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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. MICHAEL RESNICK and MARK P. KAISER, Defendants.	No. 04-CV-05824 (MGC) (FM) ECF Case **SECOND AMENDED COMPLAINT**

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") alleges:

NATURE OF THE ACTION

1. This is an accounting fraud case. Defendants engaged or substantially participated in a scheme to overstate Royal Ahold's (Koninklijke Ahold N.V.) ("Ahold") income by $700 million or more in Commission filings and other public announcements for at least fiscal years 2001 and 2002.

2. Ahold is a publicly-held company organized in the Netherlands with securities registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of

1934 ("Exchange Act"). Ahold's common stock trades in the United States in the form of American Depositary Shares ("ADSs") as evidenced by American Depositary Receipts ("ADRs"). Ahold's ADRs trade on the New York Stock Exchange under the symbol AHO. The depository for Ahold's ADSs is The Bank of New York.

3. U.S. Foodservice ("USF"), a foodservice and distribution company with headquarters in Columbia, Maryland, is a wholly-owned subsidiary of Ahold.

4. From the time Ahold acquired USF in April 2000, Ahold and USF budgeted annual earnings goals for USF. Compensation for USF executives, including the defendants, was based, among other things, on USF's meeting or exceeding budgeted earnings targets. Defendants each received a substantial bonus in early 2002 because USF purportedly satisfied earnings goals for fiscal year 2001. Defendants were each eligible for a substantial bonus if USF met earnings targets for fiscal year 2002. As described below, defendants engaged or substantially participated in a scheme whereby USF reported earnings equal to or greater than the targets, regardless of the company's true performance, which rendered Ahold's SEC filings and other public statements materially false and misleading.

5. A significant portion of USF's operating income was based on payments by its vendors, often referred to as promotional allowances. Defendants engaged or substantially participated in a scheme to materially inflate the amount of promotional allowances recorded by USF and reflected in operating income on USF's financial statements, which were consolidated into Ahold's Commission filings and other public statements. Defendants also provided, or assisted in providing, Ahold's independent auditors with false and misleading information in an effort to conceal the fraud.

6. The overstated promotional allowances aggregated at least $700 million for fiscal years 2001 and 2002. When the fraud was disclosed to the public, Ahold's stock price plummeted from approximately $10.69 per share to $4.16 per share.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(3)].

8. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A(a)(1), and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1(a)(1) and 78aa]. Defendants directly or indirectly have made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein. Certain transactions, acts, practices and courses of business occurred within this District, and venue is proper pursuant to Section 27 of the Exchange Act.

DEFENDANTS

9. Michael Resnick, certified public accountant ("CPA"), age 42, resides in Maryland. Resnick has been a CPA licensed by the State of Maryland since 1987. Resnick joined USF as Director of Internal Audit in or about October 2000. In or about September 2001, Resnick assumed additional responsibilities in USF's finance department. In or about November 2001, Resnick was promoted to Chief Financial Officer ("CFO") and became a member of USF's executive committee. The executive committee met on a weekly basis to discuss USF's performance and other business matters. As CFO, Resnick was responsible for USF's books, records and financial statements.

10. Mark P. Kaiser, age 47, resides in Maryland. At all times relevant to this second amended complaint, Kaiser was a high-level executive at USF with extensive experience in the food distribution industry. Prior to Ahold's acquisition of USF, Kaiser served, among other things, as USF's Senior Vice President and Executive Vice President for Sales, Marketing and Procurement, and was a member of USF's board of directors. After USF was acquired by Ahold until in or about February 2001, Kaiser held the position of Executive Vice President of Purchasing, Marketing and Procurement at USF, where he was responsible for USF's relationships with its vendor-suppliers. In or about February 2001, Kaiser became USF's Chief Marketing Officer. At all relevant times, Kaiser was a member of USF's executive committee.

STATEMENT OF FACTS

A. Promotional Allowances at USF

11. At all times relevant to this second amended complaint, USF purchased a variety of food and food-related products from vendors and resold them to customers throughout the United States. USF's customers included, among others, restaurants, hotels, governmental entities, healthcare facilities, cafeterias and schools.

12. USF and many of its vendors participated in "promotional allowance" programs. Pursuant to these programs, USF bought products from its vendors and was later paid a negotiated rebate by the vendor. The rebates were often referred to as promotional allowances, or "PAs."

13. During at least fiscal years 2001 and 2002, USF made no significant profit directly from its end-sales to customers. Instead, the majority of USF's operating income was derived from PAs. Thus, PAs were critical to USF's financial results—without them, USF's and Ahold's operating income would have been materially reduced.

14. Numerous PA arrangements between USF and its vendors were memorialized in written contracts that often covered multi-year periods. These PA contracts were negotiated and signed by members of USF's purchasing department, including Kaiser. The contracts set forth the rates at which USF would earn PAs and the conditions under which they would be earned. By the end of 2002, USF was party to well over 125 written PA contracts.

15. The PA contracts often required the vendor to make a large up-front prepayment for the PAs that USF was eligible to earn during the life of the contract. The prepayment amount was often based on the assumption that USF would purchase products from the vendor for a stated period of time and/or achieve certain purchase volume commitments during a stated period. USF's right to retain the total prepayment was typically conditioned upon USF's ability to meet its contractual obligations, including achieving the agreed-upon purchase volume goals.

16. For at least fiscal years 2001 and 2002, USF's purchase price for the products it later sold to its customers was recorded in USF's books, records, and financial statements as part of the "cost of sales." USF recorded revenue generated from sales to customers other than Ahold-affiliated companies as "net sales." USF recorded PA income from vendors as a reduction of the cost of sales. Because PAs reduced USF's costs, they had the direct effect of increasing USF's and Ahold's earnings.

17. USF personnel often referred to PA earnings as "PA income." The PA income accrued and recorded at USF, but not yet collected, was accumulated in a PA receivable account.

18. USF did not use a comprehensive, automated system for tracking PAs earned from vendors. Instead, for purposes of interim reporting during at least fiscal years 2001 and 2002, USF purportedly estimated an overall "promotional allowance recognition rate," or "PA rate," and recorded periodic PA accruals based on that rate.

19. The PA rate was simply a percentage of USF's total net sales for a specific period, and purportedly represented a blended rate of all of the individual rates contained in the PA arrangements between USF and its vendors. USF estimated the PA income it had earned during a particular period by multiplying total net sales for the period by the PA rate.

20. During at least fiscal years 2001 and 2002, the PA rate was established, reviewed and adjusted on at least a quarterly basis by Kaiser, Resnick and others at USF. The PA rate purportedly was based on various factors such as the historical PA rate, USF's alleged ability to negotiate better deals (and thus higher PA rates) with vendors, and favorable changes in the percentage of so-called "chain" and "street" sales.

21. USF classified its customers into two general categories: “street" customers, which principally consisted of independent restaurants, and "chain" customers, which included, among others, franchises or corporate-owned units of national or regional restaurants and, to a lesser extent, hotels and other regional institutional operators. USF’s profit margins on street sales were typically higher than those on chain sales because, among other reasons, USF generally earned greater PAs on the products sold to street customers. Thus, USF sought to maximize the street sales mix (i.e., the percent of total net sales that were street sales) and typically justified increases in the PA rate on the basis of alleged increases in the street sales mix compared to budget.

22. During at least fiscal years 2001 and 2002, USF's quarterly financial results were purportedly based, in part, on estimated PA income recorded on the basis of the PA rate. USF's quarterly financial results were, in turn, consolidated into Ahold's quarterly financial results, which were contained in earnings press releases, SEC filings, and other public statements.

23. For at least fiscal years 2001 and 2002, at each fiscal year end, Kaiser purportedly "trued up" the estimated PA income and receivable amounts booked during the year through negotiations with vendors. Kaiser prepared Earned Income Worksheets ("EIWs") that purportedly summarized the results of these negotiations. The EIWs purported to show, among other things, the PA income that USF had earned from the vendors during the year; the amounts the vendors had paid to USF during the year; and the unpaid balances due USF as of year end.

24. As part of their year-end audit, Ahold's independent auditors sent confirmation letters to certain vendors asking them to confirm certain amounts derived from the EIWs. Kaiser signed the vast majority of the confirmation letters. Most of the recipients countersigned the confirmation letters and returned them to the auditors.

B. The Fraudulent Scheme

25. For at least fiscal years 2001 and 2002, as part of Ahold's budgeting process, USF management prepared a budget and updated that budget throughout the year. USF's budgets typically set forth, in various levels of detail, expected sales, PAs, cost of sales, and/or projected earnings.

26. During at least fiscal years 2001 and 2002, compensation for USF executives, including defendants Kaiser and Resnick, was based on, among other things, USF's ability to meet or exceed budgeted earnings goals that were ultimately set by Ahold management. Thus, Kaiser and Resnick each received a bonus greater than his 2001 salary because USF purportedly satisfied earnings goals for fiscal year 2001. Kaiser and Resnick were each eligible for a bonus greater than his 2002 salary if USF met earnings targets for fiscal year 2002.

27. As set forth more fully below, Kaiser and Resnick engaged in a scheme to artificially inflate USF's and Ahold's earnings by hundreds of millions of dollars in order to meet

budgeted earnings targets, and thereby obtain substantial monetary bonuses. Kaiser and Resnick perpetuated this scheme to "book to budget" by, among other things:

(a) recording and causing to be recorded in USF's and Ahold's books and records PA income that had not been earned;

(b) in the case of Resnick, directing the release of reserves and accruals to make up for earnings shortfalls, in contravention of generally accepted accounting principles ("GAAP"); and

(c) making it falsely appear that recorded PA income had been earned by (i) in the case of Kaiser, inducing vendors to confirm falsely inflated PA income and receivable balances, among other things; (ii) in the case of both defendants, manipulating and misapplying PA cash receipts to make it look as if such receipts matched the PA income that had been falsely recorded; and (iii) in the case of both defendants, making and/or directing USF personnel to make false and misleading representations to independent auditors, and failing to disclose and/or directing USF personnel not to disclose material facts and information to auditors.

28. Defendants schemed to falsely inflate USF's earnings knowing, or being reckless in not knowing, that: (a) such inflated levels would be reflected in Ahold's consolidated financial statements, SEC filings, and other public disclosures; and (b) as a result of recording inflated earnings, Ahold's financial statements and other public disclosures and filings would falsely and materially overstate USF's earnings and assets.

1. False Financial Results – Fiscal Year 2001

29. Beginning in the late 1990s through in or about late 2002, USF's independent auditors repeatedly recommended to USF management that the company institute a system to track and calculate the value of earned PAs on a company-wide basis (a "PA Tracking System"). Auditors advised that, without such a system, USF was exposed to a high risk of material errors in PA income recognition and financial reporting.

30. From in or about 2000 through in or about early 2003, USF executives, including Kaiser and Resnick, regularly represented to Ahold's independent auditors that a PA Tracking System would be implemented. As of early 2003, however, no such system had been adopted.

31. In late 2000 and early 2001, Ahold attempted to conduct an internal audit into USF's PA accounting. At the time, Ahold outsourced USF's internal audit function to a third party which reported to Resnick. Defendants Kaiser and Resnick frustrated the internal audit by, among other things, failing to provide the internal audit team with requested documentation; limiting the scope of the internal audit; and failing to finalize and issue the internal audit report.

32. Specifically, in or about November 2000, the internal audit team requested information needed to conduct the PA accounting audit. USF personnel repeatedly failed to provide the information. On or about January 12, 2001, a member of the internal audit team informed Resnick that the team had identified significant control weaknesses relating to PAs and that USF personnel were being uncooperative by failing to provide information. Despite Resnick's position at the time as Director of Internal Audit, Resnick failed to assist the internal audit team in obtaining the requested information.

33. In or about late 2000, the internal audit team also asked to review USF's books and records relating to PA cash receipts and collections for the period May through October

2000. At the time, both defendants knew or were reckless in not knowing that the records for May through July 2000 reflected the receipt of large vendor prepayments. However, USF management, including Kaiser, had previously represented to Ahold management and Ahold's independent auditors that USF did not receive vendor prepayments. Therefore, in or about November 2000, Kaiser and Resnick met and decided to limit the scope of the internal audit by providing the internal audit team with a cash receipts log for only October 2000.

34. In early 2001, Resnick was provided with a draft of the internal audit report that highlighted, among other things, the significant control weaknesses and high risks relating to PAs; the fact that management had limited the scope of the internal audit; and USF's failure to provide requested documentation. Resnick directed the internal audit team to delete various portions of the initial draft, including the sections addressing USF's decision to limit the scope of the audit and USF's failure to provide requested documentation.

35. On or about July 2, 2001, Resnick informed the internal audit team that he would finalize and issue the internal audit report to Ahold management. However, Resnick never finalized the report or disclosed it to Ahold management. He also failed to inform Ahold management that he had limited the scope of the internal audit and that USF had failed to provide the internal audit team with requested documentation. Resnick also failed to provide the draft report to Ahold's independent auditors, despite their specific request in or about September 24, 2001, for all draft and final internal audit reports.

36. USF's budgeted PA income for fiscal year 2001 was materially inflated because USF's historical PA rate – the basis for budgeted PA income for 2001 – was overstated. By quantifying USF's budgeted PA income based upon an inflated historical PA rate, and then

recording PA income to meet budgeted PA levels, USF recorded PA income that did not exist, and had not been earned.

37. By the end of fiscal year 2001, USF had booked approximately $583 million in corporate PA income based, in part, on the inflated PA rate. The corporate PA receivable balance, also inflated and unsupported, was approximately $322 million.

38. Kaiser falsely represented to Ahold and its independent auditors that USF's PA programs typically were not memorialized in written, executed contracts that would have allowed the auditors to verify the actual PA income USF had earned during fiscal year 2001 and the actual receivable balance as of year end. Instead, Kaiser falsely represented to the auditors that he "trued up" the estimated PA income and receivable amounts during year-end negotiations with vendors. Kaiser prepared EIWs that purportedly summarized the results of these alleged negotiations. Kaiser or USF personnel acting at his direction gave the EIWs to Ahold's independent auditors.

39. Ahold's independent auditors sought to have the vendors confirm certain amounts in the EIWs. Confirmation letters were therefore prepared for certain vendors, the vast majority of which were signed by Kaiser. The letters asked the vendors to confirm certain figures derived from the EIWs including, among other things, the PA income USF purportedly had earned from the vendor during the year; the amounts the vendor supposedly paid to USF during the year; and the balance allegedly due USF as of fiscal year end 2001. Ahold's independent auditors sent the confirmation letters to the addressees in early 2002 as part of the 2001 fiscal year-end audit.

40. In truth and in fact, Kaiser did not conduct year-end negotiations with vendors for the purpose of "truing up" PA amounts booked by USF during the year. Instead, Kaiser simply fabricated many of the amounts in the EIWs and the confirmation letters.

41. For example, the confirmation letter for Sugar Foods dated January 23, 2002 and signed by Kaiser stated that USF had earned approximately $5.4 million in PA income during fiscal year 2001, and the unpaid balance due USF as of year end was approximately $5.1 million. In fact, as Kaiser knew or was reckless in not knowing, USF had earned only approximately $1.6 million in PA income from Sugar Foods during fiscal year 2001 and the balance due USF at year end was only approximately $101,000.

42. Similarly, the confirmation letter for Basic American dated January 23, 2002 and signed by Kaiser stated that USF had earned approximately $8.9 million in PA income during fiscal year 2001, and the unpaid balance due USF as of year-end was approximately $8.8 million. In fact, as Kaiser knew or was reckless in not knowing, USF had only earned approximately $5.1 million in PA income from Basic American during fiscal year 2001 and, as of the year end, there was no balance due USF; instead, USF actually owed money to Basic American. Many of the other EIWs and confirmation letters contained similarly inflated, fictitious amounts.

43. Kaiser also falsely represented in the EIWs and confirmation letters that USF did not receive up-front vendor prepayments. For example, the EIWs falsely indicated that all of the cash collected from the vendors during the year had been properly earned in fiscal year 2001 and/or properly applied against the prior year PA receivable balance. Likewise, the confirmation letters signed by Kaiser falsely stated that "[a]mounts paid or to be paid are not contingent upon [USF] performing any additional duties or responsibilities in the future."

44. In truth and in fact, based on, among other things, Kaiser's role in negotiating and/or signing vendor contracts, Kaiser knew that the contracts often required the vendors to make significant up-front prepayments of the PAs that USF was eligible to earn during the life of

the contract. USF's right to retain the full prepayments was contingent upon, among other things, its ability to fulfill its obligations under the contracts.

45. According to GAAP and Ahold's own accounting principles disclosed in its SEC filings, Ahold and USF could properly recognize PAs as a reduction in cost of sales only when the PAs were earned – i.e., only when the purchase-related conditions agreed upon with the vendor had been met, and the related product was sold by USF. Thus, under GAAP, if USF received a prepayment at the outset of a PA program, the full value of that prepayment could not immediately be recorded as PA income or a reduction of PA receivables upon receipt. Rather, USF was required initially to record the prepayment on its balance sheet as a credit to deferred liabilities, which increased USF's liabilities, and a debit to cash, which increased USF's assets. USF could thereafter gradually record the prepayment as PA income on its income statement only as USF sold the vendor's products to USF's customers and met the requisite contractual conditions. Thus, if properly recorded, the receipt of a prepayment generally would have no immediate impact on USF's recorded PA income, cost of sales, earnings, or PA receivable balance.

46. In contravention of GAAP, and with Kaiser's knowledge and approval, when USF received a vendor prepayment, USF immediately applied the entire prepayment to reduce USF's existing PA receivable balance. The improper accounting of prepayments perpetuated the fraud by making it appear that USF's fictitious PA accounts receivable balance was being paid down when, in fact, this was not the case.

47. Despite the fabricated amounts and misstatements in many of the confirmation letters, in late 2001 and early 2002, Kaiser and other USF personnel acting at his direction or with his knowledge, including Timothy Lee, USF's Executive Vice President of Purchasing at the

time, and William Carter, USF's Vice President for Purchasing at the time, successfully encouraged many recipients to sign the confirmation letters and return them to the auditors.

48. When some recipients challenged the accuracy of the confirmation letters, Kaiser, Lee, and Carter were able in most instances to induce them to sign by, among other things, stating, in substance, that the PA income and related PA receivable balances in the letters were not real and/or that USF would not make any effort to collect such amounts.

49. In some cases, Carter and Lee, with Kaiser's knowledge and approval, sent side letters to vendors acknowledging that the amounts contained in the confirmation letters were incorrect. For example, as stated above, on or about January 23, 2002, Kaiser signed a confirmation letter representing that Sugar Foods owed USF approximately $5.1 million in PAs as of December 29, 2001. On or about February 4, 2002, Carter, with Kaiser's knowledge and approval, countersigned a letter confirming that Sugar Foods would not be billed for the $5.1 million set forth in the confirmation letter.

50. Similarly, on or about January 24, 2002, Kaiser signed a confirmation letter falsely representing that Hunt-Wesson Foodservice owed USF approximately $4.47 million in PAs as of December 29, 2001. On or about February 5, 2002, Carter, with Kaiser's knowledge and approval, countersigned a letter confirming that Hunt-Wesson Foodservice owed nothing to USF as of December 29, 2001.

51. In at least one instance, Kaiser, Lee, and Carter could not induce the recipient of a false confirmation letter to sign it. Specifically, on or about January 28, 2002, Kaiser signed a confirmation letter falsely stating that Pactiv owed USF approximately $5.6 million in PAs as of December 29, 2001, and that amounts paid to USF during 2001 were not contingent on USF performing any additional duties or responsibilities. The recipient refused to sign the letter. To

cover up the refusal, in or about February 2002, Kaiser falsely represented to Ahold's independent auditors that the letter had not been signed because the recipient was on vacation.

52. Despite Kaiser, Lee, and Carter's success in encouraging vendors and others to sign false confirmation letters, Kaiser and Resnick knew or were reckless in not knowing that a substantial, aging PA receivable balance would raise questions by Ahold's independent auditors as to whether the PA income giving rise to the balance had, in fact, been earned by USF. Kaiser and Resnick therefore took steps to make it falsely appear that USF's PA receivable balance was being paid down.

53. Specifically, during late 2001 and early 2002, in contravention of GAAP, USF personnel made improper accounting entries that deducted material amounts from the balances USF owed its vendors for purchased products, and simultaneously credited USF's PA receivable balance in the amount of the deductions. Many of these deductions were made at year-end and had the effect of making it appear that USF had made material progress in collecting PA payments when, in fact, this was not the case.

54. The improper deductions were made with the defendants' knowledge and approval. For example, on or about December 31, 2001, Resnick and Kaiser were informed that USF had booked nearly $53 million in deductions on December 28, 2001 – the next to last day of the fiscal year. Both defendants knew or were reckless in not knowing that USF credited its inflated PA receivable balance for the same amount, which made it falsely appear to Ahold's independent auditors that USF had effectively collected approximately $53 million in PA payments.

55. Because many of the deductions were inappropriate and not authorized by the vendors, they were later reversed with the defendants' knowledge and approval. For example, on

or about January 4, February 11, and March 12, 2002, Resnick and Kaiser were informed that millions of dollars in deductions made during fiscal year 2001 had been reversed and repaid to the vendors. Kaiser and Resnick never informed Ahold's independent auditors of the reversals, and this failure was a material omission that helped perpetuate the fraud.

56. Resnick also knew, or was reckless in not knowing, that the confirmation process was tainted and unreliable because he knew, or was reckless in not knowing, that: (a) the confirmation letters asked vendors to confirm PA receivable balances as of fiscal year end 2001; and (b) the fiscal year-end PA receivable balances in numerous confirmation letters reflected unauthorized deductions booked by USF in fiscal year 2001, many of which were reversed before or shortly after the letters were signed and returned to Ahold's independent auditors.

57. The defendants' fraudulent conduct described above made it falsely appear that USF and Ahold had met budgeted earnings targets and other goals for fiscal year 2001, thereby enabling the defendants, and others, to inappropriately obtain large bonuses.

58. Kaiser and Resnick knew or were reckless in not knowing that USF's inflated PA income and earnings figures for fiscal year 2001 were incorporated into, and rendered materially false and misleading, Ahold's consolidated financial statements, SEC filings, and other public disclosures containing the company's financial results for fiscal year 2001 and interim periods including, but not limited to, Ahold's Form 20-F for fiscal year 2001.

59. In or about early 2002, Ahold personnel located in Zandaam, the Netherlands, drafted the Form 20-F for fiscal year 2001 based on financial data and other information provided by Ahold's operating companies, including the materially false and misleading financial results provided by USF.

60. In or about March 2002, Ahold sent the draft Form 20-F to its agents in New York, New York for review (including a major law firm representing Ahold, hereinafter referred to as the "New York law firm"). The Form 20-F was thereafter revised as necessary, formatted by the New York law firm for filing, and transmitted electronically by the New York law firm from New York to the SEC in Washington, D.C. for filing. The Form 20-F was filed on or about April 9, 2002.

61. The defendants' conduct described above caused Ahold to materially overstate its earnings and receivables in its Form 20-F for fiscal year 2001. In addition, by concealing and improperly booking up-front vendor prepayments, Kaiser and others at USF caused Ahold to make the following misstatements in the Form 20-F:

> [I]ncentives from suppliers that are non-refundable credits or payments are recognized when the related activities that are required by the supplier are completed [by USF], the amount is fixed and determinable and the collectibility is reasonably assured. . . . The total value of any up-front . . . payments received from vendors that are linked to purchase commitments is initially deferred. The deferred amounts are then amortized to reduce cost of goods sold over the life of the contract based upon periodic purchase volume. The total value of any up-front or other periodic payments received from vendors that are not linked to purchase commitments is also initially deferred and recognized in income when earned.

62. Ahold also communicated its financial results for fiscal year 2001 and interim periods to the investing public by way of press releases and other means. Members of the investing public, including market analysts based in New York, New York, considered and relied upon this information in making investment decisions. For example, in or about the first half of 2002, Ahold presented and discussed its materially false and misleading financial results for fiscal year 2001 during a conference call with financial analysts, at least one of whom was based

in New York, New York. As a result of the defendants' conduct, Ahold made several materially false and misleading statements during the conference call including, but not limited to, the statement that USF's "EBIT was 4 percent of sales for the year."

2. False Financial Results – Fiscal Year 2002

63. Throughout fiscal year 2002, Kaiser and Resnick continued to fraudulently inflate USF's PA income, which caused Ahold to make materially false SEC filings and other public statements relating to its fiscal year 2002 quarterly results.

The First Quarter of Fiscal Year 2002

64. USF's initial budget for fiscal year 2002 projected total net sales of approximately $19 billion; total operating earnings of approximately $816 million; and a PA rate of approximately 6.36 percent, which translated into approximately $1.185 billion in PA income.

65. Following the tragic events of September 11, 2001, USF's overall sales and, in particular, its more profitable street sales were consistently below budget. Kaiser and Resnick knew or were reckless in not knowing that USF's actual street sales mix for 2002 was consistently short of budgeted expectations, and below the mix recorded in 2001, based on, among other things: (a) internal financial reviews that Resnick received and approved for distribution on a monthly basis; and (b) weekly reports that Kaiser and Resnick received and discussed at periodic executive committee meetings throughout 2002.

66. As Resnick and Kaiser well knew, the decline in the street sales mix and total net sales created a substantial risk that USF would fail to meet earnings targets for 2002, which would have reduced or precluded bonuses for Kaiser, Resnick, and other top executives at USF.

67. To make it appear that USF was meeting earnings targets despite the decline in street and total net sales, members of USF's accounting department, at Resnick's direction or with

his approval, booked fictitious PA income and made other improper accounting adjustments (including, for example, improper releases of reserves and accruals) by means of "topside" entries in USF's books and records, i.e., manual entries that were made after the results generated by USF's accounting systems had been aggregated. Such adjustments had the effect of increasing USF's reported earnings to levels that were consistent with budgeted earnings levels.

68. For example, during the closing process for Period 1 (January 2002), the preliminary results generated by USF's accounting systems revealed a shortfall to budgeted earnings of approximately $3.47 million. To make up the shortfall, on or about February 13, 2002, Resnick directed USF's accounting department to book several improper, unsupported releases of reserves and accruals which effectively increased earnings by approximately $3.47 million.

69. In addition, by the end of the first quarter of fiscal year 2002 (January, February, and March), several improper, unsupported topside PA entries booked at Resnick's direction or with his approval resulted in a year-to-date PA rate of approximately 6.67 percent net sales, well over the rate projected for fiscal year 2002 in USF's initial budget.

70. On or about May 2 or 3, 2002, Resnick, Kaiser, and Lee met with Ahold's independent auditors and attempted to justify the increase in the PA rate to 6.67 percent. During this and other meetings with the auditors, Kaiser, Resnick, and Lee concealed the fact that the PA rate increase was driven by fictitious PA income that USF fabricated to meet earnings goals. Instead, Kaiser, Lee, and Resnick gave false explanations to the auditors for the increase in rate.

71. Kaiser, Resnick, and Lee collectively represented to Ahold's independent auditors that they had determined that the PA rate for 2002 should be 6.67 percent by taking USF's prior-year rate – represented to be 6.36 percent – and increasing it by 31 basis points due to USF's

acquisition of Alliant Foodservice at the end of 2001 and purchasing "synergies" that resulted from the acquisition.

72. In fact, as Kaiser and Resnick knew or were reckless in not knowing: (a) USF's annual PA rate was raised to approximately 6.67 percent on or about April 15, 2002, after the first quarter had ended, and only after Resnick and Kaiser knew that USF would fail to meet operating earnings goals for March and the first quarter of 2002; and (b) the 6.67 percent PA rate resulted from the improper topside PA income entries directed or authorized by Resnick to achieve earnings goals.

73. Resnick also represented to Ahold's independent auditors that the 6.67 percent rate was justifiable based upon a comparison to the PA rate of USF's closest competitor. Resnick explained that since USF's closest competitor had a PA rate of 7.0 percent based on $21.8 billion in sales, USF, with $19 billion in projected fiscal year 2002 sales, could justify a PA rate as high as 6.75 percent.

74. However, based on the internal financial reviews and other documents that Resnick regularly received, Resnick knew or was reckless in not knowing that USF was not on pace to achieve $19 billion in fiscal year 2002 sales. In addition, Resnick's assertion that USF's closest competitor had a PA rate of 7.0 percent was completely baseless. As Resnick knew or was reckless in not knowing, the 6.67 percent PA rate was simply a consequence of the fictitious PA income that had been booked during the first quarter solely to meet earnings targets.

75. The defendants knew or were reckless in not knowing that USF's inflated PA income and earnings figures for the first quarter of fiscal year 2002 were incorporated into, and rendered materially false and misleading, Ahold's public disclosures and SEC filings containing its first quarter results. For example, as a result of the defendants' conduct, Ahold made the

following materially false and misleading statements in a press release attached to the Form 6-K filed with the SEC on or about June 6 2002:

> Ahold . . . announced a 3.8% rise in first quarter 2002 net earnings . . . to Euro 328.0 million (2001: Euro 316.0 million)
>
> * * *
>
> Foodservice operating earnings in the United States were significantly higher and in line with expectations.

Defendants also caused Ahold to falsely report, in this same press release, that USF's operating earnings in the first quarter of fiscal year 2002 were $186.6 million.

76. Ahold drafted and signed the Form 6-K in the Netherlands. On or about June 6, 2002, Ahold sent the signed Form 6-K with the attachments to the New York law firm. The New York law firm performed a final review of the Form 6-K and attachments and forwarded them to its Washington, D.C. office, which hand-delivered them to the SEC for filing on or about June 6, 2002.

77. Ahold also communicated its materially false and misleading financial results for the first quarter of fiscal year 2002 to the investing public by way of press releases and other means. Members of the investing public, including market analysts based in New York, New York, considered and relied upon this information in making investment decisions. For example, on or about June 6, 2002, Ahold presented and discussed its financial results for the first quarter of fiscal year 2002 during a conference call with financial analysts, at least three of whom were based in New York, New York. As a result of the defendants' conduct, Ahold made several materially false and misleading statements during the conference call including, but not limited to, the statement that USF saw "very strong performance" during the first quarter and that Ahold's operating earnings were up 22 percent.

The Second Quarter of Fiscal Year 2002

78. During the second quarter of fiscal year 2002 (April, May, and June), Resnick and Kaiser knew or were reckless in not knowing that USF continued to experience below budget street and total sales based on, among other things: (a) internal financial reviews that Resnick received and approved for distribution on a monthly basis; and (b) weekly reports that Kaiser and Resnick received and discussed at periodic executive committee meetings throughout 2002.

79. To make it appear that USF was meeting earnings targets despite the declines in street and total net sales, USF's accounting department, at Resnick's direction or with his approval, booked fictitious PA income and made other improper accounting adjustments (including, for example, improper releases of reserves and accruals) relating to the second quarter of fiscal year 2002 through a series of improper topside entries.

80. For example, during the closing process for Period 5 (May 2002), the preliminary results generated by USF's accounting systems revealed a shortfall to budgeted earnings of approximately $21.3 million. To make up the shortfall, on or about June 11, 2002, Resnick directed USF's accounting department to book several improper, unsupported releases of reserves and accruals which effectively increased earnings by approximately $21.3 million.

81. In addition, on or about July 10, 2002, Resnick directed USF's accounting department to book an additional $8.5 million in fictitious PA income purportedly earned in the second quarter of 2002. Resnick initially characterized this improper entry as "other buying income." Resnick later reclassified the entry as income from a specific vendor program.

However, as Resnick knew or was reckless in not knowing, that program did not even begin until the third quarter and could not possibly have generated any income in the second quarter.

82. By the end of the second quarter, the fictitious topside PA entries made at Resnick's direction or with his approval resulted in a year-to-date PA rate of approximately 7.10 percent of net sales.

83. In or about late July 2002, Kaiser, Resnick, and Lee met with Ahold's independent auditors and represented that they had increased USF's annual PA rate to approximately 7.0 percent. They explained that the increase was based primarily on two factors: (a) higher than expected street sales; and (b) management's purported success in negotiating new, more favorable PA programs with certain vendors during the second quarter. Resnick also represented to the auditors that USF's closest competitor was now achieving a PA rate well in excess of 8.0 percent.

84. However, in truth and in fact: (a) Resnick and Kaiser knew or were reckless in not knowing that, by the end of the closing process for the second quarter of fiscal year 2002, USF had recorded PA income equal to approximately 7.10 percent of net sales, not 7.00 percent; (b) Resnick and Kaiser knew or were reckless in not knowing that USF's actual street sales mix was lower than budgeted as demonstrated by, among other things, internal financial reviews and reports that both defendants regularly received; (c) as Kaiser knew or was reckless in not knowing, USF had not negotiated new, more favorable PA programs during the second quarter; (d) Resnick, via topside entries that he knew or was reckless in not knowing were unsupported and improper, caused USF's PA rate to increase to approximately 6.95 percent on or about May 14, 2002, only after he knew that USF would fail to meet earnings targets using a rate of 6.67 percent; and (e) Resnick, via topside entries that he knew or was reckless in not knowing were

unsupported and improper, caused USF's PA rate to increase to approximately 7.10 percent on or about July 10, 2002, only after he knew that USF would fail to meet operating earnings goals for June using a lower rate; (f) Resnick concealed the unsupported, improper $8.5 million topside PA entry from Ahold's independent auditors, which caused USF's PA rate to increase from approximately 7.00 percent to approximately 7.10 percent; and (g) Resnick knew or was reckless in not knowing that his representation that USF's closest competitor was now achieving a PA rate well in excess of 8.0 percent was completely baseless.

85. In or about July 2002, Resnick and Kaiser also provided Ahold's independent auditors with a manual calculation, prepared by Kaiser and reviewed and approved by Resnick, to support their false assertion that street sales were higher than expected. As the defendants knew or were reckless in not knowing, the manual calculation contained numerous misrepresentations. For example, the manual calculation indicated that USF's budgeted street sale mix was approximately 49 percent of net sales. In fact, as both defendants knew or were reckless in not knowing based on, among other things, internal documents they both received relating to USF's budget, USF's budgeted street sale mix at the time was approximately 53.9 percent of net sales. In addition, the manual calculation indicated that the actual year to date street sales mix was approximately 53.25 percent of actual net sales. In fact, as Resnick and Kaiser knew or were reckless in not knowing based on periodic financial reports and other information they both received, the actual street sale mix was approximately 51.9 percent of actual net sales. By overstating USF's actual street sales, and understating USF's budgeted street sales, Kaiser and Resnick made it falsely appear to the auditors that USF's street sales mix was improving in comparison to the budget.

86. The defendants knew or were reckless in not knowing that USF's inflated PA income and earnings figures for the second quarter of fiscal year 2002 were incorporated into, and rendered materially false and misleading, Ahold's public disclosures and SEC filings containing its second quarter results. For example, as a result of the defendants' conduct, Ahold made the following materially false and misleading statements in a press release attached to the Form 6-K filed with the SEC on or about September 6, 2002:

> Operating earnings [for Ahold] were Euro 777.8 million, representing an increase of 11.9% (+20.9% excluding currency impact).
>
> * * *
>
> Foodservice operating earnings in the United States were significantly higher primarily as a result of the consolidation of Alliant, purchasing synergies and cost reductions. Results at [USF] were strong.

Kaiser and Resnick also caused Ahold to falsely report, in this same press release, that USF's operating earnings in the second quarter of fiscal year 2002 were approximately $192.3 million, and that USF's year-to-date operating earnings were approximately $378.9 million.

87. Ahold drafted the press release attached to the September 6, 2002 Form 6-K in the Netherlands. On or about August 26, 2002, Ahold sent the draft press release to the New York law firm for review and comment. The New York law firm sent comments back to Ahold on or about August 26, 2002, and Ahold issued the press release on or about August 29, 2002.

88. On or about August 30, 2002, Ahold sent the press release to the New York law firm and asked the firm to prepare a Form 6-K. On or about September 4, 2002, the New York law firm prepared the Form 6-K and sent it to Ahold for review. On or about September 5, 2002, Ahold sent the signed Form 6-K with the attached press release to the New York law firm. After

performing a final review of the Form 6-K, the New York law firm forwarded it to its Washington, D.C. office, which hand-delivered it to the SEC for filing.

89. Ahold also communicated its materially false and misleading financial results for the second quarter of fiscal year 2002 to the investing public by way of press releases and other means. Members of the investing public, including market analysts based in New York, New York, considered and relied upon this information in making investment decisions. For example, on or about August 29, 2002, Ahold presented its financial results for the second quarter of fiscal year 2002 during a conference call with financial analysts, at least two of whom were based in New York, New York. As a result of the defendants' conduct, Ahold made several materially false and misleading statements during the conference call including, but not limited to, the statement that "[o]perating earnings [for Ahold] totaled 777.8 million Euros, representing an increase of 11.9%. And that is 20.9% excluding the currency impact."

The Third Quarter of Fiscal Year 2002

90. During the third quarter of fiscal year 2002 (July, August, and September), Resnick and Kaiser knew or were reckless in not knowing that USF continued to experience below budget street and total sales based on, among other things: (a) internal financial reviews that Resnick received and approved for distribution on a monthly basis; and (b) weekly reports that Kaiser and Resnick received and discussed at periodic executive committee meetings throughout 2002.

91. To make it appear that USF was meeting earnings targets despite the continued decline in total and street sales, USF's accounting department, at Resnick's direction or with his approval, continued to book fictitious PA income through a series of improper topside entries.

92. For example, on or about September 10, 2002, during the closing process for Period 8, Resnick initially directed USF's accounting department to book an entry for PA income based upon a PA rate of approximately 7.0 percent of net sales. However, after the entry was made, USF remained approximately $19.6 million below its monthly earnings target. In order to make up the shortfall, Resnick directed USF's accounting department to book an additional $19.6 million in fictitious, unsupported PA income. This improper topside entry resulted in a year-to-date PA rate of approximately 7.16 percent of net sales.

93. During the closing process for the third quarter of fiscal year 2002, Resnick initially directed USF's accounting department to book an entry for PA income based upon a PA rate of approximately 7.16 percent of net sales. Once again, however, the entry left a significant shortfall to USF's earnings target for the quarter. In order to cover the shortfall, on or about October 7, 2002, Resnick directed USF's accounting department to book additional, unsupported PA income that resulted in a year-to-date PA rate of 7.5 percent. These improper entries made it falsely appear that USF had, in fact, met its earnings target for the quarter.

94. In or about November 2002, during a review of USF's third quarter fiscal year 2002 financial information, Kaiser, Resnick, and Lee falsely represented to Ahold's independent auditors that they had increased USF's annual PA rate to approximately 7.5 percent because: (a) USF's actual street sales mix continued to exceed the budgeted mix; (b) according to Kaiser, management reclassified nearly $1 billion in healthcare sales from chain to street because management had suddenly realized that the healthcare sales generated a PA rate of approximately 10.49 percent, which purportedly equaled the PA rate generated by street sales; and (c) according to Kaiser, USF had negotiated more favorable PA agreements with certain vendors during the third quarter.

95. However, in truth and in fact: (a) Resnick and Kaiser knew or were reckless in not knowing that USF's actual street sales mix continued to be below budget in the third quarter of fiscal year 2002 as demonstrated by, among other things, internal financial reviews and reports that both defendants regularly received; (b) Kaiser knew or was reckless in not knowing that sales to healthcare customers did not generate a PA rate of approximately 10.49 percent and should not have been reclassified as street sales as demonstrated by, among other things, an internal analysis he received on or about November 5, 2002; (c) Kaiser knew or was reckless in not knowing that USF had not negotiated new agreements with certain vendors in the third quarter; (d) Resnick, via topside entries that he knew or was reckless in not knowing were improper and unsupported, caused USF's PA rate to increase to approximately 7.16 percent on or about September 10, 2002, only after he was aware that USF would fail to meet earnings targets at a rate of approximately 7.00 percent; and (e) Resnick, via topside entries that he knew or was reckless in not knowing were improper and unsupported, caused USF's PA rate to increase to approximately 7.5 percent on or about October 7, 2002, only after he became aware that USF would fail to meet earnings targets at a PA rate of approximately 7.16 percent.

96. Also in connection with the independent auditors' review of USF's third quarter results, Kaiser and Resnick signed a formal representation letter to the auditors dated November 14, 2002, which falsely stated, among other things, that "[c]ash received for PA's during 2002 relates to PA's already earned as opposed to advances or prepayments." As Kaiser knew or was reckless in not knowing, many of USF's vendors made large, up-front prepayments in 2002 that USF had not yet fully earned. With Kaiser's knowledge and approval, USF improperly applied the full prepayments at the time of receipt to reduce USF's existing PA receivable balance.

97. Kaiser and Resnick knew or were reckless in not knowing that USF's inflated PA income and earnings figures for the third quarter of fiscal year 2002 were incorporated into, and rendered materially false and misleading, Ahold's public disclosures and SEC filings containing its third quarter results. For example, as a result of the defendants' conduct, Ahold made the following materially false and misleading statements in a press release attached to the Form 6-K filed with the SEC on or about November 19, 2002:

> Operating earnings [for Ahold] were Euro 756.2 million, representing an increase of 13.3% (+24.0% excluding currency impact)
>
> * * *
>
> Foodservice operating earnings in the United States were significantly higher, primarily as a result of the consolidation of Alliant, purchasing synergies and cost reductions. Results at [USF], excluding Alliant, were strong due to effective streamlining of the business. The combination of the voluntary exit of the unprofitable business and the stepped-up transition activities has resulted in almost a doubling of operating earnings.

Kaiser and Resnick also caused Ahold to falsely report, in this same press release, that USF's operating earnings in the third quarter of fiscal year 2002 were approximately $191.7 million, and that USF's year-to-date operating earnings were approximately $554 million.

98. Ahold drafted the press release attached to the Form 6-K in the Netherlands and sent it to the New York law firm for review and comment. In or about November 2002, the New York law firm provided comments on various drafts of the press release and prepared a Form 6-K for Ahold's review. On or about November 19, 2002, Ahold issued the press release and approved the Form 6-K. Also on or about November 19, 2002, the New York law firm electronically transmitted the Form 6-K and attached press release from New York to the SEC in Washington, D.C., for filing.

99. Ahold also communicated its materially false and misleading financial results for the third quarter of fiscal year 2002 to the investing public by way of press releases and other means. Members of the investing public, including market analysts based in New York, New York, considered and relied upon this information in making investment decisions. For example, on or about November 19, 2002, Ahold presented and discussed its financial results for the third quarter of 2002 during a conference call with financial analysts, at least three of whom were based in New York, New York. As a result of the defendants' conduct, Ahold made several materially false and misleading statements during the conference call including, but not limited to, the statement that "[o]perating earnings [for Ahold] increased by 13.4 percent to 756 million euro and if you exclude the currency impact, the operating earnings increased by 24 percent."

The Fourth Quarter of Fiscal Year 2002

100. During the fourth quarter of fiscal year 2002 (October, November, and December) and early 2003, USF's accounting department, at Resnick's direction or with his approval, continued to book fictitious PA income through a series of improper topside entries that made it falsely appear that USF was meeting earnings targets.

101. For example, during the closing process for Period 10 (October 2002), USF performed a closing analysis which indicated that an entry for PA income based upon a PA rate of 7.5 percent resulted in a shortfall to earnings targets of approximately $32 million. To make up the shortfall, on or about November 12, 2002, Resnick directed USF's accounting department to book improper topside entries totaling approximately $32 million in fictitious PA income. The result was a new PA rate of approximately 7.65 percent.

102. During the year-end closing process, USF's accounting department, at Resnick's direction or with his approval, again booked a series of improper topside entries that enabled USF to meet its earnings targets for the year.

103. First, on or about January 7, 2003, USF accounting department, acting at Resnick's direction or with his approval, booked a PA entry based on a PA rate of approximately 7.65 percent. The entry left an initial shortfall to earnings goals of approximately $27 million. In order to make up the shortfall, on or about January 9, 2003, Resnick approved an improper, unsupported topside entry of approximately $27 million which resulted in a new PA rate of approximately 7.8 percent.

104. On or about January 10, 2003, to offset the negative impact of additional expenses, Resnick authorized USF's accounting department to book another improper topside entry of approximately $2.6 million in fictitious PA income.

105. Around the same time, Resnick and others at USF realized that they had booked more income relating to a particular vendor program than they could support. The income from this program was tracked separately from PA income reflected by the PA rate. On or about January 10, 2003, instead of reversing the unsupported income in accordance with GAAP, Resnick improperly directed USF's accounting department to reclassify $20 million as PA income captured by the PA rate.

106. In addition, on or about January 13, 2003, Resnick authorized USF's accounting department to book another unsupported topside entry of approximately $1.7 million in fictitous PA income to offset the negative impact of additional expenses.

107. The topside entries discussed above, which Resnick knew or was reckless in not knowing were unsupported and improper, resulted in a new PA rate of approximately 7.94 percent and enabled USF to meet fourth quarter earnings goals almost precisely.

108. In total, by fraudulently increasing the PA income recorded at USF throughout 2002, Kaiser and Resnick made it falsely appear that USF had met its annual operating earnings target. Specifically, USF's recorded operating earnings for fiscal year 2002 exceeded budgeted operating earnings by less than 0.5 percent.

109. Because the PA income booked by USF during 2002 was fictitious and materially inflated, USF's PA receivable balance continued to grow. Kaiser and Resnick knew or were reckless in not knowing that a substantial, aging PA receivable balance would raise questions by Ahold's independent auditors as to whether the PA income giving rise to the balance had, in fact, been earned by USF. Therefore, USF personnel, with Kaiser and Resnick's knowledge and approval, once again made improper accounting entries that deducted material amounts from the balances USF owed its vendors for purchased products, and simultaneously credited the PA receivable balance in the amount of the deductions.

110. Many of these deductions were made at year-end and had the effect of making it appear that USF had made material progress in collecting PA payments when this was not the case. For example, on or about December 27, 2002, the next to last day of the fiscal year, Resnick and Kaiser were informed that USF personnel had booked approximately $94 million in deductions on or about December 27, 2002. Resnick and Kaiser knew or were reckless in not knowing that USF credited its inflated PA receivable balance in the amount of the deductions, which made it appear that USF had effectively collected $94 million in PA payments when this was not the case.

111. Because many of the deductions were inappropriate and not authorized by the vendors, they were later reversed with the defendants' knowledge and approval. For example, in or about early 2002, Kaiser and Resnick were informed that, during the first three months of 2002, USF personnel reversed approximately $51 million in deductions, a significant portion of which related to the improper deductions booked during 2002.

112. Kaiser and Resnick knew or were reckless in not knowing that many of the deductions booked during 2002 were inappropriate and subsequently reversed. For example, on or about December 27, 2002, USF personnel booked approximately $1,028,792 in unauthorized deductions relating to Carolina Turkey. In or about early 2003, a representative of Carolina Turkey complained to both Kaiser and Resnick about the unauthorized deductions. In response, in or about early January 2003, Kaiser and Resnick directed USF personnel to repay Carolina Turkey approximately $791,262.

113. Kaiser and Resnick never informed Ahold's independent auditors that many of the deductions booked in 2002 were unauthorized, inappropriate and subsequently reversed. This failure was a material omission that helped perpetuate the fraud.

114. By the end of fiscal year 2002, USF had booked approximately $1.2 billion in corporate PA income, much of which was fictitious. The corporate PA receivable balance, also inflated and unsupported, was approximately $720 million.

115. Kaiser again falsely represented to Ahold and its independent auditors that USF's PA programs typically were not memorialized in written, executed contracts that would have allowed the auditors to independently calculate the actual PA income USF had earned during 2002 and the actual PA receivable balance as of year end. Instead, Kaiser again falsely represented to the auditors that he "trued up" the estimated PA income and receivable amounts

during year-end negotiations with vendors. Kaiser again prepared EIWs for certain vendors that purportedly summarized the results of these alleged negotiations. Kaiser or a USF employee acting at his direction gave the EIWs to Ahold's independent auditors.

116. Ahold's independent auditors again sought to have the vendors confirm the amounts in the EIWs. Confirmation letters were prepared for certain vendors, the vast majority of which were signed by Kaiser. The letters asked the vendors to confirm certain figures derived from Kaiser's EIWs including, among other things, the PA income USF purportedly had earned from the vendor during 2002; the amounts the vendor supposedly paid to USF during the year; and the balance allegedly due USF as of year end 2002. Ahold's independent auditors sent the confirmation letters to the addressees in late 2002 or early 2003 as part of the year-end audit.

117. In truth and in fact, Kaiser did not conduct year-end negotiations with vendors for the purpose of "truing up" PA amounts booked by USF during 2002. Instead, Kaiser simply fabricated many of the figures contained in EIWs and the confirmation letters.

118. For example, the confirmation letter for Sugar Foods dated January 22, 2003 and signed by Kaiser falsely stated that USF had earned approximately $13.2 million in PA income during fiscal year 2002, and the unpaid balance due to USF as of year end was approximately $9.8 million. In fact, however, as Kaiser knew or was reckless in not knowing, USF had earned only approximately $4.1 million in PA income from Sugar Foods during 2002, and USF actually owed Sugar Foods approximately $145,000 as of year end 2002.

119. Similarly, the confirmation letter for Michael Foods dated January 29, 2003 and signed by Kaiser falsely stated that USF had earned approximately $28.2 million in PA income during fiscal year 2002 and the unpaid balance due USF as of year-end was approximately $19.9 million. In fact, however, as Kaiser knew or was reckless in not knowing, USF had only earned

approximately $11.8 million in PA income from Michael Foods during 2002, and USF actually owed Michael Foods approximately $3 million as of year end 2002. Many of the other EIWs and confirmation letters signed by Kaiser contained similarly inflated, fictitious amounts.

120. Kaiser also falsely represented in the EIWs and the confirmation letters that there were no up-front vendor prepayments. For example, the EIWs prepared by Kaiser falsely indicated that all of the cash collected from the vendors had been properly earned in 2002 and/or properly applied against the prior year PA receivable balance. Likewise, the confirmation letters signed by Kaiser falsely stated that "[a]ll amounts paid to USF during 2002 and all amounts due to USF as of December 28, 2002 . . . have been fully earned by USF and are not contingent upon USF performing any additional duties or responsibilities in the future." Kaiser knew or was reckless in not knowing that these representations were false because he knew or was reckless in not knowing that many of the vendors had made significant up-front prepayments during 2002 that USF improperly applied in full at the time of receipt to reduce USF's PA receivable balance.

121. Despite the fabricated amounts and false representations in many of the confirmation letters, in late 2002 and early 2003, Kaiser, Lee, and Carter (acting with Kaiser's knowledge and approval) successfully encouraged many recipients of the letters to sign them and return them to Ahold's independent auditors.

122. When some recipients challenged the accuracy of the confirmation letters, Kaiser, Lee, and Carter (acting with Kaiser's knowledge and approval) were able in most instances to induce them to sign by, among other things, stating, in substance, that the PA income and related PA receivable balances set forth in the letters were not real and/or that USF would not make any effort to collect such amounts.

123. In some cases, Kaiser, Lee, and Carter (acting with Kaiser's knowledge and approval) sent side letters to vendors acknowledging that the amounts contained in the confirmation letters were incorrect or simply tentative. For example, on or about February 5, 2003, Kaiser, while in New York, New York, agreed to send a side letter to the recipient of the confirmation letters for Riceland and Sanderson Farms after the recipient challenged the accuracy of the letters. Kaiser and Lee placed one or more telephone calls from New York, New York to the recipient of the confirmation letters who was located in Tennessee. On or about February 7, 2003, Kaiser signed a side letter addressed to the recipient stating, among other things, that the numbers in the confirmation letters were subject to adjustment and that Sanderson Farms and Riceland had paid their PA bills in full. Kaiser concealed the existence of this and similar side letters from Ahold's independent auditors.

124. In two instances, vendor representatives refused to sign the confirmation letters. Instead, in or about early 2003, they informed Ahold's independent auditors that the letters were incorrect. This was one factor leading to the exposure of the fraud described above.

125. In or about February 2003, Ahold announced that, as a result of an initial internal investigation, it would issue restated consolidated financial statements based, in large part, on the overstatement of PA income at USF, which overstatement amounted to more than approximately $500 million. In the days following this announcement, the price of Ahold’s securities plummeted more than 60 percent, resulting in an aggregate decline in shareholder value of more than $6 billion. After further internal investigation, Ahold announced, on or about May 8, 2003, that PA income at USF had been overstated by more than $800 million since in or about April 2000.

FIRST CLAIM FOR RELIEF

Fraud

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

126. Paragraphs 1 through 125 are re-alleged and incorporated by reference as to each Defendant.

127. By reason of the foregoing, each defendant 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 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 other persons.

128. By reason of the foregoing, each defendant violated and, in addition or in the alternative, aided and abetted Ahold and USF's violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

SECOND CLAIM FOR RELIEF

Reporting

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 [17 C.F.R. § 240.12b-20 and § 240.13a-1] Thereunder

129. Paragraphs 1 through 125 are re-alleged and incorporated by reference.

130. The Exchange Act and rules promulgated thereunder require every issuer of a registered security to file reports with the Commission that accurately reflect the issuer's financial performance and provide other true and accurate information to the public.

131. By reason of the foregoing, each defendant aided and abetted Ahold's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

THIRD CLAIM FOR RELIEF

Record Keeping

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

132. Paragraphs 1 through 125 are re-alleged and incorporated by reference.

133. The Exchange Act and rules promulgated thereunder require each issuer of registered securities to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the business of the issuer and to devise and maintain a system of internal controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements and to maintain the accountability of accounts. The Exchange Act and rules promulgated thereunder further prohibit any person from directly, or indirectly, falsifying any such required book, record or account and prohibit any person from knowingly circumventing or failing to implement such a system of internal accounting controls.

134. By reason of the foregoing, each defendant aided and abetted Ahold's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

135. By reason of the foregoing, each defendant violated Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

a) permanently enjoining defendants, and each of them, from violating Exchange Act Sections 10(b) and 13(b)(5) and Rules 10b-5 and 13b2-1;

b) permanently enjoining defendants, and each of them, from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-1;

c) ordering defendants, and each of them, to provide a complete accounting for and to disgorge any and all compensation or economic benefit to which they were not entitled as a result of the conduct described herein, plus prejudgment interest thereon;

d) ordering defendants, and each of them, to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act in respect of their violations;

e) prohibiting defendants, and each of them, from acting as an officer or director of a public company pursuant to Section 21(d)(2) of the Exchange Act; and

f) granting such other relief as this Court may deem just and appropriate.

Dated: February 11, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William H. Kuehnle, hereby certify that on the 11th day of February, 2005, I caused copies of foregoing **PLAINTIFF SEC'S SECOND AMENDED COMPLAINT** to be served on the following, via FedEx:

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I declare under penalty of perjury that the foregoing is true and correct.

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