**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**
**Release No. 9634 / August 22, 2014**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 72904 / August 22, 2014**

**ACCOUNTING AND AUDITING ENFORCEMENT**
**Release No. 3576 / August 22, 2014**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-16033**

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| **In the Matter of**<br><br>**AIRTOUCH COMMUNICATIONS, INC., HIDEYUKI KANAKUBO, AND JEROME KAISER, CPA,**<br><br>**Respondents.** | **ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE** |

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against AirTouch Communications, Inc., Hideyuki Kanakubo, and Jerome Kaiser, CPA (collectively, "Respondents"), and additionally as to Kaiser, pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

## II.

After an investigation, the Division of Enforcement alleges that:

### A. SUMMARY

1. This matter involves fraudulent financial disclosures and omissions by AirTouch Communications, Inc. ("AirTouch"), a Newport Beach, California issuer, its founder and former president and CEO Hideyuki Kanakubo ("Kanakubo"), and its former CFO and corporate

secretary Jerome Kaiser, CPA ("Kaiser"), in the company's voluntarily filed Form 10-Q for the third quarter of 2012, and in fraudulent statements and omissions to an investor in connection with a $2 million loan made to the company in the fall of 2012.

2. In the third quarter of 2012, AirTouch improperly recognized net revenues of $1.031 million based on $1.24 million of inventory shipped to a Florida entity. This revenue recognition was improper because, as both Kanakubo and Kaiser knew, or were reckless in not knowing, a fulfillment and logistics agreement executed contemporaneously with the Florida entity's purchase order—and upon which the purchase order was conditioned—relieved that entity of any obligation to pay AirTouch unless and until an AirTouch customer purchased the inventory. Kanakubo and Kaiser also knowingly, recklessly or negligently made false representations and omissions about this revenue to an AirTouch investor and lender. Their conduct in inflating the revenues and obtaining financing was also deceptive and constituted a scheme to defraud.

3. In early 2013, AirTouch filed a Form 8-K disclosing its intention to restate net revenues for the third quarter of 2012, based on erroneous revenue recognition.

## B. RESPONDENTS

4. **AirTouch Communications, Inc**. is a Delaware corporation with its principal place of business in Newport Beach, California. AirTouch's common stock is quoted on the OTC Pinks under the symbol "ATCH." AirTouch develops and sells telecommunications equipment designed to integrate mobile telephones into landline telephone systems within a consumer's home.

5. **Hideyuki Kanakubo** resides in Irvine, California. He is AirTouch's founder and former president, CEO, director, and chief technology officer. At all relevant times, Kanakubo was responsible for the management of AirTouch's business. As of May 31, 2014, Kanakubo beneficially owned or controlled 1,858,143 shares of AirTouch common stock, or 9% of the company's total outstanding shares. Kanakubo resigned as president and CEO in March 2013. He resigned as chief technology officer in April 2013.

6. **Jerome Kaiser, CPA** resides in Chowchilla, California. Kaiser is a licensed Certified Public Accountant and an active member in the AICPA and California Society of Public Accountants. Kaiser holds a BS in Accounting and an MS in Business Taxation. He is AirTouch's former CFO and corporate secretary. At all relevant times, Kaiser was responsible for the management of AirTouch's business. As of May 31, 2014, Kaiser owned options to acquire 520,096 shares of AirTouch common stock at a strike price of $2 per share. He resigned from AirTouch in April 2013.

## C. FACTUAL BACKGROUND

7. In or around early 2012, AirTouch developed a new product, the "U250 SmartLinx", designed for sale to Mexico's largest provider of landline telephone services (the "Mexican Entity").

8. On July 30, 2012, AirTouch contacted a Florida provider of logistics and fulfillment services (the "Florida Entity") about the possibility of warehousing AirTouch's U250

SmartLinx product for possible sale to the Mexican Entity. AirTouch had never done business with the Florida Entity prior to July 30, 2012.

9. During contract negotiations related to this potential warehousing arrangement, the Florida Entity's CEO told Kanakubo that the Florida Entity was not buying any product from AirTouch, but rather would only warehouse the U250 SmartLinx inventory for eventual delivery to the Mexican Entity or other customers of AirTouch. AirTouch's salesperson relayed the same information to Kaiser.

10. On July 30, 2012, Kaiser sent Kanakubo a Fulfillment and Logistics Agreement between AirTouch and the Florida Entity (the "Agreement"), asking him to immediately review and sign it, which Kanakubo did. The Agreement included, among other terms, the following provisions:

a) "Section 3 (Orders and Acceptance): [The Florida Entity]'s purchase orders are subject to purchase orders by [the Mexican Entity] and/or any other customer that may be assigned from time to time by AirTouch. In the event [the Mexican Entity] or any of the customers does not fulfill the purchase orders and/or cancels the orders, [the Florida Entity] shall have the right to return these products to AirTouch and obtain a full credit equal to the original purchase amount with no offsets or deductions or any kind.";

b) "Section 5 (Resale to [the Mexican Entity] and/or Assigned Customers by AirTouch): [The Florida Entity] shall store the merchandise until shipment of the Products and shall invoice AirTouch for storage of the products, in/out control, invoicing, stock reconciliation, at 1.5% of the invoice value for the first 30 days and an additional 1% for each additional 30 days."; and

c) "Section 6 (Payment): [The Florida Entity] shall pay for Products in 90 days in accordance with the payment terms invoiced by AirTouch. However, [the Florida Entity] shall not be obligated to pay AirTouch until the Products have been received by [the Mexican Entity] and [the Florida Entity] has received full payment therefor, at which time then [the Florida Entity] shall pay AirTouch for the Products within 10 days thereafter."

11. The same day, the Florida Entity issued a $1.74 million "purchase order" for 20,000 U250 SmartLinx (the "Purchase Order"). The Purchase Order stated a payment term of "Net 90" but also stated that its payment terms were "according to term sheet." The Agreement was the "term sheet." Kaiser received emails where representatives of the Florida Entity described the Purchase Order as "conditional" upon AirTouch's execution of the Agreement. Kanakubo was also made aware that the Florida Entity would not issue the Purchase Order unless AirTouch first executed the Agreement.

12. On July 31, 2012, the Florida Entity sent Kaiser the counter-signed Agreement and the Purchase Order in a single email. Before forwarding this email to AirTouch's controller, he deleted the Agreement as an attachment, and forwarded only the Purchase Order.

13. AirTouch shipped approximately $1.24 million of inventory to the Florida Entity during the third quarter of 2012, pursuant to the Agreement and the Purchase Order. AirTouch recognized revenue on all $1.24 million of inventory shipped to the Florida Entity during the quarter.

14. In October 2012, in connection with AirTouch's quarterly review, AirTouch's controller provided its outside independent accountant with a copy of the Purchase Order, but not the Agreement. The outside independent accountant did not receive the Agreement since Kaiser had never provided AirTouch's controller with the Agreement.

15. When discussing the purported receivable AirTouch booked from the Florida Entity at board meetings, Kanakubo and Kaiser did not inform AirTouch's outside directors, including the chairman of the audit committee, that shipments to the Florida Entity were controlled by the Agreement.

16. AirTouch did not receive any payment from the Florida Entity during the third quarter of 2012, and likewise received no commitment from the Mexican Entity that it would buy product shipped to the Florida Entity, or otherwise.

**1. AirTouch, Kanakubo and Kaiser Made False and Misleading Statements and Engaged in a Scheme to Defraud and Deceptive Conduct Concerning Revenue Recognition in AirTouch's Form 10-Q for the Third Quarter 2012**

17. On November 14, 2012, AirTouch filed its Form 10-Q for the third quarter of 2012, reporting net revenues of $1,031,747. Without the revenue recognized on the inventory shipped to the Florida Entity, AirTouch would not have had any positive revenue for the quarter.

18. Under Generally Accepted Accounting Principles ("GAAP"), revenue cannot be recognized unless it is "realized or realizable" and "earned."

19. AirTouch's recognition of revenues for the inventory shipped to the Florida Entity did not comply with GAAP. Because AirTouch did not sell any product to the Florida Entity—the Purchase Order and the Agreement merely documented, for tracking purposes, the transfer of AirTouch inventory to the Florida Entity in contemplation of future sales—the revenue associated with shipments to the Florida Entity was not realized, realizable or earned.

20. AirTouch's revenue recognition policy, which was disclosed in the 10-Q and was consistent with the requirements of Generally Accepted Accounting Principles, permitted the recognition of revenue only where: "(1) persuasive evidence of an arrangement exists in the form of an accepted purchase order or equivalent documentation; (2) delivery has occurred, based on shipping terms, or services have been provided; (3) the company's price to the buyer is fixed or determinable, as documented on the accepted purchase order or similar documentation; and (4) collectability is reasonably assured."

21. Given the terms of the Purchase Order and the Agreement, AirTouch had no reasonable assurance of collectability from the Florida Entity because AirTouch did not even have a valid receivable to collect from the Florida Entity.

22. Kanakubo and Kaiser signed certifications intended to be made pursuant to the Sarbanes-Oxley Act of 2002, stating that the Form 10-Q fairly presented AirTouch's financial condition and results.

23. Kanakubo and Kaiser knew, or were reckless in not knowing, that AirTouch's Form 10-Q contained materially false or misleading statements concerning reported net revenues and compliance with GAAP or AirTouch's revenue recognition policy.

24. The false and misleading statements in AirTouch's Form 10-Q occurred in connection with the purchase or sale of securities.

25. The false and misleading statements in AirTouch's Form 10-Q were material. These statements would have been viewed by a reasonable investor as significantly altering the total mix of available information, given that AirTouch would not have had any positive revenues for the quarter if it did not recognize the revenue from the Florida Entity. The Form 10-Q also reflected AirTouch's largest revenues ever reported for a quarter.

26. Kanakubo and Kaiser each knew about the Agreement but concealed it from others involved in AirTouch's financial reporting process, including the controller, the chairman of the audit committee, and the company's outside independent accountant. These acts of concealment, along with other deceptive conduct, contributed to a revenue recognition scheme and operated as a fraud.

27. Because of Kanakubo's and Kaiser's positions as AirTouch's senior management, their scienter is attributable to AirTouch.

28. At all relevant times, Kanakubo and Kaiser were the company's principal officers; they were the members of management in charge of AirTouch's day-to-day management, policies, and operations; and they were responsible for preparing and signing AirTouch's SEC filings.

**2. Kanakubo and Kaiser Made False and Misleading Statements and Omissions to an Investor and Engaged in a Scheme to Defraud and Deceptive Conduct Concerning Revenues from the Florida Entity**

29. In or around 2012, Kanakubo and Kaiser solicited a short term bridge loan from an existing AirTouch investor ("Investor A"), in exchange for a promissory note and a warrant to purchase 100,000 shares of AirTouch common stock. Investor A recommended the loan and warrant acquisition opportunity to a related entity, for which he served as the authorized agent during the due diligence process.

30. On October 3, 2012, Kanakubo falsely told Investor A by email that the inventory to be shipped by AirTouch to the Florida Entity—which he mischaracterized as an "authorized fulfillment house" for the Mexican Entity—pertained to an existing purchase order from the Mexican Entity.

31. Around the same time, Kaiser provided Investor A's representatives with the Purchase Order, but did not provide them with or disclose the existence of the Agreement.

32. On October 17, 2012, AirTouch received the loan of $2 million from Investor A in exchange for a warrant to purchase its common stock.

33. Two days later, on October 19, 2012, Kanakubo approved a $15,000 bonus payment to Kaiser for his work on raising capital. The same day, Kanakubo authorized a $15,000 payment to himself in connection with unused vacation time.

34. Kanakubo and Kaiser knew, or were reckless in not knowing, that their statements to Investor A concerning revenues from the Florida Entity were materially false and misleading.

35. Kanakubo and Kaiser also failed to act with reasonable care because: (1) they did not ensure that Investor A was provided with all material information necessary to make their statements to him concerning the inventory shipped to the Florida Entity not misleading; and (2) they provided Investor A's representatives with the Purchase Order but not the Agreement.

36. The false and misleading statements and omissions to Investor A occurred in the offer or sale of, and in connection with the purchase or sale of, securities.

37. Kanakubo's and Kaiser's false and misleading statements to Investor A, and their failure to disclose the terms of the Agreement, were material. Kanakubo's and Kaiser's statements to Investor A, and the terms of the Agreement, would have been viewed by a reasonable investor as significantly altering the total mix of available information because, among other reasons, AirTouch had not sold any of the inventory warehoused with the Florida Entity to the Mexican Entity, and thus had no basis to represent that it expected to collect revenue from the Florida Entity.

38. Kanakubo and Kaiser lured Investor A over several months into loaning AirTouch $2 million based on a distorted view of AirTouch's finances and relationships with third parties, including the Mexican Entity and the Florida Entity. They led Investor A to believe that AirTouch would receive a substantial financial commitment from the Mexican Entity, which would then provide AirTouch with sufficient cash flow for AirTouch to service and repay the loan. These inducements by Kanakubo and Kaiser, along with other deceptive conduct, contributed to an offering fraud scheme and a fraudulent transaction.

39. Because of Kanakubo's and Kaiser's positions as AirTouch's senior management, their scienter and their negligence are attributable to AirTouch.

40. At all relevant times, Kanakubo and Kaiser were the company's principal officers; they were the members of management in charge of AirTouch's day-to-day management, policies, and operations; and they were responsible for negotiating with Investor A, providing Investor A with due diligence materials, and for preparing and signing AirTouch's SEC filings.

**3. AirTouch Announces It Will Restate Revenues**

41. In January 2013, AirTouch's board of directors commenced an internal investigation concerning the net revenues reported in the Form 10-Q for the third quarter of 2012.

42. At this time, Kaiser provided the chairman of the audit committee with the Purchase Order, but withheld the Agreement.

43. AirTouch's board of directors and its outside auditor subsequently received the Agreement, and determined to restate reported revenues for the third quarter of 2012.

44. AirTouch filed a Form 8-K on February 7, 2013, announcing errors in revenue recognition and the intention to file an amended Form 10-Q. No amended Form 10-Q has been filed.

## E. VIOLATIONS

45. As a result of the conduct described above, Respondents AirTouch and Kanakubo violated, and Kaiser willfully violated, Sections 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

46. Respondents Kanakubo and Kaiser are jointly and severally liable under Section 8A(a) of the Securities Act for causing AirTouch's violations of Section 17(a) of the Securities Act and under Section 21C(a) of the Exchange Act for causing AirTouch's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and in the case of Kaiser, for willfully aiding and abetting AirTouch's violations of the Securities Act and the Exchange Act.

## III.

In view of the allegations made by the Division of Enforcement, the Commission deems it appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 17(a) of the Securities Act and Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, in the public interest, and Section 21B(a) of the Exchange Act; whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Sections 21B(e) and 21C(e) of the Exchange Act; and whether other appropriate relief should be granted, including a prohibition from service as an officer or director of any issuer pursuant to Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act; and

C. Whether, pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is appropriate to censure or deny Kaiser the privilege of appearing or practicing before the Commission.

## IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fails to appear at a hearing after being duly notified, Respondents may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission’s Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson
Assistant Secretary