

ANDREW J. GEIST (AG-0284)  
Associate Regional Director

Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
7 World Trade Center  
New York, New York 10048  
(212) 748-8186

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CV 96 3899  
E.J.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

JERALD BEAGELMAN,  
FRED LYMAN,  
JOSEPH SANFELLIPO, and  
ELLIOT STUMACHER,

Defendants.

ORENSTEIN, M.  
96 Civ. ( )  
COMPLAINT  
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Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Jerald Beagelman ("Beagelman"), Fred Lyman ("Lyman"), Joseph Sanfello ("Sanfello"), and Elliot Stumacher ("Stumacher") (collectively, "Defendants"), alleges that:

**SUMMARY OF ALLEGATIONS**

1. During 1990 and 1991 ("Relevant Period"), Beagelman, Lyman and Sanfello engaged in a fraudulent scheme to overstate the assets, revenue and income of Packaging Plus Services, Inc. ("Packaging Plus") on its books and records and in its reports filed with the Commission and disseminated to the investing public. Beagelman, Lyman and Sanfello achieved this result by, among other things, directly or indirectly, improperly recording franchise fee revenue and franchise fee receivables on Packaging Plus's books and records, and by executing backdated and otherwise fraudulent franchise agreements.

2. As a result of the defendants' fraudulent conduct, Packaging Plus's assets, revenue and income were materially overstated on its books and records and in its financial

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statements for the year ended December 31, 1990 ("1990 Financial Statements"). The 1990 Financial Statements were contained in an amendment ("Form 10-K Amendment") to Packaging Plus's Annual Report on Form 10-K for its fiscal year ended December 31, 1990 ("1990 Form 10-K"). The 1990 Form 10-K was filed with the Commission on August 7, 1991. The Form 10-K Amendment was filed with the Commission on August 8, 1991.

3. Beagelman and Sanfellipo also made material misrepresentations and provided materially false and misleading documents to Arthur Bellini ("Bellini"), a certified public accountant ("CPA"), in connection with Bellini's audit of the 1990 Financial Statements.

4. During the Relevant Period, Stumacher, who was not, and is not, a CPA, forged the signature of Jack Diamond ("Diamond"), a CPA, to an audit report ("1989 Audit Report") that accompanied Packaging Plus's financial statements for the year ended December 31, 1989 ("1989 Financial Statements"). The 1989 Financial Statements and the 1989 Audit Report were filed with the Commission on May 2, 1990, August 6, 1990, February 27, 1991 and April 15, 1991, in amendments ("Form 10 Amendments") to a Form 10 Registration Statement filed by Packaging Plus with the Commission on November 7, 1989. Stumacher also knowingly or recklessly misrepresented in the 1989 Audit Report that Diamond had conducted an audit of the 1989 Financial Statements in accordance with generally accepted auditing standards ("GAAS") and that the 1989 Financial Statements were presented fairly in conformity with generally accepted accounting principles ("GAAP") when, in fact, they were not.

5. Thus:

- (a) Beagelman has engaged and is about to engage, directly or indirectly, singly or in concert, in acts, practices and courses of conduct that constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rules 10b-5, 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2],

and is liable as a controlling person of Packaging Plus, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], for Packaging Plus's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 13a-1 and 12b-20 [17 C.F.R. §§ 240.13a-1 and 240.12b-20].

- (b) Lyman has engaged and is about to engage, directly or indirectly, singly or in concert, in acts, practices and courses of conduct that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5 and 240.13b2-1].
- (c) Sanfellipo has engaged and is about to engage, directly or indirectly, singly or in concert, in acts, practices and courses of conduct that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 and 13b2-2 [17 C.F.R. §§ 240.10b-5 and 240.13b2-2].
- (d) Stumacher has engaged and is about to engage, directly or indirectly, singly or in concert, in acts, practices and courses of conduct that constitute 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].

6. Defendants, unless permanently enjoined and restrained, will continue to engage in the acts, practices and courses of conduct alleged in this Complaint, and acts, practices and courses of conduct of a similar type and object.

#### **JURISDICTION**

7. The Commission brings this action pursuant to authority conferred upon it by Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)] to restrain and enjoin permanently the Defendants from engaging in the acts, practices and courses of conduct

alleged in this Complaint. The Commission also brings this action pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] for an order imposing civil penalties against Beigelman, Lyman and Sanfello.

8. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

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

#### DEFENDANTS

10. Jerald Beigelman, of Glen Cove, New York, age 49, was president of Packaging Plus from January 1986 through July 1991, and was a director of Packaging Plus from January 1986 through December 1991. Beigelman signed the 1990 Form 10-K and the Form 10-K Amendment as a director of Packaging Plus.

11. Fred Lyman, of Wantagh, New York, age 52, was a Packaging Plus franchisee during the Relevant Period. Also during the Relevant Period, Lyman owned and controlled FLK, Inc. ("FLK"), a corporation that purported to own a Packaging Plus master franchise for Brooklyn, New York.

12. Joseph Sanfello, of Del Mar, California, age 48, was president of Packaging Plus in August 1991. Sanfello was also president of FranchiseWorks ("FranchiseWorks"), a franchise development company incorporated in California. Sanfello signed the 1990 Form 10-K and the Form 10-K Amendment as president of Packaging Plus.

13. Elliot Stumacher, of Woodmere, New York, age 37, owned during the Relevant Period, together with another individual, Jack Diamond & Co., an accounting firm located New York City. Stumacher is not, and during the Relevant Period was not, a CPA, having failed the qualifying examination on at least one occasion.

### **RELEVANT ENTITY**

14. Packaging Plus is a Nevada corporation that, during the Relevant Period, engaged in the business of selling franchises for the operation of stores specializing in parcel packaging and shipping, with principal executive offices located in Plainview, New York. During the Relevant Period, Packaging Plus's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and was traded in the over-the-counter market.

15. On December 19, 1991, Packaging Plus filed a voluntary petition under Chapter 11 of Title 11 of the United States Code [11 U.S.C. §§ 101 et seq.] in the United States Bankruptcy Court for the Eastern District of New York. In May 1994, Packaging Plus emerged from bankruptcy with new senior management in place.

### **CONTROLLING PERSON OF PACKAGING PLUS**

16. During the Relevant Period, Beigelman was a controlling person of Packaging Plus. As alleged herein, Beigelman was an officer and director of Packaging Plus, directed and actively participated in the management and operations of Packaging Plus, negotiated and signed franchise agreements on behalf of Packaging Plus, signed Commission filings on behalf of Packaging Plus, and provided documents and information to Packaging Plus's independent auditors.

### **PACKAGING PLUS'S BUSINESS**

17. During the Relevant Period, Packaging Plus sold two types of franchises: unit franchises and master franchises, each of which was governed by a written agreement between Packaging Plus, as franchisor, and a franchisee. A unit franchise agreement generally granted to the franchisee the right to operate a single Packaging Plus store, and obligated the unit franchisee to pay to Packaging Plus an initial franchise fee and continuing royalties based upon the unit franchisee's monthly sales. A master franchise agreement generally granted to the franchisee the right to operate or sell several Packaging Plus stores

within a designated geographical area, and obligated the master franchisee to pay to Packaging Plus an initial franchise fee. A master franchise agreement also entitled the master franchisee to a portion of the initial franchise fees and royalties collected from the unit franchisees operating stores within the master franchisee's territory.

### **THE FRAUDULENT SCHEME**

#### **Packaging Plus Recognizes Revenue And Records An Asset From A Sham Transaction**

18. At Beigelman's request, on or before October 26, 1990, Lyman agreed to execute and falsify documents to evidence a fictitious Packaging Plus franchise agreement. Beigelman told Lyman that the purpose of this fictitious agreement was to improve Packaging Plus's balance sheet in anticipation of a contemplated public offering of Packaging Plus securities.

19. On or about October 26, 1990, Beigelman and Lyman, on behalf of Packaging Plus and FLK, respectively, signed a master franchise agreement ("FLK Agreement"). The FLK Agreement purportedly granted to FLK the right to operate and sell Packaging Plus franchises in Brooklyn, New York, and purportedly obligated FLK to pay a total of \$216,570 to Packaging Plus.

20. Although Beigelman and Lyman executed the FLK Agreement on or about October 26, 1990, Beigelman, directly or indirectly, backdated the FLK Agreement to July 26, 1990, the date of another Packaging Plus franchise agreement with Lyman.

21. Of the \$216,570 purportedly due under the FLK Agreement, \$209,070 was purportedly payable to Packaging Plus in twenty-four monthly installments of \$8,711.25, commencing on March 26, 1991. On or about October 26, 1990, Lyman, on behalf of FLK, signed twenty-four promissory notes of \$8,711.25 each ("FLK Notes").

22. The FLK Agreement and the FLK Notes were a sham. Before the FLK Agreement and the FLK Notes were executed, Lyman and Beigelman had agreed that neither FLK nor Lyman would actually have to pay any amount purportedly due under the

FLK Agreement and the FLK Notes. Beagelman promised to pay Lyman \$25,000 from the proceeds of the contemplated public offering in exchange for Lyman's agreement to this sham transaction.

23. Packaging Plus improperly recorded on its books and records in 1990 franchise fee revenue of \$216,570 and a franchise fee receivable of \$209,070 in connection with the sham FLK Agreement and sham FLK Notes. As a result, in the 1990 Financial Statements, Packaging Plus overstated franchise fee revenue by \$216,570, understated the net loss reported in the 1990 Financial Statements by \$216,570, and overstated franchise fee receivables by \$209,070.

**Packaging Plus Fails To Write Off (Or Establish An Allowance For) Uncollectible Account Receivables, And Fails To Take A Charge Against Income**

**The Bevi Agreement**

24. Beagelman and Albert Bevilacqua ("Bevilacqua"), on behalf of Packaging Plus and Bevi Corp. respectively, signed a master franchise agreement ("Bevi Agreement"), dated September 25, 1990. The Bevi Agreement purportedly grants to Bevi Corp. the right to operate and sell Packaging Plus franchises in Nassau County, New York, and purportedly obligates Bevi Corp. to pay a total of \$224,910 to Packaging Plus.

25. Of the \$224,910 purportedly due under the Bevi Agreement, \$10,812.67 was purportedly payable upon execution of the Bevi Agreement, and \$214,097.33 was purportedly payable to Packaging Plus in twenty-four monthly installments of \$8,920.72, commencing on March 25, 1991. On or about September 25, 1990, Bevilacqua signed twenty-four promissory notes of \$8,920.72 each ("Bevi Notes").

26. Packaging Plus recorded on its books and records in 1990, and reflected in the 1990 Financial Statements, franchise fee revenue of \$224,910 and a franchise fee receivable of \$214,097.33 in connection with the Bevi Agreement.

27. Neither Bevi Corp. nor Bevilacqua ever made any of the payments purportedly due under the Bevi Notes. As of August 8, 1991 (the date that the Form 10-K Amendment was filed with the Commission), Bevi Corp. had missed each of the first five payments purportedly due under the Bevi Notes.

28. GAAP requires the write off of (or the establishment of an allowance for) uncollectible receivables, with a corresponding charge against income, when it is probable that such receivables have become uncollectible. See Statement of Financial Accounting Standards ("FAS") No. 5, Paragraphs 8, 22 and 23.

29. Packaging Plus should not have reflected the \$214,097.33 purportedly due under the Bevi Notes as a franchise fee receivable in the 1990 Financial Statements because, as a result of Bevi Corp.'s failure to pay any of the Bevi Notes, Packaging Plus had no reasonable basis to believe the amount was collectible. Rather, under GAAP, Packaging Plus should have written off the amount as uncollectible (or established an allowance therefor) and should have recognized a corresponding charge to income. By failing to write off (or establish an allowance for) the \$214,097.33 purportedly due under the Bevi Notes, Packaging Plus overstated in the 1990 Financial Statements franchise fee receivables by \$214,097.33, and understated the net loss reported in the 1990 Financial Statements by \$214,097.33.

#### **The FranchiseWorks Agreement**

30. In or about June 1991, Beagelman and Sanfellipo, on behalf of Packaging Plus and FranchiseWorks, respectively, signed a master representative agreement ("FranchiseWorks Agreement").

31. The FranchiseWorks Agreement purportedly grants to FranchiseWorks the right to operate and sell Packaging Plus franchises in California, Oregon and Washington, and, as amended, purportedly obligates FranchiseWorks to pay a total of \$305,245 to Packaging Plus.



32. In 1990, Packaging Plus had on its books and records \$305,245 of franchise fee receivables, relating to certain other franchise agreements, that Packaging Plus had deemed uncollectible ("Uncollectible Receivables"). Under GAAP, Packaging Plus should have written off (or established an allowance for) the Uncollectible Receivables.

33. Beagelman, directly or indirectly, backdated the FranchiseWorks Agreement to October 1, 1990, and substituted on Packaging Plus's books and records and in the 1990 Financial Statements the amount purportedly due under the FranchiseWorks Agreement for the Uncollectible Receivables of \$305,245.

34. By substituting the amount purportedly due under the FranchiseWorks Agreement for the Uncollectible Receivables, Packaging Plus overstated in the 1990 Financial Statements franchise fee receivables by \$305,245, and understated the net loss reported in the 1990 Financial Statements by \$305,245.

**MATERIALLY FALSE AND MISLEADING  
STATEMENTS IN PACKAGING PLUS'S PERIODIC REPORTS**

35. Packaging Plus reported in the 1990 Financial Statements total franchise fee receivables of \$1,273,122; total franchise fee revenue of \$1,599,254; and a net loss of \$145,881.

36. The 1990 Financial Statements were materially false and misleading because they:

- (a) overstated franchise fee receivables by \$728,412.33, or 57.2 percent, as alleged above in paragraphs 18 - 34;
- (b) overstated franchise fee revenue by \$216,570, or 13.5 percent, as alleged above in paragraphs 18 - 34; and
- (c) understated the net loss by \$735,912.33, as a result of Packaging Plus's recognition of \$216,570 of franchise fee revenue from the sham FLK Agreement, and Packaging Plus's failure to write off the

Uncollectible Receivables of \$305,245 and the \$214,097.33 purportedly due under the Bevi Agreement, as alleged above in paragraphs 18 - 34.

37. The Footnotes to the 1990 Financial Statements falsely represent:

- (a) "Approximately \$305,000 of Franchise and Master License Income in 1990 is from a MLA [Master License Agreement] with FranchiseWorks for the California, Oregon, and Washington states;" and
- (b) "Presently \$305,000 is due from FranchiseWorks for a Master License Agreement entered into covering the California, Oregon, and Washington states".

38. Packaging Plus falsely represented in the text of the 1990 Form 10-K and the Form 10-K Amendment that:

- (a) "In 1990 the Company entered into a Master License Agreement with FranchiseWorks, a California corporation engaged in franchise sales and development activities;" and
- (b) "Revenue from Franchise and Master Representative Territories increased [in 1990 by] \$216,915. This increase was due primarily to the granting of . . . one (1) Master Representative Territory amounting to approximately \$305,000."

39. The representations alleged in paragraphs 37 to 38 were materially false and misleading because:

- (a) the FranchiseWorks Agreement was not entered into until in or about June 1991;
- (b) no revenue from the FranchiseWorks Agreement was earned by Packaging Plus in 1990; and

- (c) \$305,000 was not due to Packaging Plus under the FranchiseWorks Agreement at December 31, 1990.

40. Beagelman knew or was reckless in not knowing that:

- (a) the FLK Agreement and the FLK Notes were a sham and that neither Lyman nor FLK would actually have to make the payments purportedly due to Packaging Plus under the FLK Agreement or the FLK Notes;
- (b) the FranchiseWorks Agreement was not entered into until 1991 and, thus, that the amount purportedly due under the FranchiseWorks Agreement was not due at December 31, 1990; and
- (c) Bevi Corp. had missed the first five payments purportedly due under the Bevi Notes.

41. Thus, Beagelman knew or was reckless in not knowing that the 1990 Financial Statements, the 1990 Form 10-K and the Form 10-K Amendment were materially false and misleading.

42. Lyman knew or was reckless in not knowing that the FLK Agreement and the FLK Notes were a sham, that neither Lyman nor FLK would actually have to make the payments purportedly due to Packaging Plus under the FLK Agreement and the FLK Notes, and that Packaging Plus would include the amounts purportedly due under the FLK Agreement and the FLK Notes to improve its balance sheet in connection with a contemplated public offering of its securities.

43. Sanfellipo knew or was reckless in not knowing that the FranchiseWorks Agreement was not, and could not have been, entered into in 1990, and that the amount purportedly due under the FranchiseWorks Agreement was not outstanding at December 31, 1990 because Sanfellipo did not meet Beagelman or anyone else at Packaging Plus until

1991. Sanfelliipo also knew or was reckless in not knowing at the time that he signed the 1990 Form 10-K and the Form 10-K Amendment that Packaging Plus had included the amount purportedly due under the FranchiseWorks Agreement in the 1990 Financial Statements.

**BEAGELMAN AND SANFELLIPO MADE MATERIALLY FALSE AND MISLEADING STATEMENTS TO BELLINI**

44. Bellini issued an audit report, dated July 25, 1991, that contained an unqualified opinion on the 1990 Financial Statements.

45. In connection with Bellini's audit of the 1990 Financial Statements, Beagelman told Bellini that:

- (a) the FranchiseWorks Agreement was entered into in 1990 when Beagelman knew or was reckless in not knowing that the FranchiseWorks Agreement was not entered into until 1991; and
- (b) the FLK Agreement was a valid agreement and that the amount purportedly due under the FLK Notes was collectible when Beagelman knew or was reckless in not knowing that the FLK Agreement and the FLK Notes were a sham.

46. Beagelman also provided Bellini with copies of the sham FLK Agreement, the sham FLK Notes, and the backdated FranchiseWorks Agreement and related correspondence.

47. Sanfelliipo knowingly or recklessly made materially false and misleading statements to Bellini in connection with Bellini's audit of the 1990 Financial Statements. Sanfelliipo signed and returned to Bellini an audit statement confirming that, as at December 31, 1990, FranchiseWorks owed to Packaging Plus \$305,000 under the FranchiseWorks Agreement when Sanfelliipo knew or was reckless in not knowing that the FranchiseWorks Agreement was not entered into until in or about June 1991 and, thus, that FranchiseWorks

did not owe Packaging Plus \$305,000 under the FranchiseWorks Agreement as of December 31, 1990.

**STUMACHER ISSUES A MATERIALLY  
FALSE AND MISLEADING AUDIT REPORT**

**The 1989 Financial Statements Report Franchise  
Fee Receivables And Net Loss In Contravention Of GAAP**

48. In the 1989 Financial Statements, Packaging Plus reported total franchise fee receivables of \$1,210,353 at December 31, 1989, and a net loss of \$180,960 for the year ended December 31, 1989. Packaging Plus overstated in the 1989 Financial Statements franchise fee receivables by \$153,602, or 12.7 percent, and understated the net loss reported by \$153,602.

49. The 1989 Financial Statements improperly include franchise fee receivables of:

- (a) approximately \$45,601 purportedly due from Janmar Corp. ("Janmar") under a master franchise agreement, as amended, between Packaging Plus and Janmar dated September 8, 1988 ("Janmar MFA");
- (b) approximately \$37,416 purportedly due from Andrew Benjamin ("Benjamin") under a master franchise agreement, as amended, between Packaging Plus and Benjamin dated September 30, 1988 ("Benjamin MFA"); and
- (c) approximately \$70,585 purportedly due from J & T Cavanaugh Enterprises, Inc. ("Cavanaugh") under a master franchise agreement, as amended, between Packaging Plus and Cavanaugh dated March 2, 1989 ("Cavanaugh MFA").

50. The amounts purportedly due under the Janmar MFA, the Benjamin MFA and the Cavanaugh MFA were payable by Janmar, Benjamin and Cavanaugh, respectively, as

each earned royalties and initial franchise fees from the sale of unit franchises within their respective territories.

51. GAAP provides that franchise fee revenue shall be accounted for using the installment (i.e. cash) method of accounting when revenue is collectible over an extended period of time and no reasonable basis exists for estimating the amounts of uncollectible franchise fees. See FAS 45, Paragraph 6. Under the installment method of accounting: (a) franchise fees are recognized as revenue at the time such fees are collected; and (b) no revenue is recognized, and no receivable is recorded, at the time the franchise agreement is executed.

52. GAAP also requires the write off of (or the establishment of an allowance for) uncollectible receivables, with a corresponding charge to income, when it is probable that such receivables have become uncollectible.

53. Packaging Plus improperly reported as a receivable the amounts purportedly due under the Janmar MFA, the Benjamin MFA and the Cavanaugh MFA in the 1989 Financial Statements because Packaging Plus should have used the installment method of accounting for these MFAs. Packaging Plus should have used the installment method of accounting for these MFAs because it did not know how many franchises Janmar, Benjamin and Cavanaugh would sell within their territories. Thus, Packaging Plus had no reasonable basis to estimate the amounts that would be collected on these MFAs.

54. Also, Packaging Plus should not have reflected the amounts purportedly due under the Janmar MFA, the Benjamin MFA and the Cavanaugh MFA in the 1989 Financial Statements because collections on those amounts during 1989 had been de minimis and, as such, it was probable that such amounts had become uncollectible. Instead, Packaging Plus should have written off (or established an allowance for) these amounts.

## **The 1989 Audit Report**

55. The 1989 Audit Report is on stationery which reads "Jack E. Diamond, Certified Public Accountant," and bears a signature which reads "Jack Diamond."

56. The 1989 Audit Report also represents that: Diamond audited the 1989 Financial Statements; Diamond conducted an audit in accordance with GAAS; and the 1989 Financial Statements were presented fairly in conformity with GAAP.

57. The Audit Report is materially false and misleading because:

- (a) Diamond did not audit the 1989 Financial Statements, did not sign the 1989 Audit Report, and did not authorize Stumacher, or anyone else, to sign his name to the 1989 Audit Report;
- (b) Diamond did not conduct an audit in accordance with GAAS; and
- (c) As alleged in paragraphs 48 - 54, the 1989 Financial Statements were not presented fairly in conformity with GAAP.

58. Stumacher knew or should have known that Jack Diamond & Co. was engaged to issue a report to accompany the 1989 Financial Statements in Commission filings and, therefore, that the 1989 Audit Report would be disseminated to the investing public.

59. Stumacher was not a CPA during the Relevant Period and, therefore, was not qualified to certify financial statements of reporting companies, including Packaging Plus.

60. Stumacher, directly or indirectly, knowingly or recklessly printed the 1989 Audit Report on stationery which reads "Jack E. Diamond, Certified Public Accountant," and forged Diamond's signature to the 1989 Audit Report.

61. Stumacher also knowingly or recklessly misrepresented in the 1989 Audit Report that:

- (a) Diamond audited the 1989 Financial Statements;
- (b) Diamond conducted an audit in accordance with GAAS; and

(c) the 1989 Financial Statements were presented fairly in conformity with  
GAAP

when, in fact, Diamond had not conducted any audit of the 1989 Financial Statements, and neither had Stumacher nor anyone else at Jack Diamond & Co.

62. GAAS requires that sufficient competent evidential matter be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. See AU Section 326 of the Codification of the Statements on Auditing Standards.

63. Jack Diamond & Co. hired Sindel Co., a public accounting firm located in Valley Stream, New York, to perform the audit field work relating to the audit of the 1989 Financial Statements. Sindel Co. performed certain audit field work on the 1989 Financial Statements in or around February 1990.

64. Sindel Co. did not provide to Jack Diamond & Co. copies of its audit workpapers because Sindel Co. was not paid for its work.

65. Also, Stumacher did not review Sindel Co.'s audit workpapers reflecting the audit work performed by Sindel Co. on the 1989 Financial Statements.

66. Stumacher, therefore, had no reasonable basis to state in the 1989 Audit Report that the 1989 Financial Statements had been audited in accordance with GAAS or that the 1989 Financial Statements were presented fairly in conformity with GAAP.

### **FIRST CLAIM FOR RELIEF**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

(Fraudulent Reports Filed With the Commission -- All Defendants)

67. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 - 66 above.



68. As alleged in paragraphs 1 - 4, 9, 10 - 13 and 18 - 47, during the Relevant Period, Beagelman, Lyman, Sanfellipo and Stumacher, directly or indirectly, singly or in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of Packaging Plus securities, knowingly or recklessly, have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or have omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which have operated as a fraud or deceit upon purchasers of Packaging Plus securities and upon other persons.

69. As part of and in furtherance of the violative conduct, Beagelman, directly or indirectly, engaged in a fraudulent scheme to overstate by material amounts Packaging Plus's franchise fee revenue and franchise fee receivables on its books and records and in reports filed with the Commission, and signed the 1990 Form 10-K and the Form 10-K Amendment when he knew or was reckless in not knowing that the 1990 Form 10-K, and the Form 10-K Amendment and the 1990 Financial Statements contained therein, were materially false and misleading, as alleged in paragraphs 10, 18 - 41 and 44 - 46.

70. As part of and in furtherance of the violative conduct, Sanfellipo, directly or indirectly, engaged in a fraudulent scheme to overstate by material amounts Packaging Plus's franchise fee revenue and franchise fee receivables on its books and records and in reports filed with the Commission, and signed the 1990 Form 10-K and the Form 10-K Amendment when he knew or was reckless in not knowing that the 1990 Form 10-K, and the Form 10-K Amendment and the 1990 Financial Statements contained therein, were materially false and misleading, as alleged in paragraphs 12, 30 - 39, 43 - 44 and 47.

71. As part of and in furtherance of the violative conduct, Lyman, directly or indirectly, engaged in a fraudulent scheme to overstate by material amounts Packaging Plus's franchise fee revenue and franchise fee receivables on its books and records and in

reports filed with the Commission, and signed the FLK Agreement and the FLK Notes when he knew or was reckless in not knowing that the FLK Agreement and the FLK Notes were a sham, and that neither Lyman nor FLK would actually have to make the payments purportedly due under the FLK Agreement and the FLK Notes, as alleged in paragraphs 11, 18 - 23, 35 - 36 and 42.

72. As part of and in furtherance of the violative conduct, Stumacher signed Diamond's name to the 1989 Audit Report, and knowingly or recklessly made material misrepresentations in the 1989 Audit Report that Diamond had audited the 1989 Financial Statements, that Diamond had conducted an audit in accordance with GAAS, and that the 1989 Financial Statements were presented fairly in conformity with GAAP, as alleged in paragraphs 13 and 48 - 66.

73. By reason of the foregoing, Beagelman, Lyman, Sanfellipo and Stumacher have, singly or in concert, directly or indirectly, violated and, unless permanently enjoined, will again violate Section 10(b) of the Exchange Act and Rule 10b-5.

### **SECOND CLAIM FOR RELIEF**

#### **Violations of Section 13(a) of the Exchange Act and Rules 12b-20 And 13a-1**

**(Periodic Reporting Violations -- Beagelman)**

74. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 - 66.

75. As alleged in paragraphs 35 - 39, during the Relevant Period, Packaging Plus violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 when it filed with the Commission the 1990 Form 10-K, and the Form 10-K Amendment containing the 1990 Financial Statements, which were materially false and misleading.

76. As alleged in paragraph 16, during the Relevant Period, Beagelman was a controlling person of Packaging Plus within the meaning of Section 20(a) of the Exchange Act.

77. As part of and in furtherance of the violative conduct, as alleged in paragraphs 18 - 41 and 44 - 46, Beagelman, directly or indirectly, engaged in a fraudulent scheme to overstate by material amounts Packaging Plus's franchise fee revenue and franchise fee receivables on Packaging Plus's books and records and in its reports filed with the Commission. As such, Beagelman did not act in good faith.

78. By reason of the foregoing, Beagelman, as a controlling person of Packaging Plus pursuant to Section 20(a) of the Exchange Act, has, singly or in concert, directly or indirectly, violated and, unless permanently enjoined, will again violate Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1.

### **THIRD CLAIM FOR RELIEF**

#### **Violation of Section 13(b)(2)(A) of the Exchange Act**

#### **(Failure to Keep Proper Books and Records -- Beagelman)**

79. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 - 66 above.

80. During the Relevant Period, Packaging Plus's books and records improperly reflected franchise fee revenue and franchise fee receivables relating to the FLK Agreement, the Bevi Agreement and the FranchiseWorks Agreement, as alleged in paragraphs 18 - 34.

81. As alleged in paragraphs 18 - 34, during the Relevant Period, Packaging Plus violated Section 13(b)(2)(A) of the Exchange Act by failing to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected its transactions and the dispositions of its assets.

82. As alleged in paragraph 16, during the Relevant Period, Beagelman was a controlling person of Packaging Plus within the meaning of Section 20(a) of the Exchange Act.

83. As part of and in furtherance of the violative conduct, as alleged in paragraphs 18 - 34, Beagelman, directly or indirectly, engaged in a fraudulent scheme to overstate by material amounts Packaging Plus's franchise fee revenue and franchise fee receivables on its books and records. As such, Beagelman did not act in good faith.

84. By reason of the foregoing, Beagelman, as a controlling person of Packaging Plus pursuant to Section 20(a) of the Exchange Act, has, singly or in concert, directly or indirectly, violated and, unless permanently enjoined, will again violate Section 13(b)(2)(A) of the Exchange Act.

#### **FOURTH CLAIM FOR RELIEF**

##### **Violations of Rule 13b2-1 of the Exchange Act**

**(Falsification of Corporate Books  
and Records -- Beagelman and Lyman)**

85. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 - 66 above.

86. As alleged paragraphs 18 - 34, during the Relevant Period, Beagelman and Lyman, directly or indirectly, singly or in concert, falsified or caused to be falsified Packaging Plus's books, records and accounts subject to Section 13(b)(2)(A) of the Exchange Act, including its franchise fee revenue and franchise fee receivables accounts.

87. By reason of the foregoing, Beagelman and Lyman have each violated and, unless permanently enjoined, will again violate Rule 13b2-1 of the Exchange Act.

**FIFTH CLAIM FOR RELIEF**

**Violations of Rule 13b2-2  
of the Exchange Act**

**(False and Misleading Statements  
to Auditors -- Beigelman and Sanfellipo)**

88. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 - 66 above.

89. As alleged in paragraphs 44 - 47, during the Relevant Period, Beigelman and Sanfellipo, directly or indirectly, singly or in concert, made or caused to be made materially false or misleading statements, or omitted to state or caused another person to omit to state material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant, in connection with: (a) audits or examinations of the financial statements of Packaging Plus, or (b) the preparation and filing of documents and reports required to be filed with the Commission.

90. As part of and in furtherance of the violative conduct, Beigelman and Sanfellipo each knowingly or recklessly made material misrepresentations to Bellini and provided Bellini with materially false and misleading documents in connection with Bellini's audit of the 1990 Financial Statements, as alleged in paragraphs 44 - 47.

91. By reason of the foregoing, Beigelman and Sanfellipo have violated and, unless permanently enjoined, will again violate Rule 13b2-2 of the Exchange Act.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests a Final Judgment:

**I.**

Permanently enjoining Beigelman, Lyman, Sanfellipo and Stumacher, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act and Rule 10b-5.

## **II.**

Permanently enjoining Beigelman, his officers, agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 13(a) of the Exchange Act and Rule 13a-1.

## **III.**

Permanently enjoining Beigelman, his officers, agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Rule 12b-20 of the Exchange Act.

## **IV.**

Permanently enjoining Beigelman, his officers, agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 13(b)(2) of the Exchange Act.

## **V.**

Permanently enjoining Beigelman and Lyman, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Rule 13b2-1 of the Exchange Act.

## **VI.**

Permanently enjoining Beigelman and Sanfellipo, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Rule 13b2-2 of the Exchange Act.

**VII.**

Ordering Beagelman, Lyman and Sanfellipo to pay civil money penalties pursuant to Section 21(d)(3)(B) of the Exchange Act [15 U.S.C. § 78u(d)(3)(B)].

**VIII.**

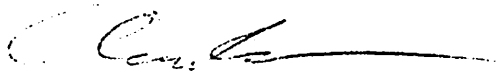
Granting such other relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, hereby demands a trial by jury for all issues so triable.

Dated:           New York, New York  
                  August 6, 1996

Respectfully submitted,



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ANDREW J. GEIST (AG-0284)  
Associate Regional Director

Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
7 World Trade Center  
New York, New York 10048  
(212) 748-8186

Of counsel:

Andrew J. Wertheim  
Christine M. Sommero