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

**SECURITIES ACT OF 1933**
**Release No. 9719 / January 30, 2015**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 74183 / January 30, 2015**

**ACCOUNTING AND AUDITING ENFORCEMENT**
**Release No. 3625 / January 30, 2015**

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

**In the Matter of**

**AIRTOUCH COMMUNICATIONS, INC., HIDEYUKI KANAKUBO, AND JEROME KAISER, CPA,**

**Respondents.**

**ORDER MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO AIRTOUCH COMMUNICATIONS, INC. AND HIDEYUKI KANAKUBO**

## I.

On August 22, 2014, the Securities and Exchange Commission ("Commission") instituted proceedings 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.

Respondents AirTouch Communications, Inc. ("AirTouch") and Hideyuki Kanakubo ("Kanakubo") have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings

brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents AirTouch and Kanakubo consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 as to AirTouch Communications, Inc. and Hideyuki Kanakubo ("Order"), as set forth below.

## III.

On the basis of this Order and Respondents AirTouch's and Kanakubo's Offers, the Commission finds[1] that:

### Summary

1. This matter involves fraudulent financial misstatements by AirTouch, a Newport Beach, California issuer, its founder and former president and CEO 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 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 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. This 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.

### 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.

[1] The findings herein are made pursuant to Respondent AirTouch's and Kanakubo's Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. **Hideyuki Kanakubo** resides in Irvine, California. He is AirTouch's founder and former president, CEO, and director. 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.

6. **Jerome Kaiser, CPA** resides in Santa Barbara, 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.

## 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'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 GAAP, 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 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 did not provide it to others involved in AirTouch's financial reporting process, including the controller, the chairman of the audit committee, and the company's outside independent accountant. This and 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. Misstatements and Omissions Made to an Investor**

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. 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 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.

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 persuaded Investor A over several months into loaning AirTouch $2 million based on a distorted view of AirTouch's financial relationships with 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; there 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's Restatement**

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. 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.

43. 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.

## Violations

44. As a result of the conduct described above, Respondents AirTouch and Kanakubo violated Section 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.

## IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondents AirTouch's and Kanakubo's Offers.

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents AirTouch and Kanakubo shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Kanakubo is prohibited, pursuant to Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act, for five years following the date of entry of this Order, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

C. Respondent Kanakubo shall pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission. Payment shall be made within 365 days of entry of the Order. If payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent Kanakubo may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent Kanakubo may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent Kanakubo may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Kanakubo as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Diana Tani, Assistant Regional Director, Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower St., Suite 900, Los Angeles, CA 90071.

D. Respondent Kanakubo shall pay disgorgement of $15,000, which represents profits gained as a result of the conduct described herein, to the Securities and Exchange Commission. Payment shall be made within 365 days of entry of the Order. If payment is not made by the date the payment is required by this Order, any interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent Kanakubo may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent Kanakubo may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent Kanakubo may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Kanakubo as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Diana Tani, Assistant Regional Director, Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower St., Suite 900, Los Angeles, CA 90071.

**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Kanakubo, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Kanakubo under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Kanakubo of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary