

USDC SCAN INDEX SHEET



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3:04-CV-01966 SEC V. ROKE

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DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 MARCY WILSON ROKE,

16 Defendant.

04CV1966 H (POR)

Case No.

BY FAX

COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS

17
18 Plaintiff Securities and Exchange Commission ("Commission") alleges as
19 follows:

20 **JURISDICTION AND VENUE**

21 1. This Court has jurisdiction over this action pursuant to Sections
22 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15
23 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e),
24 and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§
25 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendant has, directly or indirectly,
26 made use of the means or instrumentalities of interstate commerce, of the mails, or
27 of the facilities of a national securities exchange, in connection with the
28 transactions, acts, practices, and courses of business alleged in this Complaint.

1 2. Venue is proper in this district pursuant to Section 22(a) of the
2 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
3 § 78aa, because certain of the transactions, acts, practices, and courses of conduct
4 constituting violations of the federal securities laws occurred within this district.

5 SUMMARY

6 3. This is a financial fraud case involving Advanced Marketing
7 Services, Inc. ("AMS"), a San Diego-based wholesaler of general interest books
8 that provides other book-related services, including advertising. From at least
9 2000 to 2003, AMS manipulated its earnings to meet Wall Street analysts'
10 expectations and made misleading disclosures in its periodic reports, through at
11 least two fraudulent schemes related to its advertising services. Defendant Marcy
12 Wilson Roke ("Roke"), a director in AMS's advertising department, was one of the
13 individuals who instigated and participated in the fraudulent schemes.

14 4. In the first fraudulent scheme, AMS improperly manipulated its
15 earnings by producing fewer advertising vehicles than it had contracted with
16 publishers to provide. One advertising service that AMS provides to publishers is
17 to print and mail advertising vehicles -- such as inserts, catalogs, and post-cards --
18 for books the publishers produce. AMS improperly recognized revenue on the full
19 quantity of advertising vehicles that it had agreed to distribute, because it did not
20 in fact produce the number of vehicles that it had contracted to produce.

21 5. In the second fraudulent scheme, AMS improperly increased its
22 reported earnings by reversing certain liabilities when it was not entitled to do so.
23 AMS had accrued a liability for credits that it expected its retail customers to take
24 for certain advertising and promotional services that those customers provided.
25 When the retail customers did not take the credits that were due to them, instead of
26 contacting the retailers and reconciling the amounts of the credits, Roke and others
27 directed advertising and sales personnel to hide the discrepancies from the
28 retailers. Advertising personnel, which at times included Roke, then directed

1 accounting personnel to reverse the liability, which in turn reduced expenses,
2 thereby ensuring that the advertising department achieved or exceeded its budget.

3 6. Roke knew that the inflated advertising department numbers had a
4 significant impact on AMS's bottom line and that they would impact AMS's
5 financial statements. Roke profited from the fraudulent schemes through her
6 annual bonuses and through her sales of AMS stock during the relevant period.

7 7. As a result of the defendant's improper actions, from the fourth
8 quarter of fiscal year 2002 through the fourth quarter of fiscal 2003, AMS met or
9 exceeded analysts' earnings estimates every quarter except one.

10 8. As alleged more specifically below, Roke violated the antifraud,
11 record-keeping, and books and records provisions of the federal securities laws.
12 By this complaint, the Commission seeks to enjoin the defendant from future
13 violations of the federal securities laws, to obtain disgorgement of all benefits the
14 defendant received from her violations, and to obtain civil penalties.

15 **THE DEFENDANT**

16 9. Marcy Wilson Roke, age 37, resides in San Diego, California. Roke
17 was the Director of Advertising at AMS from 1999 until 2004. During that time,
18 she reported to the Vice President of Advertising. Before then, she was a Senior
19 Advertising Manager at AMS. AMS terminated Roke in June 2004.

20 **RELATED ENTITY**

21 10. AMS is a Delaware corporation, headquartered in San Diego,
22 California. AMS is a wholesaler of general interest books to membership
23 warehouse clubs, specialty retailers, e-commerce companies, and traditional book
24 stores. AMS's common stock is registered with the Commission pursuant to
25 Section 12(b) of the Exchange Act and has been listed on the New York Stock
26 Exchange under the ticker symbol "MKT" since November 2000. Before then,
27 AMS's common stock was registered with the Commission pursuant to Section
28 12(g) of the Exchange Act and was traded on the Nasdaq National Market System

1 under the symbol "ADMS."

2 **BACKGROUND**

3 11. AMS purchases books from a variety of publishers on a returnable,
4 wholesale basis and resells them to retailers, which include book stores and
5 wholesale clubs. In addition to being a wholesale distributor of books, AMS
6 provides other services to its customers, including product-selection advice,
7 merchandising and product development services, distribution services, and
8 advertising and promotion services.

9 12. For its fiscal year ended March 31, 2003, AMS reported pre-tax
10 earnings of \$18 million and revenues of \$911 million. From fiscal year 2001 to
11 2003, AMS's revenues grew from \$713 million to \$911 million.

12 13. Although AMS's promotion and advertising services constituted just
13 two to three percent of AMS's revenue, the advertising department accounted for
14 at least 20% of AMS's pre-tax earnings, primarily due to the large profit margins
15 generated by AMS's advertising department.

16 **A. AMS's Reporting Obligations and Public Announcements**

17 14. As a public company, AMS was required to comply with federal
18 statutes, rules, and regulations to maintain public trading of its stock and to sell its
19 securities to the public.

20 15. These statutes, rules, and regulations required AMS to, among other
21 things: (a) make and keep books, records, and accounts, which, in reasonable
22 detail, accurately and fairly reflected its transactions and dispositions of assets; (b)
23 devise and maintain a system of internal accounting controls sufficient to provide
24 reasonable assurances that the transactions were recorded as necessary to permit
25 preparation of financial statements in conformity with Generally Accepted
26 Accounting Principles ("GAAP") or any other criteria applicable to such statements
27 and to maintain accountability for assets; (c) file with the Commission quarterly
28 reports on the appropriate form (known as a "Form 10-Q") including a financial

1 statement containing the company's balance sheet and statements of income and
2 cash flows prepared in conformity with GAAP; (d) file with the Commission
3 annual reports on the appropriate form (known as a "Form 10-K") including a
4 financial statement containing the company's balance sheet and statements of
5 income and cash flows prepared in conformity with GAAP; and (e) file with the
6 Commission periodic reports that did not make any untrue statement of material
7 fact or omit to state a material fact necessary in order to make the statements made,
8 in the light of the circumstances under which they were made, not misleading.

9 16. Under GAAP and the Commission's rules and regulations, AMS
10 recorded and reported income for specific periods (i.e., at the end of each quarter
11 and at the end of its fiscal year). AMS's fiscal year began April 1 and ended March
12 31. In fiscal year 2001, AMS's first quarter ended June 30, 2000; its second quarter
13 ended September 30, 2000; its third quarter ended December 31, 2000, and its
14 fiscal year ended March 31, 2001. In AMS's fiscal year 2002, its first quarter
15 ended June 30, 2001; its second quarter ended September 30, 2001; its third quarter
16 ended December 31, 2001, and its fiscal year ended March 31, 2002. For AMS's
17 fiscal year 2003, AMS's first quarter ended June 30, 2002; its second quarter ended
18 September 30, 2002; its third quarter ended December 31, 2002, and its fiscal year
19 ended March 31, 2003.

20 17. In addition to filing quarterly and annual reports with the Commission,
21 AMS also issued earnings press releases and held conference calls with analysts
22 and investors to discuss AMS's financial performance on a periodic basis, usually
23 after the end of a quarter and before AMS made its periodic filings with the
24 Commission.

25 18. Under GAAP and the Commission's rules and regulations, AMS could
26 recognize revenue from the advertising services that it provided once AMS
27 substantially completed the advertising services that it was supposed to perform in
28 order to be entitled to those revenues.

1 19. Under GAAP and the Commission's rules and regulations, AMS
2 should accrue and record a liability when the underlying obligation to provide an
3 asset or service was deemed probable and reasonably estimable. GAAP also
4 requires that a recognized liability be measured at the amount initially recorded
5 until an event that changes the liability or its amount occurs.

6 **B. Cooperative Advertising**

7 20. Virtually all of AMS's advertising revenue was generated though
8 cooperative ("coop") advertising programs, pursuant to which publishers make
9 available advertising dollars to promote their books. AMS participates in two
10 types of coop advertising programs: 1) wholesale coop advertising; and 2) retail
11 coop advertising.

12 21. Wholesale coop advertising is a program through which publishers
13 offer a pool of funds directly to AMS to be used to promote the publishers' books
14 to industry insiders, such as store managers and book buyers employed by retailers.
15 The funds that publishers make available to AMS for wholesale coop advertising
16 are generally based on AMS's prior year's net purchases. Before using the funds,
17 AMS is required to obtain publisher approval. Thus, when AMS develops an
18 advertising concept, it sends the publisher an advertising request. Once the
19 publisher approves the advertising request, it becomes a contract between AMS
20 and the publisher. After AMS creates the artwork, prints the vehicle, and directs a
21 mailing house to distribute the advertising vehicle, AMS invoices the publisher for
22 the advertising vehicle and recognizes revenue for that service.

23 22. Retail coop advertising is similar to wholesale coop, except that the
24 funds are made available for use by a retailer (instead of a wholesaler) to advertise
25 books to end-consumers (instead of industry insiders). The amount of retail coop
26 funds that a publisher makes available to a particular retailer usually is based on the
27 retailer's net purchases of that publisher's titles. Similar to wholesale coop, either
28 AMS or the retailer creates an advertising concept. If the retailer and AMS agree

1 on the advertising concept, AMS sends an advertising request to the publisher.
2 Upon receiving the publisher's approval, AMS creates the artwork, prints the
3 advertising vehicle, directs a mailing house to mail the advertisement to the end-
4 customers, and bills the publisher.

5 23. A retailer is not required to use its coop advertising funds to obtain
6 advertising from AMS. Because retail coop dollars belong to the retailers, there are
7 instances when retailers do not spend their retail coop dollars with AMS, but
8 provide all or some of the promotional service themselves. In instances where the
9 retailers provide the advertising service, many retailers will invoice the publisher
10 through AMS, because in addition to creating advertisements, AMS keeps an
11 accounting of the retail coop funds and provides publishers with the sales
12 information necessary to calculate the funds available to the retailer. When a
13 retailer decides to use its retail coop dollars for a particular promotion using AMS,
14 it notifies AMS that this is how it intends to use its retail dollars. AMS then
15 obtains approval from the publisher. Once the publisher approves the promotion,
16 AMS communicates the approval to the retailer and invoices the publisher. The
17 retailer is then supposed to invoice AMS for the service. In this way, some
18 advertising costs are "passed through" AMS from the retailers to the publishers.

19 THE FRAUDULENT SCHEMES

20 24. For at least the past three years, AMS manipulated its pre-tax
21 earnings and made misleading disclosures in public filings, press releases, and
22 conference calls, through different fraudulent schemes involving both its
23 wholesale coop and retail coop advertising programs.

24 A. Quantity Reductions

25 25. In 2000, the advertising department was at risk of failing to meet its
26 budget. As a result, Roke and other advertising personnel devised and
27 implemented a scheme to cut quantities, so that the advertising department would
28 make or exceed its budget. Roke and other advertising personnel decided they

1 could meet the budget by cutting their costs, and that they could cut costs by
2 printing fewer advertising vehicles than they had agreed to provide their
3 publishers. This practice evolved into a regular course of business in the
4 department.

5 26. Beginning in 2000 and continuing into 2003, in order to meet the
6 advertising budget and respond to pressure from AMS senior executives for more
7 earnings, the advertising department routinely printed and distributed fewer
8 advertising vehicles than AMS had contracted to provide. This occurred in both
9 the wholesale and the retail coop programs. Roke participated in the scheme by
10 obtaining quotes from printers for various print quantities, so members of the
11 advertising department could decide the amount of vehicles to reduce. Roke
12 instructed individuals in her department to print fewer advertising vehicles than
13 AMS had contracted with its publishers to print, without changing the quantity
14 terms on the contracts with the publishers.

15 27. For example, in the wholesale coop context, by at least September
16 2000, AMS was informing publishers that its circulation for one of its wholesale
17 advertising vehicles, "Pages" magazine, was 100,000 when it was substantially
18 less than that. In September 2000, AMS printed only 55,000 copies of "Pages,"
19 even though AMS's contracts with publishers and AMS's webpage indicated that
20 the circulation was 100,000. In some months, AMS printed as few as 8,000 copies
21 of "Pages."

22 28. Similarly, in the retail coop context, AMS systematically sent
23 advertising post cards to fewer warehouse club members than it agreed. For
24 example, in about March 2000, AMS informed publishers that it would send one
25 SAM's Club post card to 200,000 of SAM's Club's members, but AMS only
26 printed 50,000 of those cards.

27 29. Reducing quantities became such standard business practice that the
28 advertising department made little attempt to hide the practice. All documentation

1 pertaining to a particular advertising vehicle, including the advertising contracts,
2 the invoices from the printer, and the mailing house invoices, was kept in one
3 promotion folder. As an advertising promotion was processed, the promotion
4 folder was passed from person to person in the advertising department and
5 ultimately provided to Roke, who approved the vehicles by signing the outside of
6 the folders before they went to the accounting department. A signature on the
7 promotion folder was an indication that the accounting department could invoice
8 the publisher for the vehicle.

9 30. The advertising department's deliberate quantity reductions from
10 contracted amounts caused a revenue recognition practice that was improper under
11 GAAP because AMS failed to substantially accomplish its duties under its
12 contracts -- namely to produce the agreed-upon number of advertising vehicles.
13 As a result, AMS overstated its earnings, and its quarterly and annual financial
14 statements did not conform with GAAP.

15 **B. Improper Accrual Reversals**

16 31. AMS inflated its advertising income by improperly reversing accrued
17 liabilities related to retail coop advertising. As previously alleged, when a retailer
18 provided all or part of an advertising service and the advertising cost was "passed
19 through" AMS to the publisher, AMS would invoice the publisher for the cost of
20 the promotion and wait for the retailer to take a credit on its book purchases from
21 AMS. Because the retailer was owed a credit, AMS would record an offsetting
22 liability for the anticipated credit in an accrued liability account called "accrued
23 coop." When AMS received notice that a retailer was using the credit, AMS
24 credited the retailer and reduced the corresponding liability from the "accrued
25 coop" account.

26 32. Retailers often failed to take credits for their advertising costs. This
27 was largely due to a lack of communication between the retailers' sales people,
28 who arranged for the various promotions, and the retailers' accounting group,

1 which invoiced those services. Thus, there often were discrepancies between what
2 AMS accrued and what retailers deducted.

3 33. From at least 2000, members of the advertising department used the
4 pool of coop accrued liabilities to meet the advertising budget without reaching
5 settlement with the retailers. When the end of a quarter drew near, the person in
6 the accounting department who was responsible for coop advertising provided the
7 advertising department with a list of outstanding coop accruals. Then advertising
8 department personnel would identify which accrued liabilities should be removed
9 from the "accrued coop" account, even though AMS had not reached settlements
10 regarding those accruals. By reversing the accrued liability, AMS reduced the
11 corresponding expense on its income statement, thereby overstating earnings. In
12 this way, the advertising department created the false appearance that it was
13 making or exceeding its budget.

14 34. From at least 2000, Roke knew that the advertising department was
15 improperly reversing coop advertising accrued liabilities, and sometimes assisted
16 in perpetration of the fraud. At times, Roke was consulted about which credits the
17 retailers would most likely fail to take, and consequently which accruals to
18 reverse.

19 35. In order to maximize the pool of "accrued coop," AMS adopted the
20 practice of intentionally refraining from giving retailers information about the
21 credits due to them. The often-repeated motto among AMS executives was "we
22 are not our customers' accounting departments." In other words, if the retailers did
23 not accurately track the credits due to them, AMS was not going to help. As the
24 coop advertising accountant stated in an email: "Our policy has always been . . .
25 WE NEVER ISSUE A CREDIT TO A CUSTOMER UNTIL THEY TAKE IT."
26 Roke directed individuals in AMS's advertising and sales departments to withhold
27 from AMS's retailers information about credits due to them, even when retailers
28 called to ask about outstanding credits. As a result of this conduct, Roke assured

1 that there was no documentation to support the accruals and the accrual reversals.

2 36. AMS did not have operating and accounting policies outlining the
3 procedures for the reversal of coop cost accruals that retailers did not utilize.
4 Roke knowingly caused coop accounting accruals to be reversed to income, by
5 helping identify which accruals should be reversed, even though she knew that
6 there was no documentation supporting the reversals.

7 37. The advertising department's reversal of coop accruals did not
8 conform to GAAP. Although AMS initially properly recorded the coop accrued
9 liabilities, the advertising department improperly reduced those liabilities and the
10 corresponding expenses without contacting retail customers or attempting to reach
11 settlement with them, in an effort to manipulate the advertising department's
12 earnings, and ultimately AMS's earnings. These reductions in the coop accrued
13 liability account were improper because no corresponding event occurred that
14 changed the amount of the liability. Rather, they were arbitrarily and improperly
15 reversed at the direction of Roke and others in the advertising department. As a
16 result, AMS's quarterly and annual financial statements did not conform with
17 GAAP.

18 **C. Pressure to Meet Budget**

19 38. Roke was aware that an AMS executive put pressure on the
20 advertising department to make budget, because Roke was sometimes present
21 when the executive pressured advertising department personnel. A senior member
22 of the advertising department also periodically met with members of the
23 department to discuss expectations for the quarter, as compared to budget.

24 39. In order to keep track of how the advertising department was
25 performing as compared to budget, the department kept a "crib sheet," which was
26 updated at least weekly. The "crib sheets" tracked AMS's actual profit on
27 individual advertising promotions, by retailer and month, and compared that
28 number to the budgeted monthly profit for each retailer. The spreadsheets also

1 had a line item that reflected coop advertising accrual reversals. Roke
2 occasionally helped update the crib sheet. The crib sheet was shared with an AMS
3 executive on a weekly basis.

4 **D. Scienter**

5 40. Roke had the requisite scienter. Roke helped carry out the two
6 fraudulent schemes for the sole purpose of manipulating the advertising
7 department's results, so it would appear that the advertising department was making
8 or exceeding its budget. The decision to instigate the fraud was the result of
9 pressure from AMS executives for additional advertising income.

10 41. Roke knew that the advertising department's financial performance
11 impacted AMS's financial statements. Indeed, Roke commented that anyone
12 looking at AMS's Form 10-K would have no idea how much money the advertising
13 department contributed. When AMS issued its earnings releases, Roke discussed
14 the fact that the press releases said nothing about the advertising department's
15 contribution to AMS's bottom line.

16 42. In late February 2003, an employee in AMS's advertising department
17 discovered the discrepancies between the number of advertising vehicles that AMS
18 contracted to distribute and the number of vehicles that AMS actually distributed.
19 On February 24, 2003, the employee mentioned the quantity variances in a meeting
20 with Roke, who was her direct supervisor, and a senior manager in the advertising
21 department. During the meeting, the employee showed Roke and another manager
22 the advertising promotions she had managed, pointing out that the publisher had
23 signed a contract in good faith and that AMS had provided fewer advertising
24 vehicles than represented in the contract. Roke said nothing while the other
25 manager confirmed that AMS was going to print and mail fewer advertising
26 vehicles than it had contracted to provide.

27 **E. Materiality**

28 43. Roke's fraudulent conduct had a material impact on AMS's financial

1 statements. By producing fewer advertising vehicles than contracted, and by
2 improperly reversing coop advertising accruals, Roke caused AMS to improperly
3 inflate its revenue and earnings. Because the advertising department accounted for
4 nearly 25% of AMS's pre-tax earnings, the impact was sizeable. The estimated
5 overstatement of pre-tax earnings was 9% in fiscal year 2001, 10% in fiscal year
6 2002, and 19% in fiscal year 2003.

7 **F. Roke Profited During the Fraud**

8 44. Roke profited from her participation in the schemes. During the
9 relevant period, Roke received annual bonuses and sold shares of AMS stock.

10 45. During her perpetration of the fraud, Roke executed and sold stock
11 options through her and her husband's joint brokerage account. On June 13, 2000,
12 Roke executed options and sold 1,500 shares at \$18.50 per share for a total sale of
13 \$27,750. On February 5, 2001, she executed 1,500 options and sold them for
14 \$19.80 per share for a total sale of \$29,700. On February 28, 2001, she executed
15 1,500 options and sold them for \$20.05 per share for a total of \$30,075. On
16 February 14, 2002 she executed 3,375 options and sold them for \$21.00 per share
17 for a total of \$70,875, and on February 15, 2002 she executed another 3,375
18 options and sold them for \$23.00 per share for a total of \$77,625. Roke's stock
19 sales during the relevant period totaled \$236,025. At the time Roke exercised these
20 options and made these sales, the price of AMS stock was inflated due to AMS's
21 overstated earnings, which were caused in part by Roke's misconduct.

22 46. When Roke sold her AMS stock, she knew that AMS's publicly
23 available earnings information was materially overstated.

24 **FIRST CLAIM FOR RELIEF**

25 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

26 ***Violations of Section 17(a) of the Securities Act***

27 47. The Commission realleges and incorporates by reference ¶¶ 1 through
28 46 above.

1 48. Defendant Roke, by engaging in the conduct described above, directly
2 or indirectly, in the offer or sale of securities by the use of means or instruments of
3 transportation or communication in interstate commerce or by use of the mails:

- 4 a. with scienter, employed devices, schemes, or artifices to
5 defraud;
6 b. obtained money or property by means of untrue statements of a
7 material fact or by omitting to state a material fact necessary in
8 order to make the statements made, in light of the circumstances
9 under which they were made, not misleading; or
10 c. engaged in transactions, practices, or courses of business which
11 operated or would operate as a fraud or deceit upon the
12 purchaser.

13 49. By engaging in the conduct described above, defendant Roke violated,
14 and unless restrained and enjoined will continue to violate, Section 17(a) of the
15 Securities Act, 15 U.S.C. § 77q(a).

16 **SECOND CLAIM FOR RELIEF**

17 **FRAUD IN CONNECTION WITH THE**

18 **PURCHASE OR SALE OF SECURITIES**

19 **Violations of Section 10(b) of the Exchange Act**

20 **and Rule 10b-5 thereunder**

21 50. The Commission realleges and incorporates by reference ¶¶ 1 through
22 46 above.

23 51. Defendant Roke, by engaging in the conduct described above, directly
24 or indirectly, in connection with the purchase or sale of a security, by the use of
25 means or instrumentalities of interstate commerce, of the mails, or of the facilities
26 of a national securities exchange, with scienter:

- 27 a. employed devices, schemes, or artifices to defraud;
28 b. made untrue statements of a material fact or omitted to state a

1 material fact necessary in order to make the statements made, in
2 the light of the circumstances under which they were made, not
3 misleading; or

4 c. engaged in acts, practices, or courses of business which
5 operated or would operate as a fraud or deceit upon other
6 persons.

7 52. By engaging in the conduct described above, defendant Roke violated,
8 and unless restrained and enjoined will continue to violate, Section 10(b) of the
9 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
10 § 240.10b-5.

11 **THIRD CLAIM FOR RELIEF**

12 **RECORD-KEEPING VIOLATIONS**

13 **Aiding and Abetting Violations of**

14 **Section 13(b)(2)(A) of the Exchange Act and**

15 **Violations of Rule 13b2-1 thereunder**

16 53. The Commission realleges and incorporates by reference ¶¶ 1 through
17 46 above.

18 54. AMS violated Section 13(b)(2)(A) of the Exchange Act and Rule
19 13b2-1, thereunder, by failing to make or keep books, records, and accounts in
20 reasonable detail that accurately and fairly reflected its transactions and disposition
21 of its assets and by falsifying or causing to be falsified AMS's books, records, and
22 accounts subject to Section 13(b)(2)(A) of the Exchange Act.

23 55. Defendant Roke knowingly provided substantial assistance to AMS's
24 violation of Section 13(b)(2)(A) of the Exchange Act.

25 56. By engaging in the conduct described above and pursuant to Section
26 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendant Roke aided and abetted
27 AMS's violations, and unless restrained and enjoined will continue to aid and abet
28 violations, of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

57. By engaging in the conduct described above, defendant Roke violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified AMS's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act. Unless restrained and enjoined, defendant Roke will continue to violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

FOURTH CLAIM FOR RELIEF

BOOKS AND RECORDS VIOLATIONS

Violations of Section 13(b)(5) of the Exchange Act

58. The Commission realleges and incorporates by reference ¶¶ 1 through 46 above.

59. By engaging in the conduct described above, defendant Roke violated Section 13(b)(5) of the Exchange Act, by circumventing or failing to implement a system of internal accounting controls, or by knowingly falsifying any book, record or account described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined, defendant Roke will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5).

PRAAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

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

II.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining defendant Roke and her officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act, Sections 10(b), 13(b)(2)(A) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1

1 thereunder.

2 III.

3 Order defendant Roke to disgorge all ill-gotten gains from her illegal
4 conduct, together with prejudgment interest thereon.

5 IV.

6 Order defendant Roke to pay civil penalties under Section 20(d) of the
7 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15
8 U.S.C. § 78u(d)(3).

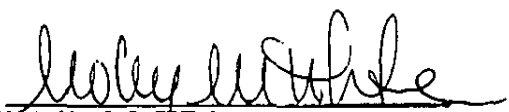
9 V.

10 Retain jurisdiction of this action in accordance with the principles of equity
11 and the Federal Rules of Civil Procedure in order to implement and carry out the
12 terms of all orders and decrees that may be entered, or to entertain any suitable
13 application or motion for additional relief within the jurisdiction of this Court.

14 VI.

15 Grant such other and further relief as this Court may determine to be just
16 and necessary.

17 DATED: September 29, 2004

18 
19 Molly M. White
20 Attorneys for Plaintiff
21 Securities and Exchange Commission
22
23
24
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26
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BY FAX

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(Rev. 07/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

SECURITIES AND EXCHANGE
COMMISSION

(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

FILED SEP 29 AM 10:16
DEBTORS 04 CV 1966 H POR

MARCY WILSON ROKE
DISTRICT OF CALIF.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT SAN DIEGO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Molly M. White 323-965-3250
Securities & Exchange Commission
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036-3648

ATTORNEYS (IF KNOWN)

Frank Vecchione 619-231-3653
Law Offices of Frank Vecchione
105 W. F Street, Suite 215
San Diego, CA 92101

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☒ U.S. Government Plaintiff ☐ Federal Question
(U.S. Government Not a Party)
- ☐ U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For Diversity Cases Only)
- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES.)

The Complaint alleges violations of the federal securities laws. 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 thereunder; 15 U.S.C. § 78m(b)(2)(A) and 17 C.F.R. § 240.13b2-1; and 15 U.S.C. § 78m(b)(5).

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Acc. <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 160 Medicines Act <input type="checkbox"/> 170 Recovery of Dubious Student Loans (Excl. Veterans) <input type="checkbox"/> 180 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 190 Stockholders Suits <input type="checkbox"/> 200 Other Contract <input type="checkbox"/> 210 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employer Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Sectors of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RA & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 670 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 760 Empl. Ret. Inv. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 154 <input type="checkbox"/> 423 Withdrawal 28 USC 147 PROPERTY RIGHTS <input type="checkbox"/> 420 Copyrights <input type="checkbox"/> 430 Patents <input type="checkbox"/> 440 Trademarks SOCIAL SECURITY <input type="checkbox"/> 441 SSA (13954) <input type="checkbox"/> 442 Black Lung (923) <input type="checkbox"/> 443 DIWC/DIWW (402(g)) <input type="checkbox"/> 444 SSD Title XVI <input type="checkbox"/> 445 ESI (404(a)) FEDERAL TAX SUITS <input type="checkbox"/> 470 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 471 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Regs/Act <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Executive Enforcement and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input checked="" type="checkbox"/> 520 Securities/Commodities Exchange <input type="checkbox"/> 575 Customs Challenge 19 USC <input type="checkbox"/> 591 Agricultural Act <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Entry Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 600 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 630 Constitutionality of State <input type="checkbox"/> 690 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Laws Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Laws & Eviction <input type="checkbox"/> 240 Ten in Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Wetlands <input type="checkbox"/> 445 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 520 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Manslaughter & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 9-29-04

SIGNATURE OF ATTORNEY OF RECORD