

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 SECURITIES AND EXCHANGE COMMISSION,

 Plaintiff,

 v.

 LEONARD J. GUIDA,

 Defendant.

02 10575RGS

Civil Action No.

DEPARTMENT 9	
CLASSIFICATION	N/A
EXEMPTION CODE	N/A
FILED	
FILED BY	
FILED DATE	
FILED TIME	
FILED OFFICE	
FILED BY	
FILED DATE	055
FILED TIME	2/28/12

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against defendant Leonard J. Guida ("Guida"):

SUMMARY

1. This enforcement action involves Guida's participation in a financial fraud at PictureTel Corp. ("PictureTel"), a company based in Andover, Massachusetts whose business involves the design and manufacture of videoconferencing systems. Guida served as PictureTel's former Vice President of Finance, Worldwide Sales and Service. In public announcements and financial statements filed with the Commission, PictureTel materially overstated its revenues and net income for 1996 and 1997 by approximately \$17.8 million, of which \$12 million was attributable to Guida's misconduct. Because of this overstatement of revenues and net income, PictureTel falsely reported record performance in 1996 and concealed the decline of its performance in 1997.

2. As *de facto* controller of PictureTel's sales department, Guida had substantial authority to negotiate contracts, extend credit terms, and determine when revenue should be recognized. He abused that authority by causing PictureTel to recognize revenue from a series of purported sales of its equipment even though the prerequisites for revenue recognition under generally accepted accounting principles ("GAAP") had not been satisfied. In many instances, he caused PictureTel to recognize revenue from purported sales even though he had entered into undisclosed side agreements whereby the purported purchasers were not required to pay for the equipment until it was sold to end users. Other transactions involved significant, but undisclosed, contingent liabilities for PictureTel.

3. In August 1997, PictureTel's new CFO discovered the company's financial irregularities, which led the company and its outside auditors to conduct an internal investigation that uncovered Guida's fraud. On September 19, 1997, PictureTel announced that it would restate its financial results for third quarter of 1996, the fiscal year 1996, and the first quarter of 1997. Further investigation uncovered additional aspects of Guida's fraud. On November 13, 1997, PictureTel announced that it would also restate its financial results for the second quarter of 1997. On January 13, 1998, PictureTel filed its restated financial results with the Commission.

4. Through the activities alleged in this Complaint, Guida: (i) engaged in fraud in the purchase and sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (ii) circumvented PictureTel's system of internal accounting controls and falsified its books and records or caused them to be falsified, in violation of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder; (iii) made material misrepresentations to PictureTel's auditors, in violation of Exchange Act Rule 13b2-2; (iv) aided and

abetted PictureTel's own violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; (v) aided and abetted PictureTel's violations of its reporting obligations under Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder; (vi) aided and abetted PictureTel's violations of its obligation to maintain accurate books and records under Section 13(b)(2)(A) of the Exchange Act; and (vii) aided and abetted PictureTel's violations of its obligation to maintain a system of internal accounting controls under Section 13(b)(2)(B) of the Exchange Act.

5. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting Guida from further violations of the relevant provisions of the federal securities laws; (ii) disgorgement of his \$13,500 bonus for fiscal year 1996, which was based upon PictureTel's overstated performance, plus pre-judgment interest; and (iii) the imposition of a civil monetary penalty due to the egregious nature of Guida's violations.

JURISDICTION AND VENUE

6. The Commission seeks a permanent injunction and disgorgement pursuant to Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)]. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

7. This Court has jurisdiction over this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§78u and 78aa]. Venue is proper in this District because Guida resides in Massachusetts and the acts and practices alleged in this Complaint occurred primarily within Massachusetts.

8. In connection with the conduct described in this Complaint, Guida directly and indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

DEFENDANT AND RELEVANT ENTITY

9. **Guida**, age 47, is a resident of Sudbury, Massachusetts. He joined PictureTel in 1991 as Director of Finance, Worldwide Sales and Service. In September 1996, he was promoted to Vice President of Finance, Worldwide Sales and Service. In September 1997, he left PictureTel. Since leaving PictureTel, he has worked as the CFO of several private companies in Massachusetts or New Hampshire.

10. **PictureTel** is a Delaware corporation based in Andover, Massachusetts. It designs and manufactures videoconferencing equipment. During the relevant period, its securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. §78k(g)] and were traded on the NASDAQ National Market System. On October 23, 2001, Polycom, Inc. acquired PictureTel's outstanding common stock for a combination of Polycom stock and cash. PictureTel continues to operate as a separate division of Polycom.

STATEMENT OF FACTS

Background

11. As Vice President of Finance, Worldwide Sales and Service, Guida was responsible for budgeting, forecasting, determining sales quotas, developing new business, and participating in the determination of credit terms for customers and the determination of when revenue should be

recognized from a transaction. He effectively functioned as the controller of PictureTel's sales department. In addition to his salary, Guida received a bonus based on the overall attainment of PictureTel's profit objectives.

12. At all relevant times, PictureTel's revenue recognition policy required the company to recognize revenue from product sales upon the later of: (i) shipment of the equipment; or (ii) completion of all of PictureTel's significant obligations. This policy was in accordance with generally accepted accounting principles ("GAAP") and, in particular, Statement of Financial Accounting Concepts No. 5, entitled "Recognition and Measurement in Financial Statements of Business Enterprises" ("CON 5"). Under CON 5, revenue should be recognized when it is both realized and earned. Revenue is realized when products are exchanged for cash or claims to cash. Revenue is earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenue.

13. In 1996, as use of the Internet grew rapidly, PictureTel began to face intense competition from smaller, cheaper videoconferencing products sold by companies such as Microsoft and Intel. Wall Street analysts began questioning whether the company could effectively compete in the desktop market. In response, PictureTel tried to increase its market share by, among other things, building relationships with small, thinly-capitalized equipment resellers.

14. PictureTel reported record financial results in 1996. Guida received a salary of \$125,000 and a bonus of \$13,500. His bonus was based upon three factors: PictureTel's overall profitability, the relative importance of his job, and his performance.

15. PictureTel's record profits in 1996 were, in significant part, due to Guida's improper decision to recognize revenue from the transactions described below. Further, when increased competition caused PictureTel's sales to suffer in 1997, Guida continued his improper revenue recognition practices and thereby concealed the true extent of PictureTel's declining performance.

Improper Revenue Recognition Directed by Guida

The \$3.2 Million "Demo Program" Orders

16. In June 1996, Guida and PictureTel's leasing agent, El Camino Resources Ltd. ("El Camino"), entered into an agreement (the "Demo Program Agreement") whereby El Camino would obtain used videoconferencing equipment from PictureTel and make the equipment available to prospective end users on a short-term trial basis. The Demo Program Agreement, which was memorialized in two written agreements between PictureTel and El Camino, contained several departures from PictureTel's standard master lease agreement with El Camino. Most significant were the absence of any requirement that El Camino actually pay for the equipment and a guarantee that El Camino would receive a 17.5% profit, either through direct payments by PictureTel or through PictureTel's repurchase of any equipment not sold to end users. Although PictureTel policy required the legal department to review and approve contracts with non-standard terms, Guida did not obtain approval for the Demo Program Agreement.

17. On September 12, 1996, El Camino submitted a purchase order to PictureTel for approximately \$2.3 million of equipment under the Demo Program. Even though El Camino was not

required to pay for the equipment, Guida caused PictureTel to recognize \$2.3 million of revenue from this order in the third quarter of 1996.

18. In December 1996, El Camino submitted a purchase order to PictureTel for \$444,000 of equipment under the Demo Program. Even though El Camino was not required to pay for the equipment, Guida caused PictureTel to recognize \$444,000 of revenue from this order in the fourth quarter of 1996.

19. Guida and El Camino also entered into a similar agreement for demonstration equipment to be used in Australia. On March 28, 1997, El Camino submitted a purchase order to PictureTel for \$443,044 of demonstration equipment under the Australia agreement. Even though El Camino was not required to pay for the equipment, Guida caused PictureTel to recognize \$443,044 of revenue from this order in the first quarter of 1997.

The \$1.1 Million "Try-Buy" Orders

20. On September 26, 1996, Guida and El Camino entered into an agreement (the "Try-Buy Agreement") whereby El Camino would obtain 40 units of videoconferencing equipment worth approximately \$1.1 million and arrange for prospective end users in the United Kingdom and Germany to try the equipment for up to six months and then either purchase, lease or return the equipment. Under the Try-Buy Agreement, El Camino was not required to pay PictureTel unless the end-user committed to purchase the equipment.

21. The units were delivered to an El Camino warehouse in Europe, and 38 of them were still there when PictureTel restated its financial results in January 1998. Even though El Camino was not

required to pay for the equipment unless it was sold to end users, Guida caused PictureTel to recognize \$1.1 million of revenue on the sale of the Try-Buy units in the third quarter of 1996.

The \$3.5 Million Vuecom Orders

22. On September 27, 1996, Guida and Vuecom, Inc. ("Vuecom"), a small, thinly-capitalized equipment reseller, entered into an agreement whereby Vuecom would obtain 113 used videoconferencing systems for installation in Sheraton hotels. The agreement provided that Vuecom did not have to pay for the equipment until it collected sufficient user fees from Sheraton guests.

23. Later in the fall of 1996, the Vuecom agreement was modified so that El Camino would purchase the 113 units from PictureTel and lease them to Vuecom. However, Guida agreed that El Camino was not required to pay PictureTel for the equipment until it had received lease payments from Vuecom and that Vuecom was not required to pay El Camino for the equipment until it received sufficient user fees from Sheraton guests. Guida's side agreement with El Camino was not memorialized until March 17, 1997, and Guida never disclosed the arrangement to PictureTel's management or outside auditors.

24. On September 21 and December 31, 1996, El Camino submitted purchase orders to PictureTel for 113 units under the modified Vuecom agreement. These orders purported to be PictureTel's largest sale ever. Even though neither Vuecom, El Camino nor Sheraton was required to pay for the equipment, Guida caused PictureTel to recognize approximately \$3.5 million from the Vuecom orders – \$1.52 million of revenue in the third quarter of 1996 and \$1.97 million of revenue in the fourth quarter of 1996.

The \$1.2 Million Department of Justice Order

25. During December 1996, PictureTel was negotiating with the U.S. Department of Justice (“DOJ”) concerning the possible sale of videoconferencing equipment worth \$1.2 million. As of December 31, 1996, however, the negotiations had not been completed. Nevertheless, at 3:30 p.m. that afternoon, El Camino issued a purchase order for equipment that would purportedly be leased to the DOJ. The purchase order was not a *bona fide* order for goods but rather a fiction to enable PictureTel to record revenue before year-end. Indeed, El Camino had not been involved in the DOJ negotiations, and the DOJ was not even authorized to procure the equipment by lease.

26. On January 3, 1997, the DOJ’s procurement agent submitted a \$1.2 million purchase order to PictureTel. Even though the DOJ order had not been submitted before the close of business on December 31, 1996, Guida caused PictureTel to recognize \$1.2 million of revenue from the DOJ transaction in the fourth quarter of 1996. Guida later issued credit memos to negate El Camino’s supposed order for the same equipment, but he did not reverse the revenue recognized on December 31, 1996. Because the purchase order from DOJ’s procurement agent was not received until January 3, 1997, the \$1.2 million of revenue should have been recognized during the first quarter of 1997.

The \$1.5 Million Revnet Order

27. On November 18, 1996, Guida signed a letter of intent to sell 2,500 personal computer units to Revnet, another small, thinly-capitalized equipment reseller. Using lease financing from El

Camino, Revnet planned to resell the equipment to large banks and real estate brokers' offices so that home buyers could quickly obtain mortgage commitments.

28. Revnet did not place any orders with PictureTel prior to December 31, 1996.

However, on December 31, 1996, El Camino submitted a purchase order for 500 personal computer units worth approximately \$1.5 million, purportedly for lease to Revnet. Guida agreed that El Camino was not required to pay for the units until it received lease payments from Revnet and that Revnet was not required to pay El Camino until the participating banks had paid sufficient monthly subscription fees to Revnet.

29. No banks signed agreements with Revnet or paid any subscription fees. Nevertheless, even though neither Revnet nor El Camino was required to pay for the units, Guida caused PictureTel to recognize approximately \$1.5 million of revenue from the purported Revnet order in the fourth quarter of 1996.

The \$4.4 Million NuVision Orders

30. On March 27, 1997, PictureTel received a \$2.2 million purchase order from NuVision, a dealer of PictureTel equipment in Texas. The purchase order carried a notation by one of NuVision's principals that the company's obligation to pay for the equipment was contingent on El Camino's "acceptance". This notation referred to El Camino's willingness to finance the end users' acquisition of the equipment, as NuVision could not pay for the equipment itself.

31. After March 27, 1997, Guida, El Camino, NuVision and the prospective end users continued to negotiate the terms of this transaction. However, no agreement to purchase or lease the

equipment ever resulted. Nevertheless, Guida caused PictureTel to recognize \$2.2 million of revenue from the purported order in the first quarter of 1997.

32. On June 28, 1997 – the last business day of the quarter – PictureTel received another \$2.2 million purchase order from NuVision. To induce this order from NuVision, Guida and a PictureTel salesman offered an undocumented side agreement whereby NuVision would have six months to sell the equipment and would not be required to pay unless the units were actually sold to end users. In addition, Guida agreed to convert \$2.8 million of NuVision’s accounts receivable balance, which then exceeded \$6 million, into an 18-month note receivable incorporating NuVision’s past 90-day balance, thus making it appear that NuVision was current on its obligations to PictureTel. Even though NuVision was not required to pay for the equipment, Guida caused PictureTel to recognize \$2.2 million of revenue from the order in the second quarter of 1997.

The \$4.6 Million “Bill and Hold” Transactions

33. Between July 1996 and June 1997, Guida caused PictureTel to enter into 88 so-called “bill and hold” transactions. Seventy-five of these transactions were with Lucent Technologies (“Lucent”). Even though Lucent and the other customers did not take possession of the equipment or assume the risk of loss, PictureTel recognized more than \$4.6 million of revenue from the “bill and hold” transactions.

**Guida's Misrepresentations and Omissions to
PictureTel Management and its Outside Auditors**

34. During the fiscal year 1996 audit, Guida made several material misrepresentations to PictureTel's outside auditors concerning the transactions described above. For example, Guida told the auditors that all transactions with El Camino were governed by the parties' standard master lease agreement and were payable "without recourse." Those statements were false because the Demo Program Agreement was non-standard and because El Camino was not required to pay for the equipment covered by the Demo Program, Try-Buy or Vuecom orders unless the equipment was sold to end users. Guida also told the auditors that the DOJ had leased the equipment through El Camino before December 31, 1996 and had submitted its January 3, 1997 purchase order only because "the lease fell through." Those statements were false because the DOJ had never leased any PictureTel equipment, had not discussed the possibility of leasing equipment, and did not even have authority from the General Services Administration to procure the equipment through a lease.

35. Guida made additional material misrepresentations to the auditors during their review of the first quarter of 1997. For example, he told the auditors in April 1997 that the handwritten reference to El Camino's "acceptance" on NuVision's initial \$2.2 million purchase order referred to El Camino's willingness to accept shipment of the equipment and had nothing to do with a financing contingency. That statement was false because NuVision had actually conditioned its obligation to pay on El Camino's agreement to finance the purchase by end users – an agreement that never materialized. To further mislead the auditors, Guida obtained a letter from El Camino dated April 10, 1997 stating that El Camino would accept shipment of the goods "as a favor to NuVision." Guida also told the auditors

that NuVision did not present a credit risk and that the purported end-user had established an escrow account to pay for the goods. Those statements were false because NuVision already owed PictureTel more than \$6 million and because there was no such escrow account established by any end-user.

PictureTel's Materially Misstated Financial Results for 1996 and 1997

36. On October 16, 1996, PictureTel announced revenues of \$121.3 million, net income of \$8.9 million, and earnings of \$0.25 per share for the third quarter of 1996. Each of these figures established a new quarterly record for the company, and the reported earnings exceeded analysts' expectations by \$0.02 per share. On November 12, 1996, PictureTel filed with the Commission a quarterly report on Form 10-Q containing the same financial information. These reported financial results were materially misstated due to the improper revenue recognition described above. Without the improper revenue recognition, PictureTel's earnings would have been \$0.17 per share, or \$0.06 per share *below* analysts' expectations.

37. On February 12, 1997, PictureTel announced that its revenues for the fiscal year 1996 were a record \$482.5 million – a 39% increase over the prior year. The company also announced that its net income was a record \$34.8 million – a 77% increase over the prior year – and that its earnings were \$0.96 per share. On March 31, 1997, PictureTel filed with the Commission an annual report on Form 10-K containing the same financial information. These reported financial results were materially misstated due to the improper revenue recognition described above. Without the improper revenue recognition, PictureTel's earnings would have been \$0.85 per share.

38. On April 16, 1997, PictureTel announced revenues of \$118.2 million, net income of \$3.1 million, and earnings of \$0.09 per share for the first quarter of 1997. On May 13, 1997, PictureTel filed with the Commission a quarterly report on Form 10-Q containing the same financial information. These reported financial results were materially misstated due to the improper revenue recognition described above. Without the improper revenue recognition, PictureTel's earnings would have been \$0.07 per share.

39. On July 15, 1997, PictureTel announced revenues of \$112.2 million (\$20 million under budget), a net loss of \$3 million, and a loss of \$0.09 per share for the second quarter of 1997. The company blamed its poor performance on "unexpectedly soft demand" and warned of severe cost-cutting measures, including layoffs. On August 13, 1997, PictureTel filed with the Commission a quarterly report on Form 10-Q containing the same financial information. Although disappointing enough, these reported financial results were materially misstated due to the improper revenue recognition described above. Without the improper revenue recognition described above, the loss would have been 33% worse – \$0.12 per share.

PictureTel's Restatements of its Financial Results

40. In August 1997, PictureTel's new CFO began to uncover Guida's fraud when he investigated the large accounts receivable balances purportedly owed by El Camino and NuVision. He related his concerns to the outside auditors, which commenced an investigation of PictureTel's revenue recognition practices dating back to the third quarter of 1996 and uncovered further evidence of Guida's improper revenue recognition.

41. On September 19, 1997, PictureTel announced that it was going to restate its financial results for the third quarter of 1996, the fiscal year 1996, and the first quarter of 1997. Following that announcement, PictureTel's stock declined approximately \$1.31 (more than 10%) to \$11.50 per share. On November 13, 1997, PictureTel announced that it was also going to restate its results for the second quarter of 1997. On January 13, 1998, PictureTel issued the restatement of its financial results for all four reporting periods.

42. PictureTel restated its revenues as follows:

Period	Reported (000s)	Restated (000s)	Reduction (000s)	Reduction (%)
3 rd Quarter 1996	\$127,926	\$120,785	\$7,141	5.9%
4 th Quarter 1996	\$146,281	\$138,695	\$7,586	5.5%
Fiscal Year 1996	\$504,952	\$490,225	\$14,727	3.0%
1 st Quarter 1997	\$123,618	\$121,935	\$1,683	1.4%
2 nd Quarter 1997	\$119,304	\$117,966	\$1,338	1.1%

43. PictureTel restated its net income as follows:

Period	Reported (000s)	Restated (000s)	Reduction (000s)	Reduction (%)
3 rd Quarter 1996	\$9,600	\$6,884	\$2,716	39.5%
4 th Quarter 1996	\$10,021	\$8,680	\$1,341	15.4%
Fiscal Year 1996	\$36,229	\$32,172	\$4,057	12.6%
1 st Quarter 1997	\$2,494	\$2,011	\$483	24.0%
2 nd Quarter 1997	(\$3,671)	(\$4,900)	\$1,229	25.1%

44. When PictureTel restated its financial results, it reversed all of the revenue recognition items described above and also corrected other accounting errors not attributable to Guida.

FIRST CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

45. The Commission repeats and incorporates by reference the allegations in paragraphs 1-44 of the Complaint as if set forth fully herein.

46. Guida, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons, including purchasers or sellers of PictureTel's securities.

47. As a result, Guida violated 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].

48. Guida's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements and resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

SECOND CLAIM FOR RELIEF
(Violation of Section 13(b)(5) of the Exchange Act and Rule 13b2-1)

49. The Commission repeats and incorporates by reference the allegations in paragraphs 1-48 of the Complaint as if set forth fully herein.

50. Guida knowingly circumvented PictureTel's system of internal accounting controls and, directly or indirectly, falsified or caused to be falsified PictureTel's books, records and accounts.

51. As a result, Guida violated 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].

52. Guida's violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements and resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

THIRD CLAIM FOR RELIEF
(Violation of Exchange Act Rule 13b2-2)

53. The Commission repeats and incorporates by reference the allegations in paragraphs 1-52 of the Complaint as if set forth fully herein.

54. In his capacity as Vice President of Finance, Worldwide Sales and Service, Guida, directly or indirectly, made or caused to be made a materially false or misleading statement, or omitted to state, or caused another person to omit to state, a material fact 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 (i) an audit or examination of the financial statements of an issuer

required to be made or (ii) the preparation or filing of a document or report required to be filed with the Commission.

55. As a result, Guida violated Rule 13b2-2 promulgated under the Exchange Act [17 C.F.R. §240.13b2-2].

56. Guida's violations of Exchange Act Rule 13b2-2 involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements and resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

FOURTH CLAIM FOR RELIEF
(Aiding and Abetting PictureTel's Violations of
Section 10(b) of the Exchange Act and Rule 10b-5)

57. The Commission repeats and incorporates by reference the allegations in paragraphs 1-56 of the Complaint as if set forth fully herein.

58. PictureTel's annual report to the Commission on Form 10-K for the fiscal year 1996 and its quarterly reports to the Commission on Form 10-Q for the third quarter of 1996, the first quarter of 1997, and the second quarter of 1997 materially misstated the company's financial results. As a result, PictureTel violated Section 10(b) of the Exchange Act [15 U.S.C. §78m(a)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

59. Guida provided knowing and substantial assistance to PictureTel's violations of Section 10(b) of the Exchange Act and Rule 10b-5. Such assistance included, but was not limited to, causing PictureTel to record revenue from the transactions described above. Guida knew or was reckless in

not knowing that PictureTel's accounting for these transactions was improper and that PictureTel's filings with the Commission would be materially misstated as a result of the improper accounting.

60. As a result, Guida aided and abetted PictureTel's violations of Section 10(b) of the Exchange Act and Rule 10b-5.

FIFTH CLAIM FOR RELIEF
(Aiding and Abetting PictureTel's Violations of
Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13)

61. The Commission repeats and incorporates by reference the allegations in paragraphs 1-60 of the Complaint as if set forth fully herein.

62. PictureTel's annual report to the Commission on Form 10-K for the fiscal year 1996 and its quarterly reports to the Commission on Form 10-Q for the third quarter of 1996, the first quarter of 1997, and the second quarter of 1997 contained materially false and misleading statements about its revenues and net income. As a result, PictureTel violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, 240.13a-13].

63. Guida provided knowing and substantial assistance to PictureTel's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13. Such assistance included, but was not limited to, causing PictureTel to record revenue from the transactions described above. Guida knew or was reckless in not knowing that PictureTel's accounting for these transactions was improper and that its financial results would be materially misstated as a result of the improper accounting.

64. As a result, Guida aided and abetted PictureTel's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13.

SIXTH CLAIM FOR RELIEF
(Aiding and Abetting PictureTel's Violations of
Section 13(b)(2)(A) of the Exchange Act)

65. The Commission repeats and incorporates by reference the allegations in paragraphs 1-64 of the Complaint as if set forth fully herein.

66. PictureTel maintained false and misleading books, records and accounts which, among other things, materially overstated the company's revenue and net income for the third quarter of 1996, the fiscal year 1996, the first quarter of 1997, and the second quarter of 1997. As a result, PictureTel violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)].

67. Guida provided knowing and substantial assistance to PictureTel's violations of Section 13(b)(2)(A) of the Exchange Act. Such assistance included, but was not limited to, causing false entries to be made on the company's books and records. Guida knew or was reckless in not knowing that the entries were false and that PictureTel's books and records would be materially inaccurate as a result.

68. As a result, Guida aided and abetted PictureTel's violations of Section 13(b)(2)(A) of the Exchange Act.

SEVENTH CLAIM FOR RELIEF
(Aiding and Abetting PictureTel's Violations of
Section 13(b)(2)(B) of the Exchange Act)

69. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

70. PictureTel failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP. As a result, PictureTel violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78m(b)(2)(B)].

71. Guida provided knowing and substantial assistance to PictureTel's violations of Section 13(b)(2)(B) of the Exchange Act. Such assistance included, but was not limited to, directing the accounting treatment for numerous transactions that did not comply with GAAP. Guida knew or was reckless in not knowing that the accounting treatment for these transactions did not comply with GAAP.

72. As a result, Guida aided and abetted PictureTel's violations of Section 13(b)(2)(B) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Guida and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of:

1. 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];
2. 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];
3. Exchange Act Rule 13b2-2 [17 C.F.R. §240.13b2-2];
4. Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-13];
5. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)]; and
6. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78m(b)(2)(B)];

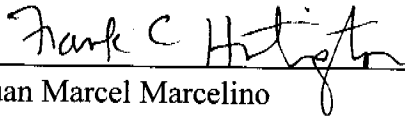
B. Require Guida to disgorge his \$13,500 bonus for the fiscal year 1996, plus pre-judgment interest;

C. Order Guida to pay an appropriate civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



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