about August 7, 1995 through August 8, 1995, Davis performed due diligence work on behalf of Vista at ACPI's offices in Ohio.

254. On or about August 9, 1995, Smyth made a presentation to ACPI's board. On or about August 28, 1995, Vista's board, by unanimous written consent, approved a tender offer for ACPI's stock.

255. On or about August 29, 1995 after the close of the markets, Vista publicly announced a tender offer for all issued and outstanding shares of ACPI stock.

256. On or about September 5, 1995, Becker sent a letter to ACPI's advisors, representing that Vista had the funds necessary to complete the acquisition of ACPI.

257. On or about September 6, 1995, Johns was sent an indication of interest by a financial institution for proposed financing. Smyth forwarded the letter to ACPI.

258. On or about September 14, 1995, Vista announced that ACPI's board recommended that its shareholders tender their stock to Vista.

259. On or about September 29, 1995, Vista announced that its tender offer for ACPI stock had expired at midnight on September 28, 1995. Vista purchased approximately 96% of all issued and outstanding shares of ACPI common stock at \$5.30 per share.

260. On or about November 13, 1995, Becker told Vista's counsel that ACPI's financial statements would be consolidated with Vista's financial statements prior to the actual closing date.

261. Vista's counsel responded that another client had tried to take a similar position and was overruled by the Securities and Exchange Commission.

262. Becker, Johns, Smyth and Davis were each aware in or about October 1995 that ACPI's vice president of finance believed that Vista's recognizing its acquisition of ACPI prior to September 30, 1995 was materially improper because Vista had not obtained control of ACPI.

263. From in or about the period November 1995 through December 1995, Johns discussed with Becker, Davis and Smyth possible accounting irregularities related to the accounting for Vista's acquisition of ACPI, including the proper time to record the acquisition.

264. Johns knew that the date selected to record the acquisition would affect certain results including the amount of income Vista would recognize in the September 1995 Form 10-QSB.

265. Johns asked Seymour general questions regarding the accounting for this acquisition.

266. Seymour discussed this transaction with Smyth and Davis.

267. Vista improperly reported the date of acquisition and improperly consolidated ACPI's financial statements with Vista's as of September 1, 1995.

268. Becker directed Vista's bookkeeper to fully consolidate all of the financial statements of ACPI and Vista as of this date even though Vista clearly did not acquire control of ACPI until on or about September 30, 1995. For example, shares were not taken from the tender until on or about October 31, 1995, and the employment agreements with ACPI personnel were contingent on the completion of the tender offer.

269. Vista's consolidated financial statements included in the September 1995 Form 10-QSB should have excluded the operating results of ACPI prior to September 30, 1995.

270. Davis knew that Vista did not acquire or control ACPI until on or about September 30, 1995. Davis participated in the premature recording and reporting of ACPI's and Vista's financial statements on a fully consolidated basis during the quarter ended September 30, 1995 in a manner which did not conform with GAAP. As a result, Vista's financial statements improperly included approximately \$11,166,000 and \$801,000 of ACPI's net sales and net income, respectively, in Vista's September 30, 1995 financial statements.

271. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding ACPI transaction in Vista's financial statements in a manner which did not conform with GAAP.

272. On or about May 22, 1996, Vista announced that it would restate its financial statements to, among other things, restate the acquisition date of ACPI from July 31, 1995 to September 30, 1995, and to consolidate ACPI and Vista's financial statements as of that date.

IMPROPER RECORDING OF THE ALABASTER ACQUISITION

273. As previously discussed, Vista, through Smyth, Johns and Davis, improperly consolidated Alabaster's financial statements as of May 1, 1995, because Vista did not acquire Alabaster until on or about July 31, 1995.

274. Vista departed from GAAP when it consolidated Alabaster's results of operations for the month of July 1995 with Vista's results for the September 1995 quarter. As a result, Vista improperly included approximately \$2,918,384 and \$1,779,425 of Alabaster's net sales and net income, respectively, in Vista's September 30, 1995 financial statements.

275. Becker directed Vista's bookkeeper to consolidate the financial statements of Alabaster and Vista for the entire quarter (including the period July 1 through July 30, 1995), when only Alabaster's results of operations for August and September 1995 (the period subsequent to the acquisition) should have been included in Vista's September 30, 1995 financial statements, in order to conform with GAAP.

276. Although Davis knew that the acquisition did not close until July 31, 1995, he participated in the premature recording and reporting of Alabaster's and Vista's financial statements on a fully consolidated basis during the quarter ended September 30, 1995. This accounting treatment did not conform with GAAP because the deal did not close and Vista did not control Alabaster until July 31, 1995.

277. On or about March 15, 1996, Smyth told Vista's CFO that if Vista's auditors required any documentation to support the timing of the Alabaster acquisition, he would find it or create it.

278. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, reported and caused Vista to report the preceding Alabaster transaction in Vista's financial statements in a manner which did not conform with GAAP.

OTHER MISSTATEMENTS OF ASSETS

279. At September 30, 1995, Vista overstated its current assets and net property, plant and equipment by approximately \$10,774,355.

280. Smyth and Johns failed to record and report, and caused Vista to fail to record and report the preceding transactions in Vista's books, records and in its financial statements in conformity with GAAP.

VISTA'S EPS WAS OVERSTATED

281. Vista departed from GAAP by calculating its EPS in the September 1995 Form 10-QSB as it did in its December 1994, March 1995 and June 1995 Forms 10-QSB.

282. Vista's EPS was materially overstated in the September 1995 Form 10-QSB because Smyth and Davis directed Vista's bookkeeper to calculate EPS using the annual weighted average number of shares outstanding. This method did not conform with GAAP. Instead, Vista's EPS should have been calculated using the weighted average number of shares of common stock outstanding during each quarter to conform with GAAP.

283. As a result, by using the incorrect amount of shares in its calculation Vista overstated its reported EPS by \$.06 or 43% and should have reduced the EPS from \$.20 to \$.14.

284. However, when all of Vista's misstatements during this quarter are considered, Vista's EPS was actually overstated by \$.57 or 154% and should have been reported as a loss of \$.37.

285. On or about November 15, 1995, Vista's counsel questioned Becker about Vista's calculation of its EPS amount in the September 1995 Form 10-QSB.

286. On or about November 27, 1995, Vista's counsel called Becker to discuss Vista's September 1995 Form 10-QSB.

287. In or about November 1995, Vista's counsel told Becker, Johns, and Smyth that Vista's calculation of the weighted average number of shares used in determining EPS in the September 1995 Form 10-QSB was wrong, causing Vista's September 1995 Form 10-QSB to be inflated, false and misleading.

288. After Vista's counsel told Johns, Johns told Smyth that Vista's EPS in its Forms 10-QSB were inflated, false and misleading.

289. On or about December 1, 1995, Vista's counsel sent Becker a letter following up their November 15 and 27, 1995 telephone conversations regarding Vista's calculations of weighted average number of shares in the September 1995 Form 10-QSB. This letter indicated that Vista's counsel was still concerned with the EPS calculations and based upon his firm's research, believed that Vista may have significantly overstated its EPS, and Vista should consider restating its Forms 10-QSB and issuing a corrective press release.

290. From in or about mid-to-late November 1995 through early December 1995, subsequent to the filing of the September 1995 Form 10-QSB, Johns, Becker and Smyth discussed this EPS issue, including Vista's counsel's concerns about the overstated EPS. Becker believed this error was material and needed to be restated. Johns agreed that a restatement was necessary.

291. On or about December 28, 1995, Vista's counsel sent Becker a letter as a follow-up to his December 1, 1995 letter previously sent to Becker. Vista's counsel sent copies of the letter to Smyth and Johns. This December 28, 1995 letter indicated that it appeared Vista calculated its EPS based on an annual weighted average number of shares outstanding rather than quarterly weighted average number of shares and that it appeared that Vista had calculated EPS in similar way in previous Forms 10-QSB.

292. Vista's counsel noted in his letter that trading was continuing in Vista's stock based on information which might be misleading, and incorrectly reported quarterly earnings presented a significant problem that must be dealt with quickly and decisively by issuing a corrective press release and restated Forms 10-QSB.

293. Johns received and read this letter on or about December 28, 1995, and he discussed the letter with Smyth, Becker and Vista's counsel at that time. Smyth also received and read this letter.

294. Becker told Johns that Vista's EPS must be recalculated and that Vista's historical reports on Forms 10-QSB would have to be refiled.

295. Johns, Smyth and Vista's counsel discussed whether to issue a corrective press release. Later that day, Becker communicated to Vista's counsel his agreement with Vista's counsel that Vista had been incorrectly calculating EPS for the last three or four quarters. Johns saw a written copy of Becker's communication to Vista's counsel by February 7, 1996; Johns did not disagree with anything contained in Becker's message.

296. Previously, approximately in the beginning of December 1995, Becker spoke to Johns about this issue, after which Johns discussed the matter with Smyth. Becker also discussed

the matter with Davis, who had previously provided Smyth with the formula to calculate Vista's EPS. Becker also discussed the matter with Smyth. Smyth did not want to make any changes.

297. During a December 31, 1995 telephone conversation with Vista's counsel, Smyth stated that he would instruct Becker to prepare and file amended Forms 10-QSB to correct the quarterly EPS.

298. On or about February 7, 1996, Vista's counsel sent a letter to Smyth and Johns. Johns discussed the letter with Vista's counsel. This letter mentioned the December 31, 1995 telephone conversation between Vista's counsel and Smyth, where Smyth said that he would instruct Becker to prepare and file amended Forms 10-QSB to correct the quarterly EPS amounts.

299. The February 7, 1996 letter also stated that Becker agreed that Form 10-QSB amendments should be filed promptly and that Vista's counsel understood from Grant Thornton that other errors in the Forms 10-QSB had to be corrected.

300. Vista's counsel expressed concern that amendments and corrective press releases had not yet been filed. Becker told Johns at this time that amended reports on Forms 10-QSB, for the March, June and September 1995 quarters, had to be filed promptly.

301. Smyth, Johns, Becker and Davis failed to take action to correct the misstated EPS even after having been alerted by Vista's counsel. In or about November 1995, shortly after Vista filed its September 1995 Form 10-QSB, Smyth, Johns and Becker became aware from Vista's counsel that Vista's quarterly EPS amounts reported in the September 1995 Form 10-QSB was materially false and misleading because the number of shares used to calculate EPS was incorrect.

302. In or about December 1995, Vista's counsel told Becker, Johns and Smyth that trading was occurring in Vista's stock based on information which might be misleading, and Vista appeared to have significantly overstated its EPS which presented a problem to be dealt with quickly and decisively by issuing a corrective press release and restating previously filed Forms 10-QSB. Becker believed this error was material and both he and Johns agreed that a restatement was necessary.

303. By February 1996, Vista's counsel again, in writing, expressed concerns to Smyth and Johns that amended Forms 10-QSB and corrective press releases had still not been filed. At the same time, Becker told Johns that an amended Form 10-QSB for the September 1995 quarter needed to be filed promptly. No corrective amendments or press releases were filed or issued.

304. Smyth, Johns and Davis knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding EPS transaction in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

VISTA RESTATES ITS SEPTEMBER 30, 1995 QUARTERLY FINANCIAL STATEMENTS

305. As a result of failing to record the preceding transactions in conformity with GAAP, Vista's net sales, net loss, loss per share and assets were materially misstated in its books and in its September 1995 Form 10-QSB. Vista should have reported approximately \$2,218,000 of net sales, a \$2,303,000 net loss, a \$.37 loss per share and assets of \$83,108,000, rather than the reported \$16,907,235 of net sales, \$882,276 of net income, \$.20 earnings per share and \$93,882,355 of assets for the quarter ended September 30, 1995. Vista originally misstated these amounts by 662%, 138%, 154%, and 113%, respectively.

306. On or about May 1, 1997, Vista filed its September 1996 Form 10-QSB which, among other things, included Vista's restated financial statements for the quarter ended September 30, 1995. These financial statements were restated to account for the: (1) Alabaster acquisition, (2) ACPI acquisition, (3) FSPI's sales and cost of goods sold, and (4) other misstated assets, each in accordance with GAAP.

DECEMBER 30, 1995 ANNUAL FINANCIAL STATEMENTS

307. On or about February 13, 1995, Vista changed its fiscal year end from September 30 to December 31. However, Vista used and reported December 30 as its fiscal year end for 1995.

308. On or about March 26, 1996, Vista, through Smyth, issued a press release that announced that it intended to make certain adjustments and charges that would result in reporting a \$5 million loss for 1995. The press release falsely stated that the adjustments and charges were generally one-time and related to acquisitions, new product development and relocation costs.

309. Smyth knew this press release was misleading and he failed to disclose all of the accounting irregularities known to him including the existence of fictitious sales, as well as the overstatement of Vista's inventory.

310. Subsequently, in a press release issued on or about May 22, 1996, Vista announced, among other things, that it had incurred a net loss of \$12.9 million and a net loss per share of \$2.04 for fiscal year end 1995. The reasons for the increase to Vista's previously reported loss included the improper consolidation of ACPI during 1995 (accounting for a \$1.5 million increase to the reported loss) and the inability of Grant Thornton to audit Vista's inventory.

VISTA'S 1996 FORM 8-K

311. On or about June 10, 1996, Johns, on behalf of Vista, filed a report on Form 8-K (the "1996 Form 8-K") which, among other things, reported that Vista suffered a \$12,858,000 net loss during 1995. The 1996 Form 8-K included Vista's annual financial statements for the year ended December 30, 1995 and was accompanied by a disclaimer of opinion issued by Grant Thornton, Vista's independent auditors.

312. Grant Thornton disclaimed an opinion because Vista was unable to furnish evidence supporting the operations of, including the level of inventories held by, FSPI and Intelock.

313. Specifically, Grant Thornton found, among other things, that no accounting or internal control systems were maintained at any point during 1995, and no reconciliation of significant accounts were performed during the year. Vista's wholly-owned subsidiary (FSPI) was unable to provide Grant Thornton evidence supporting the underlying transactions involving inventory, accounts receivable and accounts payable. For example, no physical inventories were taken until year end resulting in an unexplained, year end shrinkage adjustment of \$1 million, and during March 1996, another physical count resulted in additional, unexplained inventory shrinkage of \$1 million. Further, Grant Thornton was unable to determine the accuracy of FSPI's accounts receivable.

314. As a result of failing to record the preceding transactions in conformity with GAAP, Vista's net loss and loss per share were materially misstated in its books. Vista should have reported approximately a \$14,663,000 net loss and a \$2.33 loss per share rather than the

reported \$12,858,000 net loss and \$2.04 loss per share for the year ended December 30, 1995.

As a result, Vista's 1996 Form 8-K was false and misleading.

315. At the time the 1996 Form 8-K was filed, Vista disclosed that it was in the process of implementing financial controls at FSPI to properly determine its inventory.

316. The 1996 Form 8-K and Vista's management's letter of representation relating to the December 30, 1995 financial statements included in the 1996 Form 8-K were both signed by Johns in his capacity as president of Vista. At the time he signed these documents, Johns knew, among other things, certain accounting irregularities had not been disclosed to the public including the existence of fictitious sales, as well as the overstatement of Vista's inventory.

317. Johns knowingly, intentionally and/or with severe recklessness, recorded and reported, and caused Vista to record and report the preceding December 30, 1995 annual results of operations and financial position in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

VISTA RESTATES ITS 1995 ANNUAL FINANCIAL STATEMENTS

318. On or about May 1, 1997, Vista filed a report on Form 10-KSB for the year ended December 30, 1995 (the "1995 Form 10-KSB). The 1995 Form 10-KSB included Vista's 1995 annual financial statements restated from the 1995 annual financial statements which had been previously filed on June 10, 1996 and included in the 1996 Form 8-K.

319. Vista's December 30, 1995 financial statements were restated in the 1995 Form 10-KSB to, among other things: (1) increase cost of goods sold by \$1,658,000, and (2) increase the loss on the sale of PMI during 1995 by \$147,000. As a result, Vista's net loss increased by

\$1,805,000 (12%) from \$12,858,000 to \$14,663,000, and net loss per share increased by \$.29 (12%) from \$2.04 to \$2.33, from what was previously reported in the 1996 Form 8-K.

FALSE AND MISLEADING PRESS RELEASES

320. From on or about November 8, 1994 through March 26, 1996, Vista issued ten false and misleading press releases. Some of these press releases included disclosures which misstated Vista's financial results of operations for the same reasons its annual and quarterly reports were misstated. Other press releases were false and misleading because they misrepresented Vista's financial condition, the status of acquisitions it was contemplating, and purchases of stock purportedly made by Smyth. Smyth prepared and issued all of Vista's press releases.

321. The press releases involving financial information about Vista were dated November 8, 1994, November 10, 1994, March 9, 1995, May 12, 1995, August 15, 1995, and November 15, 1995.

322. On or about November 8, 1994 and November 10, 1994, Vista, through Smyth, issued press releases that announced the completion of its IPO. These press releases, similar to disclosures in the IPO, falsely stated that the proceeds of the offering would be used for offering-related expenses, sales and marketing support, product development, acquisitions, and debt repayment. In fact, at the time these releases were issued, approximately 30% of the IPO proceeds had been utilized by Vista to repurchase its securities, representing a material change from the use of proceeds disclosed in the IPO.

323. In the May 12, 1995 press release, Smyth is quoted stating, "This is the third consecutive quarter of growth in our profitability. As the year progresses, you will see revenues at substantially higher levels, with continuing improvement in overall profitability."

324. Other misleading press releases included those dated and issued on or about April 4, 1995, June 21, 1995, July 5, 1995 and March 26, 1996.

325. Johns saw all of the above press releases issued by Vista during 1995 and 1996 and had "problems" with every press release that Smyth issued, although Johns took no action to correct the releases.

326. In the April 4, 1995 press release, Smyth announced that he had increased his holdings in Vista common stock to over 650,000 shares from approximately 400,000 shares. Smyth also stated in the press release that he believed the stock was undervalued. There is no evidence to support Smyth's claim that he purchased approximately 250,000 shares of Vista stock at the time. In fact, Smyth filed a report on Form 4 for the month of April 1995 in which he disclosed that he beneficially owned only 474,333 shares of Vista.

327. The press release dated June 21, 1995 quoted Smyth as stating, "We are well positioned for record profitability and growth in all phases of our business." Smyth had no basis for making this statement. In fact, Vista suffered a net loss of over \$1.3 million for the quarter ended June 30, 1995.

328. The press release dated July 5, 1995 falsely announced that Vista completed the acquisition of Alabaster. In fact, the acquisition agreement had not been even drafted and the acquisition had not been finalized. Johns told Smyth and Davis of his objections to the press release because Vista did not close on this acquisition until the end of July 1995. Johns told

Vista's counsel, who agreed that this press release was inaccurate. Vista's counsel sent two letters to Smyth and Johns stating that this press release was inaccurate and must be corrected. Alabaster's attorneys and its president objected to the press release because the acquisition had not been completed.

329. In the press release dated August 15, 1995, Smyth is quoted as stating, "This quarter was particularly meaningful for Vista. . . ." "First, we reported our fourth consecutive quarter of growth and profitability. . . , secondly, we completed two strategic acquisitions in the quarter. The value of these transactions is reflected in our balance sheet with total assets over \$20 million." Johns objected to Smyth that the Alabaster acquisition had not actually been completed. In addition, during the quarter ended June 30, 1995, far from being profitable, Vista actually incurred a \$1.372 million loss.

330. The March 26, 1996 press release announced that Vista intended to make certain adjustments and charges that would result in reporting a \$5 million loss for 1995. This press release misled investors by materially understating the expected loss incurred by Vista during 1995 and the reasons therefore. For example, the press release falsely stated that the adjustments and charges were generally one-time and related to acquisitions, new product development and relocation costs.

331. Smyth participated in the preparation of each of these ten preceding press releases. Smyth knowingly, intentionally and/or with severe recklessness, issued and caused Vista to issue these false and misleading press releases.

MISAPPROPRIATION OF FUNDS BY SMYTH

332. In or about February 1996, Smyth misappropriated approximately \$481,000 from Vista. Smyth used the funds to purchase a house and Vista securities. These funds-- unauthorized compensation taken by Smyth--were taken from Vista without the approval or authorization of Vista's board or compensation committee, and without any evidence of Smyth's indebtedness or collateral to support these transactions. The misappropriations were not recorded in Vista's books or records.

333. Smyth accomplished his misappropriations in two ways. First, Smyth exercised an option to purchase 200,000 shares of Vista common stock, but failed to pay Vista the \$256,000 required to exercise the option. Second, Smyth caused Vista to transfer \$225,000 to a personal account that he then used towards the purchase of a house in Amelia Island, Florida.

334. Specifically, on or about February 8, 1996, Smyth exercised an option to purchase 200,000 shares of Vista common stock, but failed to pay the \$256,000 required to exercise the option. Smyth wrote a \$256,000 personal check to pay for the options that he gave to Johns. Smyth told Johns to hold the check and not deposit it because there were not enough funds in his account to cover the check. A week later, Smyth retrieved the check from Johns and placed it in his own desk. Notwithstanding his failure to pay for the options, Smyth exercised the options and instructed Vista's transfer agent to issue him the underlying shares. Vista's board did not authorize this activity, and Smyth never paid for these shares.

335. On or about February 13, 1996, Smyth caused Vista to transfer \$225,000 of corporate funds to an escrow account held by his legal counsel to purchase a house in Amelia Island, Florida. On February 15, 1996, the \$225,000, along with other funds, was used by Smyth

to purchase a house for \$850,000. Vista's bookkeeper told Becker and Johns about this transfer of Vista funds and the lack of documentation to substantiate this transaction. Becker also told Johns about this transaction. Johns was aware of Smyth's misappropriations and allowed them to occur.

336. Smyth knowingly, intentionally and/or with severe recklessness, misappropriated the preceding funds, and failed to record and report, and caused Vista to fail to record and report the preceding misappropriation transactions in Vista's books, records and in its financial statements in a manner which conformed with GAAP.

337. Johns knowingly, intentionally and/or with severe recklessness failed to record and report, and caused Vista to fail to record and report the preceding misappropriation transactions in Vista's books, records and in its financial statements in a manner which conformed with GAAP.

VISTA'S AUDITOR LACKED INDEPENDENCE AND OTHER GAAS VIOLATIONS

338. In or about November 1991, Davis received a gift of 60,000 shares of Vista common stock from the chairman of Vista's board. The chairman was also a tax client of Davis's and had been very close friends with Davis's brother. Subsequently, Davis obtained approximately an additional 10,000 shares of Vista common stock.

339. Subsequently, through two separate reverse stock splits on or about November 30, 1993 and March 11, 1994, Davis's holdings of Vista stock were reduced to 23,333 shares.

340. On or about December 6, 1994, Vista dismissed a multi-national accounting firm (KPMG) as its independent accountants ("the predecessor auditors"). Subsequently, Vista's chairman contacted Davis regarding Vista's need to obtain independent auditors.

341. At the time, Davis was subleasing an office from R&S. Davis suggested to Seymour, a partner with R&S, that they jointly bid for the Vista audit engagement.

342. On or about December 22, 1994, Davis, on behalf of himself and R&S submitted a written proposal to Vista's board to audit Vista's September 30, 1994 annual financial statements. Both Davis and Seymour, who held themselves out as partners, signed this proposal.

343. On or about December 30, 1994, Vista's board approved the hiring of R&S as Vista's independent accountants. On or about January 9, 1995, Vista engaged Davis and R&S to be its independent accountants.

344. Davis and R&S conducted the audit together as a joint venture.

345. At the time of the 1994 audit, Davis was a member of both the AICPA and the Georgia State Society of CPAs, and he was familiar with the rules relating to auditor independence.

346. At the time he was engaged as Vista's independent accountant, and at all times during his audit of Vista, Davis owned 23,333 shares of Vista common stock. Davis lacked independence during his audit of Vista because he personally owned 23,333 shares of Vista stock. The independence of Seymour and R&S was similarly impaired by virtue of Davis's lack of independence.

347. During the 1994 audit, the value of Davis's Vista stock was approximately \$75,000.

348. R&S issued an unqualified audit opinion on Vista's September 30, 1994 annual financial statements which represented that R&S "conducted [its] audit in accordance with

generally accepted auditing standards” and that Vista’s financial statements were presented “in conformity with generally accepted accounting principles.” These representations were false.

349. The September 30, 1994 financial statements and R&S’s audit opinion were both included in Vista’s September 1994 Form 10-KSB.

350. Davis caused Vista to file its September 30, 1994 annual financial statements on Form 10-KSB that had not been certified by independent accountants despite representations to the contrary.

351. Davis violated GAAS and Rule 2-01 of Regulation S-X (Qualifications of Accountants, 17 C.F.R. 210.2-01) by auditing Vista’s 1994 annual financial statements when he was not an independent accountant.

352. Davis violated GAAS when he caused an unqualified audit opinion to be issued on Vista’s 1994 annual financial statements rather than an opinion which stated that he, Seymour and R&S lacked independence.

353. Davis violated GAAS when he failed to engage in predecessor-successor auditor communications prior to accepting the Vista audit engagement.

354. Davis violated GAAS when he failed to obtain competent evidence to verify the existence and validity of the purported \$1.2 million sale of marketing rights to PMI. Davis ignored “red flag” warnings when he reviewed this transaction during his audit. This transaction, which was disclosed in Vista’s 1994 Form 10-KSB, was not recorded in conformity with GAAP.

355. Davis violated GAAS and Rule 2-02(b) of Regulation S-X (Accountants’ Reports, 17 C.F.R. 210.2-02(b)) when he caused an unqualified audit opinion to be issued on Vista’s 1994 annual financial statements which falsely stated that the Vista audit had been conducted

audit in accordance with GAAS and that Vista's financial statements had been prepared in conformity with GAAP.

356. Davis knowingly, intentionally and/or with severe recklessness, recorded and reported the preceding PMI transaction in Vista's books, records and in its financial statements in a manner which did not conform with GAAP.

357. Davis knowingly, intentionally and/or with severe recklessness, participated in the preparation and issuance of the preceding unqualified audit opinion regarding Vista's 1994 annual financial statements which falsely stated that the Vista audit had been conducted in accordance with GAAS and that Vista's financial statements had been prepared in conformity with GAAP.

358. Davis received \$10,452 for auditing Vista's 1994 annual financial statements.

VISTA'S INADEQUATE BOOKS, RECORDS, AND INTERNAL ACCOUNTING CONTROLS, AND RELATED VIOLATIONS BY SMYTH, JOHNS AND DAVIS

359. From 1994 through 1996, Vista was required to make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflected transactions and disposition of its assets.

360. From 1994 through 1996, as described above, Vista failed, as described above, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (a) transactions were executed in accordance with management's general or specific authorization, (b) transactions were recorded as necessary (i) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (ii) to maintain accountability for assets, (c) access to its assets was permitted only in accordance with management's general or specific authorization, and (d) the recorded

accountability for its assets was compared with its existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

361. As described above in paragraphs 1 through 337, Vista's books, records, and accounts failed to reflect the true nature of the transactions. Additionally, Vista's internal accounting controls were insufficient, in that Vista did not have systems in place to record the transactions as necessary to be reported in the financial statements in conformity with GAAP and other criteria.

362. From 1994 through 1996, as described above, Smyth, singly or in concert with others, was responsible for making and keeping Vista's books, records, and accounts, which in reasonable detail, accurately and fairly reflected transactions and disposition the assets of Vista, and for devising and maintaining Vista's internal accounting controls.

363. From 1994 through 1996, as described above, Smyth, singly or in concert with others, knowingly circumvented Vista's internal accounting controls, knowingly failed to implement certain systems of internal accounting controls, and knowingly falsified Vista's books, records, and accounts.

364. During 1995 and 1996, as described above, Johns, singly or in concert with others, was responsible for making and keeping Vista's books, records, and accounts, which in reasonable detail, accurately and fairly reflected transactions and disposition the assets of Vista, and for devising and maintaining Vista's internal accounting controls.

365. During 1995 and 1996, as described above, Johns, singly or in concert with others, knowingly circumvented Vista's internal accounting controls, knowingly failed to implement

certain systems of internal accounting controls, and knowingly falsified Vista's books, records, and accounts.

366. During 1995 and 1996, as described above, Davis, singly or in concert with others, knowingly falsified Vista's books, records, and accounts.

367. As described above, defendant Smyth from 1994 through 1996, defendant Johns during 1995 and 1996, and defendant Davis during 1995 and 1996, singly or in concert with others, knowingly circumvented Vista's internal accounting controls, knowingly failed to implement certain systems of internal accounting controls, and/or knowingly falsified Vista's books, records, and accounts, including, among other things:

- a. recording sales and assets from fictitious transactions;
- b. recording sales in Vista's books when goods had not been shipped and when title to products had not passed from Vista to independent third parties;
- c. recording transactions that lacked substance in Vista's books;
- d. recording the repurchase of its securities as an asset;
- e. recording income from barter transactions;
- f. consolidating Vista's financial statements with companies which had not yet been acquired;
- g. failing to ensure that certain costs and expenses incurred by or on behalf of Vista, including certain cost of goods sold, were recorded in Vista's books;
- h. failing to properly calculate quarterly EPS; and
- i. failing to account for Smyth's misappropriation of funds,

in a manner which did not conform with GAAP and/or Vista's internal accounting rules.

SMYTH LIED TO, MISLED AND/OR OMITTED TO TELL VISTA'S OUTSIDE ACCOUNTANTS MATERIAL FACTS OR STATEMENTS

368. As described above, during 1994 and 1995 Smyth lied to, misled and/or omitted to tell Vista's outside accountants material facts or statements in connection with Vista's IPO and the audit of Vista's 1994 annual financial statements.

369. On two occasions, as described above, Smyth signed false and/or misleading management representation letters which were provided to Vista's outside accountants and/or he omitted to tell Vista's outside accountants material facts.

ILLEGAL INSIDER TRADING

SUMMARY

370. At various times during 1995 and 1996, Becker, Davis, Johns and Smyth sold Vista common stock while in possession of material, adverse, nonpublic information regarding Vista's reported financial condition and operations. The information they possessed did not become public until after the markets closed on April 15, 1996, at which time Vista announced there had been material accounting and financial improprieties extending over several reporting periods that had to be remedied by restating Vista's historical financial statements.

371. During August 1995, Davis, through a nominee account and by tipping a friend, traded ACPI common stock while in possession of material, nonpublic information regarding Vista's proposed takeover of ACPI.

372. Collectively, these individuals avoided losses of and/or obtained ill-gotten gains of approximately \$1,214,852.

ILLEGAL TRADING OF VISTA STOCK--SUMMARY

373. On April 15, 1996 after the stock markets closed, Vista issued a press release which disclosed that Smyth had resigned from the board of directors and was retiring from being Chairman and CEO.

374. The April 15, 1996 press release also disclosed that Vista's audit committee had reported preliminary findings of its examination of Vista's financial statements and accounting procedures. The press release announced that the investigation indicated that there had been material accounting and financial improprieties that Vista would have to remedy by restating financial statements for several historical periods, i.e., the September 1994 Form 10-KSB, the December 1994, March 1995, June 1995 and September 1995 Forms 10-QSB, and the December 1995 annual financial statements. (Although Vista had not published its December 1995 annual financial statements, on March 26, 1996, it had disclosed in a press release that it expected to report a \$5 million loss for the period). The press release stated that Vista expected several weeks to transpire until the restatements and the 1995 audit would be completed.

375. The April 15, 1996 press release further disclosed the existence of improprieties involving revenue recognition policies used by Vista and its FSPI subsidiary and purchase accounting questions involving revenue recognition issues with respect to the acquisitions of Alabaster and PMI.

376. The April 15, 1996 press release was the first time that the September 1994 through December 1995 periods were disclosed as "affected" periods to the public.

377. Becker, Davis, Johns and Smyth were previously aware of the extent of the need for the restatements and the reasons therefore.

ILLEGAL TRADING OF VISTA STOCK--BY BECKER

378. During the period on or about January 29, 1996 through March 13, 1996, Becker sold a total of 21,690 shares of Vista stock while he was in possession of material, adverse, nonpublic information.

379. Becker sold 9,030, 5,969 and 6,691 shares of Vista stock on or about January 29, 1996, February 6, 1996 and March 13, 1996, respectively. Becker's last sale of 6,691 shares occurred less than one week after he left Vista.

380. Becker sold his stock at prices ranging from \$10.75 to \$12.125 per share providing him gross proceeds of approximately \$245,352, and allowing him to avoid losses of approximately \$191,127.

381. Becker acquired his shares of Vista stock by exercising stock options that he had been granted less than six months previously in accordance with his employment agreement. Becker obtained short-swing profits on his sales of stock.

382. Becker sold his stock at times when he was aware of: material misstatements of various financial information disclosed in Vista's December 1994, March 1995, June 1995 and September 1995 Forms 10-QSB; the existence of material misstatements in Vista's books related to Vista's inventory for the fourth quarter ended December 30, 1995 and/or Smyth's misappropriation of funds.

383. In or about November 1995, Becker refused to sign Vista's September 30, 1995 Form 10-QSB because he believed it contained material misstatements.

384. By mid-December 1995, Becker was concerned about the condition of Vista's books, records and internal accounting controls, and he was also aware of problems in calculating Vista's EPS.

385. On or about December 28, 1995, Vista's controller told Becker that it appeared that \$604,851 of sales were material and had been improperly recorded in the September 1995 Form 10-QSB because the goods had not been shipped by September 30, 1995. Becker agreed with the controller's statements. Becker also agreed with the controller's assessment that the sales were a "crook".

386. On or about December 1995, Vista's independent accountants told Becker that the Alabaster acquisition had been improperly recorded by Vista in its June 1995 Form 10-QSB.

387. In or about January 1996, Becker discussed his concerns regarding problems with the consolidation of the Alabaster and ACPI acquisitions with Vista's controller.

388. On or about February 7, 1996, Vista's counsel sent a letter to Smyth and Johns. This letter mentioned the December 31, 1995 telephone conversation between Vista's counsel and Smyth, where Smyth said that he would instruct Becker to prepare and file amended Forms 10-QSB to correct the quarterly EPS amounts. This letter also stated that Becker agreed that Form 10-QSB amendments should be filed promptly and that Vista's counsel understood from Grant Thornton that other errors in the Forms 10-QSB had to be corrected. Vista's counsel expressed concern that amendments and corrective press releases had not yet been filed.

389. Previously, in or about December 1995, Becker had already discussed the issues communicated in Vista counsel's February 7, 1996 letter with Vista's controller.

390. On or about February 7, 1996, the day after his second trade, Becker told Johns that amendments to Vista's March, June and September 1995 Forms 10-QSB had to be filed promptly.

391. On or about February 26, 1996, Becker resigned because of accounting irregularities that existed in Vista's previously issued financial statements, misstatements in Vista's books related to Vista's inventory for the fourth quarter ended December 30, 1995, and Smyth's misappropriation of funds.

392. Prior to selling his stock on or about March 13, 1996, Becker was aware that material adjustments to Vista's financial statements were necessary. He was also aware of the deficiencies that existed in Vista's books, records, and internal accounting controls which were part of the cause for the delay in filing, and subsequent restatements, of Vista's December 1995 financial information.

393. Becker knowingly, intentionally and/or with severe recklessness, sold 21,690 shares of Vista stock while he was in possession of material, nonpublic information.

394. By selling his Vista stock while he was in possession of material, nonpublic information, Becker avoided losses of approximately \$191,127.

ILLEGAL TRADING OF VISTA STOCK--BY DAVIS

395. During the period on or about June 22, 1995 through April 1, 1996, Davis sold a total of 43,333 shares of Vista stock while he was in possession of material, adverse, nonpublic information.

396. Davis sold 3,000, 5,000, 5,000, 10,000, 333 and 20,000 shares of Vista stock on or about June 22, 1995, July 19, 1995, July 26, 1995, October 31, 1995, November 8, 1995 and April 1, 1996, respectively.

397. Davis sold his stock at prices ranging from \$6.00 to \$9.625 per share providing him gross proceeds of approximately \$540,313, and allowing him to avoid losses of approximately \$239,519.

398. Davis conducted his sales by: (1) transferring stock to a brother and two associates, one of whom was the president of PMI, to satisfy business debts, (2) transferring stock to his sister's husband as Davis's nominee, providing instructions on when to sell the stock, having the proceeds from the sale of stock transferred to a bank account in the name of his sister and brother-in-law, and then instructing them to use the proceeds for his behalf (e.g., to pay personal debts, make investments, make cash payments to Davis), (3) selling stock through a nominee account in the name of his mistress, and (4) selling stock which he obtained by exercising warrants previously granted to him by Vista.

399. Davis arranged for the establishment of brokerage accounts with the same registered representative for each of the above individuals in order to facilitate the transfer his Vista stock.

400. At the time of these transactions, Davis was aware that various financial information disclosed in Vista's September 1994 Form 10-KSB, and December 1994, March 1995, June 1995, September 1995 Forms 10-QSB, and July 5, 1995 press release was materially misstated and/or misleading, having participated in many of the misstatements. He was also aware of Becker's decisions to refuse to sign the September 1995 Form 10-QSB and to resign

based on the existence of past and current accounting errors and irregularities at Vista, including inventory problems, and Smyth's misappropriation of funds.

401. In or about March 1996, Vista's CFO expressed concerns to Davis that Vista's historical financial statements did not comply with GAAP.

402. Davis knowingly, intentionally and/or with severe recklessness, sold 43,333 shares of Vista stock while he was in possession of material, nonpublic information.

403. By selling his Vista stock while he was in possession of material, nonpublic information, Davis avoided losses of \$239,519.

ILLEGAL TRADING OF VISTA STOCK--BY JOHNS

404. During the period on or about February 5, 1996 through February 15, 1996, Johns sold a total of 47,500 shares of Vista stock while he was in possession of material, adverse, nonpublic information.

405. Johns sold 15,000, 5,000, 20,000 and 7,500 shares of Vista stock on or about February 5, 6, 8 and 15, 1996, respectively.

406. Johns sold his stock at prices ranging from \$10.5625 to \$12.50 per share providing him gross proceeds of approximately \$540,313, and allowing him to avoid losses of approximately \$421,563.

407. Johns acquired his stock by exercising options to purchase 43,679 and 150,000 shares of Vista stock on or about December 21, 1995 and February 9, 1996, respectively.

408. After joining Vista in 1995, Johns read the Corporate Director's Guidebook, published by the American Bar Association, which he obtained from Vista's counsel. This book

described the role of a director of a public company including insider trading restrictions. Johns also received memos from Vista's counsel regarding insider trading.

409. At the time of stock sales, Johns was aware that various financial information disclosed in Vista's press releases issued on or about March 9, 1995, April 4, 1995, May 12, 1995, June 21, 1995, July 5, 1995, August 15, 1995, November 15, 1995 and March 26, 1996, the December 1994, March 1995, June 1995 and September 1995 Forms 10-QSB, and in the October 1995 and June 1996 Forms 8-K was materially false and/or misleading. Johns was also aware of Smyth's misappropriations.

410. For example, on or about July 6, 1995, Vista's counsel sent Johns a letter which urged that a press release immediately be issued to correct the false and materially misleading July 5, 1995 press release which stated that the statement that the Alabaster acquisition had been completed. Vista's counsel also warned in the letter that failure to correct the release could result in lawsuits, including SEC enforcement actions.

411. On or about July 24, 1995, Vista's counsel sent a letter to Johns that indicated, in direct contravention to Vista's July 5, 1995 press release, that the acquisition agreement between Vista and Alabaster was still unsigned and no closing had occurred. Despite Vista's counsel's reiteration that Vista issue a corrective press release, no such release was issued.

412. On or about July 24, 1995, Vista's counsel sent a letter to Johns acknowledging issues raised by Johns regarding Vista's revenue recognition practices from barter transactions. Vista's counsel stated his concerns that such recognition might be of the type "that were specifically disallowed by the SEC on Vista's initial public offering" and the adverse effect thereof on EPS reported in Vista's latest Form 10-QSB. This letter also stated that this issue

“could have an extremely serious adverse effect on Vista,” and continued on to describe the possible civil and criminal liabilities from making materially misleading public statements.

413. In or about November 1995 Becker told Johns that he would not sign Vista’s September 1995 Form 10-QSB and the reasons therefore (e.g., misstatements in Vista’s financial statements, and on-going problems with recording accounting transactions).

414. On or about December 1995, Vista’s independent accountants told Becker that the Alabaster acquisition had been improperly recorded by Vista in its June 1995 Form 10-QSB. Becker conveyed this information to Johns on or about December 1995.

415. In or about late-December 1995, Vista’s controller told Johns that his association with Smyth would end in litigation and that Vista’s books were “a mess.”

416. Johns was aware that the gross margins reported by Vista in its March 1995 and September 1995 reports on Form 10-QSB were fictitious. Johns told Vista’s special counsel that Smyth directed the use of the percentages to arrive at a gross margin consistent with projections previously provided to financial analysts.

417. Prior to February 7, 1996, Vista’s counsel told Johns that his firm might resign because of the way Vista was accounting for certain transactions, and the way Vista was conducting its business.

418. On or about February 7, 1996, Johns received a letter from Vista’s counsel. The letter, which Vista’s counsel had discussed with Johns on or about February 5, 1996, stated that: (1) Vista had to amend its Forms 10-QSB to correct the reported EPS amounts; (2) Grant Thornton believed other errors in the Forms 10-QSB had to be corrected; and (3) Vista had to issue corrective press releases.

419. The February 7, 1996 letter also stated, "Additionally, obviously no officer or director should sell any shares until the corrective filings have been made and the market has had ample opportunity to process and react to the disclosures. Otherwise, a charge of trading on "inside" information could easily be levied."

420. Prior to selling his last 27,500 shares, Johns was advised by Becker that Vista's March, June and September 1995 Forms 10-QSB had to be amended promptly.

421. Johns knowingly, intentionally and/or with severe recklessness, sold 47,500 shares of Vista stock while he was in possession of material, nonpublic information. By selling his Vista stock while he was in possession of material, nonpublic information, Johns avoided losses of approximately \$421,563.

ILLEGAL TRADING OF VISTA STOCK--BY SMYTH

422. On or about June 22, 1995, April 8, 1996 and April 10, 1996, Smyth sold 3,500, 103,000, and 216,500 shares, respectively - a total of 323,000 shares - of Vista stock while he was in possession of material, adverse, nonpublic information. Smyth sold his stock in 1995 at \$5.53125 per share, and at prices ranging from \$3.266 to \$4.1029 per share in April 1996 providing him gross proceeds of approximately \$1,319,236. Smyth's misconduct allowed him to avoid losses of approximately \$356,987.

423. At the time of these transactions, Smyth was aware that various financial information disclosed in Vista's press releases, IPO registration statement, September 1994 Form 10-KSB, December 1994, March 1995, June 1995, September 1995 Forms 10-QSB, and other periodic reports was materially misstated or misleading. Smyth was involved in causing all of these misstatements and was aware of each of them. Moreover, Smyth knew that in February

1996, Vista's counsel threatened to resign because of the way Vista was accounting for certain transactions.

424. On or about February 26, 1996, Becker told Smyth he was resigning because of accounting irregularities which existed in Vista's previously issued financial statements, misstatements in Vista's books related to inventory for the fourth quarter ended December 30, 1995, and Smyth's misappropriation of funds.

425. On or about March 21, 1996, Vista's counsel sent a letter of resignation to Vista's board, including Smyth, citing the accounting irregularities and false financial statements described above and Vista's refusal to amend reports or make corrective disclosures. Among other things, the letter noted the following issues: (1) prior quarterly EPS were overstated, (2) premature revenue recognition had occurred by improperly consolidating Alabaster and ACPI's financial statements, and (3) improper recognition of revenue using barter transactions.

426. Also, on or about March 21, 1996, Vista's general counsel gave Smyth a memo which, among other things, communicated information from Vista's CFO that: (1) Vista's September 30, 1995 Form 10-QSB recorded sales which occurred during the following quarter thereby distorting Vista's reported sales and income; (2) Vista recorded fictitious sales on December 31, 1995; (3) Vista prematurely recorded the PMI acquisition in its December 1994 Form 10-QSB; (4) personal, undocumented and unauthorized loans to Smyth existed; (5) the number of outstanding shares of Vista stock during any reporting period was incorrect; (6) management's integrity was in question; and (7) Vista had to file amended Forms 10-QSB.

427. On or about March 22, 1996, Grant Thornton auditors reiterated their concerns to Smyth that certain October 1995 sales had been improperly included in Vista's September 1995 quarterly financial statements filed with the Commission.

428. On or about March 26, 1996, Smyth attended a special Vista board meeting at which the Grant Thornton audit partner indicated that certain charges and operating losses would be reported for Vista's year ending December 30, 1995 which would differ significantly from results anticipated by the investment community, and that prior quarterly reports would require amendments as well as possibly the September 1994 Form 10-KSB.

429. On or about March 26, 1996, Vista retained special counsel to the audit committee to, among other things, assist it in the examination of Vista's accounting and financial control activities, the resignation of Vista's outside counsel.

430. On or about March 26, 1996, Grant Thornton expressed concerns to Smyth about discussions it had with Vista's CFO, and with respect to Vista's management's representations. Grant Thornton indicated that they would not proceed with the audit process until Vista's board responded to its concerns.

431. On or about Saturday, April 6, 1996, Smyth attended a special meeting of Vista's board. Vista's special counsel delivered a summary report of the status of the internal investigation by the audit committee. Vista's special counsel recommended, on behalf of the audit committee, that the board consider: (1) advising the public that Vista would be amending prior Exchange Act reports; (2) a trading suspension of Vista's stock; and (3) Smyth taking a voluntary leave of absence until completion of the examination being conducted of Vista's recent financial results by the audit committee. Vista's board resolved: (1) that the special counsel review prior public disclosures and

examine what additional information should be made regarding the financial condition of Vista, and if such review couldn't be timely made, special counsel should explore the possibility of seeking a trading suspension; and (2) Smyth be granted a temporary leave of absence.

432. On or about Saturday, April 6, 1996, Smyth attended a special meeting of Vista's. On or about April 8, 1996, Vista issued a press release which disclosed, among other things, that: (1) Smyth had agreed to take a temporary paid leave of absence as chairman and CEO, pending completion of the audit committee's examination of Vista's recent financial results; and (2) adjustments (although unspecified) related to this loss were expected to result in the filing of amended Exchange Act reports for certain historical periods. Later that day, Smyth began selling off 319,500 shares of Vista stock.

433. Smyth knowingly, intentionally and/or with severe recklessness, sold 323,000 shares of Vista stock while he was in possession of material, nonpublic information.

434. By selling his Vista stock and selling Vista stock short while he was in possession of material, nonpublic information, Smyth avoided losses of approximately \$356,987.

ILLEGAL TIPPING AND TRADING OF ACPI STOCK--SUMMARY

435. In or about August 1995, Davis was engaged by Vista to perform work related to the proposed acquisition of ACPI. At the time, ACPI was traded on the NASDAQ National Market.

436. On or about August 3, 1995, Seymour met with Davis to discuss Vista's purchase of ACPI. On August 7, 1995, Davis flew to ACPI's offices in Ohio to perform due diligence work.

437. On or about August 16, 1995, Davis instructed his brother-in-law to purchase ACPI stock. On August 17, 1995, Davis's brother-in-law purchased shares of ACPI stock.

438. On or about August 16, 1995, Davis tipped a friend to purchase ACPI stock. On August 16, 1995, Davis's friend purchased ACPI stock.

439. Previously, on or about June 1995, Davis had previously arranged for his brother-in-law, and his friend to open a brokerage account with the same registered representative.

440. On August 29, 1995, after the close of the markets, Vista publicly announced a tender offer for all issued and outstanding shares of ACPI stock at \$5.30 per share. Prior to this announcement, ACPI's stock had last traded on August 23, 1995 closing at \$3.75 per share.

441. On August 30, 1995, ACPI's stock closed at \$5.25 per share (an increase of 40%) after trading as high as \$5.50 per share. On August 31, 1995, ACPI's stock closed at \$5.0625 per share after trading as high as \$5.3125 per share. Subsequently, and until Vista acquired ACPI, the stock traded in a range of \$5.0625 to \$5.3125 per share.

442. Davis, by his purchases through his brother-in-law, and by his tipping his friend, is responsible for combined profits of approximately \$5,656.

ILLEGAL TIPPING AND TRADING OF ACPI STOCK--BY DAVIS'S FRIEND

443. On or about August 16, 1995, Davis's friend purchased 1,500 shares of ACPI at \$3.625 per share.

444. On or about September 1, 1995, Davis's friend sold her 1,500 shares of ACPI stock at \$5.0625 per share.

445. Davis knowingly, intentionally and/or with severe recklessness, tipped material, nonpublic information to his friend, who then purchased and sold 1,500 shares of ACPI stock.

446. As a result of Davis's tipping of material, nonpublic information to his friend, and his friend's purchase and sale of ACPI stock while she was in possession of such information, Davis caused his friend to obtain approximately \$2,531 of ill-gotten gains.

ILLEGAL TIPPING AND TRADING OF ACPI STOCK--BY DAVIS THROUGH HIS BROTHER-IN-LAW

447. On or about August 16, 1995, Davis told his brother-in-law that he believed Vista would be acquiring ACPI.

448. On or about August 17, 1995, Davis's brother-in-law, at Davis's direction, purchased 2,000 shares of ACPI at \$3.75 per share.

449. To pay for the purchase of the ACPI stock, Davis's brother-in-law used funds in a nominee account which Davis had previously established. The nominee account was held in the name of Davis's brother-in-law. The funds in this account were leftover from the proceeds of the June 1995 sale of Vista stock made by Davis's brother-in-law at Davis's direction.

450. On or about September 1, 1995, Davis's brother-in-law, at Davis's direction, sold 2,000 shares of ACPI stock at \$5.0625.

451. The proceeds from the sale of the ACPI stock were deposited into a bank account which Davis controlled and which was held in the name of Davis's sister and brother-in-law.

452. Davis knowingly, intentionally and/or with severe recklessness, tipped material, nonpublic information to his brother-in-law, who then purchased and sold 2,000 shares of ACPI stock on behalf of Davis.

453. As a result of Davis's tipping of material, nonpublic information to his brother-in-law and Davis's, through a nominee account held under the name of his brother-in-law, purchase

and sale of ACPI stock while in possession of such information, Davis obtained approximately \$3,125 of ill-gotten gains.

VIOLATION OF SECTION 16 STOCK OWNERSHIP REQUIREMENTS

FAILURE TO FILE FORMS 4 AND 5 BY SMYTH

454. Smyth failed to file numerous reports on Forms 4 and 5 to disclose purchases and sales of Vista stock that he and his wife executed during 1994 and 1995. Smyth was deemed a beneficial owner of his wife's transactions and was required to report her transactions.

455. Smyth knowingly, intentionally and/or with severe recklessness, failed to report the preceding stock ownership transactions to the Commission.

ILLEGAL SHORT SALE BY SMYTH

456. On or about April 10, 1996, Smyth sold 109,166 shares of Vista stock short, and he did not cover this short position within the prescribed twenty-day period.

457. Smyth knowingly, intentionally and/or with severe recklessness, illegally sold short the preceding Vista stock.

COUNT I

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

458. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

459. Defendant Smyth, from 1994 through 1996, defendant Johns, during 1996, defendant Davis, from 1995 through 1996, and defendant Becker, during 1996, singly or in concert, in connection with the offer or sale of securities, directly and indirectly, by the use of means and instrumentalities of interstate commerce and by use of the mails:

- a. employed devices, schemes, and artifices to defraud;
- b. obtained money or property by means of untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c. engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the offer and sale of such securities,

all as more particularly described above.

460. The statements and representations alleged herein were known to defendants or recklessly disregarded by them to be materially false and misleading. In making the material representations of fact and material omissions described herein, defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with reckless disregard for the truth.

461. By reason of the foregoing, defendants Smyth, Johns, Davis, and Becker have violated, and unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

COUNT II

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

462. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

463. Defendant Smyth, from 1994 through 1996, defendant Johns, from 1995 through 1996, defendant Davis, from 1995 through 1996, and defendant Becker, from 1995 through 1996,

singly or in concert, in connection with the purchase and sale of securities, directly and indirectly, by the use of means and instrumentalities of interstate commerce and by use of the mails:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the purchase and sale of such securities,

all as more particularly described above.

464. The statements and representations alleged herein were known to defendants or recklessly disregarded by them to be materially false and misleading. In making the material representations of fact and material omissions described herein, defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with reckless disregard for the truth.

465. By reason of the foregoing, defendants Smyth, Johns, Davis, and Becker have violated, and unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

COUNT III

Liability of Smyth as a Control Person, for Vista's Violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. 240.12b-20 and 240.13a-1]

466. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

467. Defendant Smyth, during 1995, prepared, signed and/or filed, singly or in concert, Vista's 1994 Form 10-KSB. The 1994 Form 10-KSB was materially false and misleading, as described above.

468. By reason of the foregoing, Vista violated Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. 240.12b-20 and 240.13a-1].

469. Defendant Smyth served as Vista's CEO and as a director from July 1992 until April 15, 1996, and as Vista's chairman of the board from February 1, 1995 until April 15, 1996. Smyth, while associated with Vista, possessed the power to influence and direct the conduct of Vista with respect to the activities constituting the violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. 240.12b-20 and 240.13a-1]. In addition, Smyth was a culpable participant in the conduct.

470. By reasons of the foregoing, Smyth was a controlling person of Vista within the meaning of Section 20 of the Exchange Act [15 U.S.C. 78t] and is liable as a control person for Vista's violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. 240.12b-20 and 240.13a-1].

471. By reason of the foregoing, Smyth is liable for violations of, and unless enjoined will continue to violate and cause violations of, Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. 240.12b-20 and 240.13a-1].

COUNT IV

Liability of Smyth and Johns, as Control Persons, for Vista's Violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-11 [17 C.F.R. 240.12b-20 and 240.13a-11]

472. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

473. Defendant Smyth, from 1994 through 1995, prepared, signed and/or filed, singly or in concert, Vista's December 1994 Form 8-K and October 1995 Form 8-K. Defendant Johns, from 1995 through 1996, prepared, signed and/or filed, singly or in concert, Vista's October 1995 Form 8-K and June 1996 Form 8-K. The December 1994 Form 8-K, October 1995 Form 8-K and June 1996 Form 8-K each were materially false and misleading, as described above.

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

475. Defendant Smyth served as Vista's CEO and as a director from July 1992 until April 15, 1996, and as Vista's chairman of the board from February 1, 1995 until April 15, 1996. Defendant Johns served as Vista's president and secretary from on or about February 15, 1995 through June 7, 1996, a director from on or about February 15, 1995 through July 13, 1996, and principal financial officer from in or about March 1995 through August 1995. Smyth and Johns, while associated with Vista, possessed the power to influence and direct the conduct of Vista with respect to the activities constituting the violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-11 thereunder [17 C.F.R. 240.12b-20 and 240.13a-11]. In addition, Smyth and Johns were culpable participants in the conduct.

476. By reasons of the foregoing, Smyth and Johns were controlling persons of Vista within the meaning of Section 20 of the Exchange Act [15 U.S.C. 78t] and are liable as control persons for Vista's violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-11 thereunder [17 C.F.R. 240.12b-20 and 240.13a-11].

477. By reason of the foregoing, Smyth and Johns are liable for violations of, and unless enjoined will continue to violate and cause violations of, Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-11 thereunder [17 C.F.R. 240.12b-20 and 240.13a-11].

COUNT V

Liability of Smyth and Johns, as Control Persons, for Vista's Violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-13 [17 C.F.R. 240.12b-20 and 240.13a-13]

478. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

479. Defendant Smyth, from 1994 through 1995, prepared, signed and/or filed, singly or in concert, Vista's December 1994 Form 10-QSB, March 1995 Form 10-QSB, June 1995 Form 10-QSB and September 1995 Form 10-QSB. Defendant Johns, during 1995, prepared, signed and/or filed, singly or in concert, Vista's December 1994, March 1995 Form 10-QSB, June 1995 Form 10-QSB and September 1995 Form 10-QSB. The December 1994 Form 10-QSB, March 1995 Form 10-QSB, June 1995 Form 10-QSB and September 1995 Form 10-QSB each were materially false and misleading, as described above.

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

481. Defendant Smyth served as Vista's CEO and as a director from July 1992 until April 15, 1996, and as Vista's chairman of the board from February 1, 1995 until April 15, 1996. Defendant Johns served as Vista's president and secretary from on or about February 15, 1995 through June 7, 1996, a director from on or about February 15, 1995 through July 13, 1996, and principal financial officer from in or about March 1995 through August 1995. Smyth and Johns, while associated with Vista, possessed the power to influence and direct the conduct of Vista with respect to the activities constituting the violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. 240.12b-20 and 240.13a-13]. In addition, Smyth and Johns were culpable participants in the conduct.

482. By reasons of the foregoing, Smyth and Johns were controlling persons of Vista within the meaning of Section 20 of the Exchange Act [15 U.S.C. 78t] and are liable as control persons for Vista's violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. 240.12b-20 and 240.13a-13].

483. By reason of the foregoing, Smyth and Johns are liable for violations of, and unless enjoined will continue to violate and cause violations of, Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. 240.12b-20 and 240.13a-13].

COUNT VI

Liability of Smyth and Johns, as Control Persons, for Vista'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) and 78m(b)(2)(B)]

484. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

485. From 1994 through 1996, Vista failed, as described above, to make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflected transactions and disposition of its assets.

486. From 1994 through 1996, Vista failed, as described above, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (a) transactions were executed in accordance with management's general or specific authorization, (b) transactions were recorded as necessary (i) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (ii) to maintain accountability for assets, (c) access to its assets was permitted only in accordance with management's general or specific authorization, and (d) the recorded accountability for its assets was compared with its existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

487. By reason of the foregoing, Vista violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. 78m(b)(2)(A) and 78m(b)(2)(B)].

488. Defendant Smyth served as Vista's CEO and as a director from July 1992 until April 15, 1996, and as Vista's chairman of the board from February 1, 1995 until April 15, 1996. Defendant Johns served as Vista's president and secretary from on or about February 15, 1995 through June 7, 1996, a director from on or about February 15, 1995 through July 13, 1996, and principal financial officer from in or about March 1995 through August 1995. Smyth and Johns, while associated with Vista, possessed the power to influence and direct the conduct of Vista with respect to the activities constituting the violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the

Exchange Act [15 U.S.C. 78m(b)(2)(A) and 78m(b)(2)(B)]. In addition, Smyth and Johns were culpable participants in the conduct.

489. By reasons of the foregoing, Smyth and Johns were controlling persons of Vista within the meaning of Section 20 of the Exchange Act {15 U.S.C. 78t} and are liable as control persons for Vista'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) and 78m(b)(2)(B)].

490. By reason of the foregoing, defendants Smyth and Johns are liable as control persons for violations, and unless restrained and enjoined, will continue to violate and cause violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. 78m(b)(2)(A) and 78m(b)(2)(B)].

COUNT VII

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. 240.13b2-1 and 240.13b2-2]

491. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

492. Defendant Smyth, from 1994 through 1996, defendant Johns, from 1995 through 1996, and defendant Davis, from 1995 through 1996, singly or in concert, knowingly circumvented Vista's internal accounting controls, knowingly failed to implement certain systems of internal accounting controls, knowingly falsified and caused to be falsified Vista's books, records and accounts described in Section 13(b)(2) of the Exchange Act [15 U.S.C. 78m(b)(2)], as described in paragraphs 1 through 457.

493. Defendant Smyth, from 1994 through 1996, defendant Johns, from 1995 through 1996, and defendant Davis, from 1995 through 1996, singly or in concert, knowingly falsified and

caused to be falsified Vista's books, records and accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. 78m(b)(2)(A)], as described in paragraphs 1 through 457 above.

494. Defendant Smyth, from 1994 through 1996, defendant Johns, from 1995 through 1996, and defendant Davis, from 1995 through 1996, singly or in concert:

- a. made or caused to be made materially false or misleading statements; and
- b. omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with (1) an audit or examination of the financial statements of the issuer required to be made pursuant to Section 13 of the Exchange Act; and (2) the preparation or filing of a document or report required to be filed with the Commission pursuant to this subpart or otherwise,

as described in paragraphs 1 through 457 above.

495. Defendant Smyth, from 1994 through 1995, signed Vista's management representation letters which were provided to Vista's outside accountants. Each of these letters contained material untrue statements of facts, as described above.

496. Defendant Smyth, from 1994 through 1995, lied to, misled and/or omitted to tell Vista's outside accountants material facts or statements, as described above.

497. By reason of the foregoing, defendant Smyth has violated, and unless restrained and enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. 240.13b2-1 and 240.13b2-2].

498. By reason of the foregoing, defendants Johns and Davis have violated, and unless restrained and enjoined, will continue to violate Rule 13b2-1 of the Exchange Act [17 C.F.R. 240.13b2-1].

COUNT VIII

Violations of Section 14(e) of the Exchange Act [15 U.S.C. 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. 240.14e-3]

499. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

500. Defendant Davis, from in or about August 1995 through September 1995, singly or in concert, engaged in fraudulent, deceptive or manipulative acts or practices in connection with the tender offer made by Vista for ACPI, by causing certain persons to purchase or hold the securities of ACPI, while in possession of material information relating to such tender offer, which information Davis knew or had reason to know was nonpublic and which information he knew or had reason to know had been acquired, directly or indirectly, from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer, to purchase or sell or cause to be purchased or sold any of such securities, as described in paragraphs 1 through 457 above.

501. Defendant Davis, from in or about August 1995 through September 1995, singly or in concert:

- a. communicated material, nonpublic information relating to a tender offer to persons under circumstances in which it was reasonably foreseeable that

such communications were likely to result in a violation of the federal tender offer laws;

- b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c. engaged in fraudulent, deceptive, and manipulative acts and practices, in connection with a tender offer and request and invitation for tenders, and a solicitation of security holders in opposition to or in favor of any such offer, request, or invitation.

as described in paragraphs 1 through 457 above.

502. By reason of the foregoing, defendant Davis has violated, and unless restrained and enjoined, will continue to violate Section 14(e) of the Exchange Act [15 U.S.C. 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. 240.14e-3].

COUNT IX

Violations of Sections 16(a) and 16(c) of the Exchange Act [15 U.S.C. 78p(a) and 78p(c)]
and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. 240.16a-2 and 240.16a-3]

503. Paragraphs 1 through 457 are hereby realleged and are incorporated herein by reference.

504. Defendant Smyth, from 1994 through 1995, singly or in concert, failed to file or filed false and misleading statements of the amount of all equity securities owned of an issuer and any changes in such ownership when he directly or indirectly beneficially owned more than 10 per centum of any class of any equity security which was registered pursuant to Section 12 of

the Exchange Act [15 U.S.C. 781], or was a director or an officer of the issuer of such security, as described in paragraphs 1 through 457 above.

505. Defendant Smyth, during 1996, singly or in concert, sold an equity security of an issuer when he or his principal (i) did not own the security sold, or (ii) if owning the security, did not deliver it against such sale within twenty days thereafter, or did not within five days after such sale deposit it in the mails or other usual channels of transportation, when he directly or indirectly beneficially owned more than 10 per centum of any class of any equity security which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 781], or was a director or an officer of the issuer of such security, as described in paragraphs 1 through 457 above.

506. By reason of the foregoing, defendant Smyth has violated, and unless restrained and enjoined, will continue to violate Sections 16(a) and 16 (c) of the Exchange Act [15 U.S.C. 78p(a) and 78p(c)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. 240.116a2-1 and 240.16a-3].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining defendant Smyth, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating:

- a. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];
- b. Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5];
- c. Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13];
- d. Sections 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. 240.13b2-1 and 240.13b2-2];
- e. Sections 16(a) of the Exchange Act [15 U.S.C. 78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. 240.16a-2 and 240.16a-3]; and
- f. Section 16(c) of the Exchange Act [15 U.S.C. 78p(c)].

III.

Issue a permanent injunction enjoining defendant Johns, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating:

- a. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];
- b. Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5];
- c. Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-11 and 240.13a-13]; and

d. Sections 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. 240.13b2-1].

IV.

Issue a permanent injunction enjoining defendant Davis, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating:

- a. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];
- b. Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5];
- c. Section 13(b)(5) of the Exchange Act [15 U.S.C. 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. 240.13b2-1]; and
- d. Section 14(e) of the Exchange Act [15 U.S.C. 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. 240.14e-3].

V.

Issue a permanent injunction enjoining defendant Becker, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating:

- a. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; and
- b. Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

VI.

Issue an Order requiring defendants Smyth (to be enforced in Smyth's bankruptcy proceeding for so long as it is pending or to be enforced in this proceeding in the absence of a pending bankruptcy), Johns, Davis and Becker to disgorge all ill-gotten gains and losses avoided in connection with purchases and sales of Vista common stock they made, or caused others to make, while they were in possession of material, nonpublic information as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

VII.

Issue an Order requiring defendant Davis to disgorge all ill-gotten gains in connection with purchases and sales of ACPI common stock he made, or caused others to make, while he was in possession of material, nonpublic information as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

VIII.

Issue an Order requiring defendant Davis to disgorge \$10,452 representing fees he received in connection with his 1994 audit of Vista, plus pay prejudgment interest thereon.

IX.

Issue an Order pursuant to Section 21A of the Exchange Act [15 U.S.C. 78u-1] imposing a civil monetary penalty against defendant Smyth (to be enforced in Smyth's bankruptcy proceeding for so long as it is pending or to be enforced in this proceeding in the absence of a pending bankruptcy).

X.

Issue an Order pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] imposing a civil monetary penalty against defendant Smyth (to be enforced in Smyth's bankruptcy proceeding for so long as it is pending or to be enforced in this proceeding in the absence of a pending bankruptcy).

XI.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. 78u(d)(2)] permanently prohibiting defendant Smyth from acting as an officer or director of any company that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. 78l] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)].

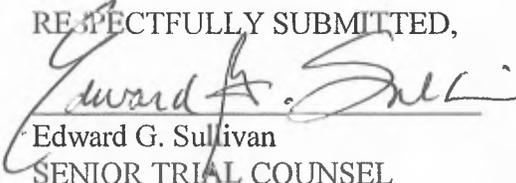
XII.

Retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

XIII.

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

RESPECTFULLY SUBMITTED,



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Georgia State Bar No. 691140

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