

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

**RECEIVED  
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OFFICE OF THE SECRETARY**

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

**In the Matter of  
  
AIRTOUCH COMMUNICATIONS,  
INC., HIDEYUKI KANAKUBO, AND  
JEROME KAISER, CPA,  
  
Respondents.**

**RESPONDENT JEROME  
KAISER'S MOTION IN LIMINE  
TO EXCLUDE EVIDENCE  
RELATING TO COMPANY CAR  
AND CREDIT CARD USAGE**

## I. INTRODUCTION

Respondent Jerome Kaiser hereby moves in limine for an order excluding any and all evidence, references to evidence, testimony, or argument relating to Mr. Kaiser's company car and company credit card usage. This motion is based on the ground that these matters are irrelevant and immaterial to the allegations in the Order Instituting Proceedings and to the determination of the proceeding. Moreover, allowing evidence, testimony or argument on these matters would prolong the hearing significantly, wasting the valuable time and resources of the hearing officer and all other participants while adding nothing of probative value to the proceeding.

Specifically, the Division of Enforcement's proposed exhibit list includes numerous documents relating to: (1) Mr. Kaiser's usage of the car that AirTouch Communications, Inc. ("AirTouch" or the "Company") purchased pursuant to Mr. Kaiser's offer of employment; and (2) certain purchases on Mr. Kaiser's Company-issued credit card. These matters are not alleged (or even mentioned) in the OIP and are irrelevant to the determination of the issues that are before the hearing officer in this proceeding. Because it is apparent that this subject matter does not relate to the Division's allegations, the clear inference is that the Division desires to demonstrate that Mr. Kaiser is not to be trusted because he made inappropriate use of Company property. But in order to gain the benefit of that conclusion (which isn't ultimately relevant to any matter at issue in this proceeding) the Division would need to prove that Mr. Kaiser's use of Company property was indeed inappropriate. Necessarily that will entail a trial within the trial on the propriety of hundreds of Mr. Kaiser's purchases as Mr. Kaiser would then need to defend the propriety of these purchases. Furthermore, the Division has not proffered sufficient detail for the hearing officer to even properly adjudicate this issue. For example, if permitted to offer evidence on this subject, the Division would proffer evidence that on September 15, 2012

(among other dates), Mr. Kaiser's company credit card was used to make purchases at Target. But the Division's proposed exhibit list includes no evidence that itemizes what in fact was purchased at Target on that date, or that would suggest that the purchases were inconsistent with Mr. Kaiser's routine practice of purchasing office supplies for AirTouch. The Division chose not to investigate this issue. Mr. Kaiser does not have the ability to conduct discovery on this issue. As a result, we would be left with a record devoid of sufficient detail to meaningfully assist the hearing officer in assessing the probative value of this evidence. Without this detail, one can infer the Division's goal with this evidence is merely to smear Mr. Kaiser with rumor and innuendo and distract from the issues genuinely in play in this proceeding. Such tactics have no place in this proceeding.

## II. FACTUAL BACKGROUND

The Company provided Mr. Kaiser with a company credit card and a company car. During the course of his employment, Mr. Kaiser drove the car on his daily commute and also to travel to business meetings. Mr. Kaiser used the credit card for business expenses such as gas for the car, stocking the office with food and dry goods, and business-related meals. The Company's controller received the monthly credit card statements and reviewed them with Mr. Kaiser and the Company's CEO before paying them.

After the Company decided to restate its revenues for the third quarter of 2012, and after Mr. Kaiser left the Company, AirTouch director J. Steven Roush looked into the reporting and documentation of employee expense reports. Mr. Roush reviewed Mr. Kaiser's credit card statements and expense reports, and then drafted a memorandum to the board of directors. *See* Exhibit D (Division's proposed Trial Exhibit 204). In the memorandum, Mr. Roush listed charges that he did not understand and raised questions. Mr. Roush explicitly noted that the memorandum was only preliminary and that he had not yet given Mr. Kaiser an opportunity to

be heard. *Id.* at 6. The memorandum concluded that expense account reporting had been inadequate and that some charges on Mr. Kaiser's card appeared personal in nature. The memorandum did not conclude or even suggest that Mr. Kaiser had engaged in illegal or wrongful conduct.

Around the same time, Mr. Kaiser and the board of directors disputed whether he should retain possession of his company car after he left the Company. Mr. Kaiser retained possession of the car pursuant to his offer of employment with the Company. Exhibit G (Division's proposed Trial Exhibit 119) ("In the case of termination, . . . [y]ou will also receive at no cost to you the company vehicle that you are driving at the time of your termination."). Despite this provision of Mr. Kaiser's employment agreement, the board requested that Mr. Kaiser return the car. Exhibit C (Division's proposed Trial Exhibit 203).

Mr. Kaiser disputes any assertion that he improperly used the company credit card or improperly retained his company car.

The Division spent over a year investigating Respondents. During its investigation, the Division never asked Mr. Kaiser about his expense reports or his usage of the company car. Despite being plainly aware of the alleged issues, the Division never inquired into them with the other twelve witnesses who gave testimony—including the CEO, the controller, and Steve Roush, the director who raised these matters. Indeed, when another director raised these matters in testimony, the Division did not show any interest or follow up but instead moved on to ask questions about other topics. Testimony of James Canton, 65:21 to 68:10 (Mar. 11, 2014) (After Canton volunteered information about Mr. Kaiser's credit card and car, the Division asked no questions about what Canton said but instead initiated a line of inquiry into a bonus payment).

Not only did the Division not include these matters in its investigation, it did not seek to place these matters at issue in these proceedings. The Order Instituting Proceedings, which sets out the Division's allegations against Respondents and the context for those allegations, contains no reference to these matters.

The Division has not explained why it has suddenly decided to expand the scope of this proceeding with new, unrelated matters. It appears that the Division wishes to suggest to the hearing officer that the questions raised by Roush about Mr. Kaiser's company credit card and car are probative evidence suggesting that Mr. Kaiser is liable for fraudulently filing a Form 10-Q and making false representations to an investor.

Mr. Kaiser objects to the Division's introduction of evidence on these matters, which is irrelevant to this proceeding and therefore inadmissible. Were the Division allowed to use this evidence and Mr. Kaiser therefore obliged to defend himself, this hearing on the Division's allegations would be derailed, necessitating a side hearing on issues raised by the board of directors, which would waste the valuable time and resources of the hearing officer and the parties without advancing the ultimate determination of this proceeding.

### **III. ARGUMENT**

#### **A. These Matters Are Irrelevant to this Proceeding.**

The Commission Rules of Practice specify that "the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious." 17 C.F.R. § 201.320.

The allegations in this proceeding involve: (1) revenue reported in a Form 10-Q filed by the Company; and (2) representations by Company officers to a representative of an investor in the Company. The Division of Enforcement's proposed exhibit list contains documents that are wholly unrelated to these allegations or any issue that may aid in the adjudication of these

allegations. Specifically, the Division's list includes numerous exhibits related to Mr. Kaiser's company car and company credit card usage. (A selection of these exhibits is identified in the Appendix attached hereto.) This evidence, however, is irrelevant because, if admitted, it would not make more or less probable any fact of consequence in determining whether the company fraudulently filed its Form 10-Q due to improper revenue recognition or whether Respondents made false representations about the company's revenue to a representative of an investor.

The factual background set forth in the Order Instituting Proceedings represents the culmination of the Division's investigation, yet it makes *no mention* of Mr. Kaiser's company car and *no mention* of Mr. Kaiser's use of company credit cards. The absence of any reference to these matters in the Order Instituting Proceedings, even as background information, demonstrates the irrelevance of these matters. Neither of these matters illuminates, elucidates, or corroborates any aspect of the allegations in this proceeding.

Because these matters are irrelevant to the issues in this proceeding as framed by the Division's allegations, Mr. Kaiser requests that the hearing officer exclude any reference to them at the hearing in this matter.

**B. Inclusion of These Matters Will Waste Time.**

Allowing the Division to refer to Mr. Kaiser's car or credit card usage at the hearing will cause unnecessary delay of the proceeding without contributing to its determination. The hearing officer may take guidance from Federal Rule of Evidence 403, which cautions against introducing evidence when its "probative value is substantially outweighed by a danger of . . . undue delay [or] wasting time." This rule recognizes the value of an adjudicator's time, as well as that of the parties, and counsels the avoidance of creating unnecessary mini-trials within a trial. *See, e.g., EEOC v. UMB Bank Fin. Corp.*, 558 F.3d 784, 794 (8th Cir. 2009) (approving of the district court's exclusion of unproven allegations that "would have required extensive

examination of wholly collateral issues regarding not only the specifics of [the] allegations, but also the truth and merits of those allegations.” *See* Fed. R. Evid. 403. As the district court noted, “We are not going to try another lawsuit. We have enough to manage.”).

Here, the matters of Mr. Kaiser’s company car and credit card usage merely concern questions raised but unproven. If the Division introduces these matters into this hearing, Kaiser will be obliged to defend himself. He is willing and able to sit before the hearing officer and discuss the propriety of each of hundreds of credit card charges. But this matter is not properly raised in this proceeding. It would be a waste of time for the Division and for Kaiser and his counsel to prepare for such side litigation. It would be a waste of time for this hearing officer to hear it. And it would delay without reason the resolution of those allegations properly at issue in these proceedings.

**C. These Matters Are Irrelevant As Character Evidence.**

Mr. Kaiser believes that the Division may attempt to use the matters of Mr. Kaiser’s company car and credit card usage, which are irrelevant to the allegations, in the hearing as evidence of Mr. Kaiser’s character in a misguided attempt to prove that Mr. Kaiser is liable for fraudulently filing a Form 10-Q and making false representations to a representative of an investor.

Pursuant to Federal Rule of Evidence 404(a)(1), “[e]vidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.” Similarly, subdivision 404(b)(1) specifies, “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” The rule recognizes that character evidence “may be admissible for another purpose, such as proving motive,

opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Subdivision 404(b)(2).

Although the hearing officer is not expressly bound by the Federal Rules of Evidence, the policy rationale expressed in Rule 404 is particularly applicable here and has been applied in other administrative proceedings. *See H.J. Meyers & Co., Administrative Proceeding File No. 3-10140; Initial Decision Release No. 211 (Aug. 9, 2002), 2002 SEC LEXIS 2075, at \*168 n. 49 (applying Federal Rule of Evidence 404 and noting that “[c]haracter evidence is of slight probative value and may be very prejudicial. It tends to distract the finder of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man and punish the bad man because of their respective characters, despite what the evidence in the case shows actually happened.”)*.

Even if the Division were to attempt to use the matters of Mr. Kaiser’s company car and credit card usage to impugn Mr. Kaiser’s character, at most the Division would be able to indicate whether Mr. Kaiser had a propensity for misconduct related to credit card expenses or contracted-for employee perks. Such an exercise would be irrelevant to determining the allegations before the hearing officer in this proceeding, and as discussed previously, would only amount to a waste of time. While the exception to Rule 404 recognizes that character evidence may in some circumstances be useful towards “proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident,” the matters of Mr. Kaiser’s company car and credit card usage have no bearing on any putative motive or intent to defraud investors that the Division may allege he had.

Courts do on occasion admit evidence of alleged misconduct that is distinct from the allegations at bar, but only when that misconduct is “inextricably intertwined” with the causes of



action. *SEC v. Franklin*, 265 Fed. App'x 644, 646 (9th Cir. 2008) (unpublished) (citing *United States v. DeGeorge*, 380 F.3d 1203, 1220 (9th Cir. 2004) (explaining that “evidence of prior acts may be admitted if the evidence constitutes a part of the transaction that serves as the basis for the criminal charge” or “when it was necessary to do so in order to permit the prosecutor to offer a coherent and comprehensible story regarding the commission of the crime”)). Here, Kaiser’s company car and credit card usage are not inextricably intertwined or even intertwined at all with the Form 10-Q or the other alleged representations that are before the hearing officer. These matters are neither “a part of the transaction” of the alleged violations of securities laws nor relevant to the Division’s ability to “offer a coherent and comprehensible story” of the commission of these alleged violations.

Mr. Kaiser therefore requests that the hearing officer prevent the Division from attempting to offer the matters of his company car or credit card usage as character evidence.

**D. These Matters Are Irrelevant to Truthfulness.**

Similarly, Mr. Kaiser believes that the Division may attempt to use the matters of Mr. Kaiser’s company car and credit card usage to impugn his character for truthfulness. These matters, however, are irrelevant as indicators of Mr. Kaiser’s credibility.

Federal Rule of Evidence 608 provides well-developed guidelines for regulating witness impeachment. The rule allows counsel to challenge a witness’s credibility by introducing reputation or opinion evidence, or extrinsic evidence of certain criminal convictions, relating to his character for truthfulness. However, subdivision (b) of the rule prohibits counsel from offering extrinsic evidence of other specific instances of conduct to impeach a witness. The rule permits counsel to inquire about other specific instances of conduct during cross-examination but not to introduce evidence of the conduct. Furthermore, counsel may only ask a witness about specific instances of conduct to the extent they are “probative of the [witness’s] character for

truthfulness or untruthfulness.” Federal Rule of Evidence 608(b); *see also United States v. Frost*, 914 F.2d 756, 767 (6th Cir. 1990) (finding the district court correctly prohibited a witness from testifying to another witness’s prior bad acts in order to impeach him and noting the counsel was “‘stuck with’ the response given on cross-examination”); *United States v. Mangiameli*, 668 F.2d 1172, 1175 (10th Cir. 1982) (finding the district court correctly prohibited a witness from relating specific examples of another witness lying under oath).

As a threshold issue, the matters of Mr. Kaiser’s company car and credit card usage are not “probative of the character for truthfulness or untruthfulness.” Rule 608(b). It is not clear how any of the questions raised on these matters bears on Mr. Kaiser’s character for telling the truth. The board of directors’ concern about the company car is a question of contract interpretation rather than dishonesty. Similarly, the board’s concern about the company credit card, which did not progress beyond one director’s review of credit card statements, is a question of adequate reporting and documentation rather than untruthfulness. The hearing officer should not permit the Division to twist these matters into somehow demonstrating that Mr. Kaiser has a history of not telling the truth.

Moreover, even if the hearing officer were to agree with the Division that these matters somehow bear on Mr. Kaiser’s truthfulness, Rule 608 restricts the Division to asking Mr. Kaiser (or another witness who has testified about Mr. Kaiser’s character) about them on cross-examination. Beyond such questioning, this rule prohibits the Division from introducing evidence about these matters to impeach Mr. Kaiser.

Mr. Kaiser respectfully requests that the hearing officer preclude the Division from attempting to use the matters of Kaiser’s company car and credit card usage to impeach his character.

**IV. CONCLUSION**

For all the foregoing reasons, Mr. Kaiser respectfully requests that the hearing officer exclude at the hearing any reference, including exhibits, witness testimony, and attorney comments, relating to Mr. Kaiser's company car and company credit card usage.

Dated: December 23, 2014

Respectfully submitted,

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*Attorneys for Respondents  
Hideyuki Kanakubo and Jerome Kaiser*

**APPENDIX – IRRELEVANT EXHIBITS ON DIVISION’S PROPOSED EXHIBIT LIST**

| <b>Division’s<br/>Proposed Trial<br/>Exhibit No.</b> | <b>Attached Hereto as<br/>Exhibit No.</b> | <b>Bates No.</b>                                 | <b>Irrelevant<br/>Matter</b> |
|--|---|--|------------------------------|
| 165  | A   | SEC-LA4275 Tr. Ex. 0165                          | credit card                  |
| 202  | B   | SEC-LA-4275-000027181                            | credit card;<br>company car  |
| 203  | C   | SEC-LA-4275-000027298                            | company car                  |
| 204  | D   | SEC-LA-4275-000027299 -<br>SEC-LA-4275-000027305 | credit card                  |
| 206  | E   | SEC-LA-4275-000027388                            | credit card;<br>company car  |
| 210  | F   | SEC-LA-4275-000033204 -<br>SEC-LA-4275-000033206 | company car                  |

**Exhibit A**

**AirTouch status report**

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**From:** "J.Steven Roush" [REDACTED]  
**To:** Larry Paulson [REDACTED]  
**Cc:** Daniel Donahue [REDACTED]  
**Date:** Sat, 13 Apr 2013 10:37:31 -0700

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Yesterday was a very long day.

We got all of the offices and file cabinets packed up in boxes. We have one office with boxes of old finished inventory and we got engineering room put in piles but not packed I will need some guidance from Hide as to what is good vs bad stuff in there.

Monday I will try and find a storage unit to rent and move as soon as possible. Between financial files, office supplies and just stuff there is a lot. Objective is to get office as neat looking as possible with furniture in it so owner can start marketing.

Office furniture issue is a little complex. we outright own some but majority is held under 2 leases. One lease we have remaining \$809 to pay off the other which includes some of cubicles and 2 offices we owe about \$8000. Game plan would be in following sequence: Let owner know what status is with furniture lease (transparency with him is best) Get boxes to storage Have owner start marketing space as turnkey. Hope to strike deal with new tenant regarding furniture. Contact used furniture broker get a quote for them buying hauling out. I assuming we would could not get much If new tenant does not want furniture then (a) sell to broker if we can get anything or (b) contact local nonprofits and offer to them if they would come tear down owned stuff and haul away

The guy who maintains our IT was here most of the day out of the goodness of his heart He has not been paid for 8 months. Our network is fairly complex for small company.

We shut down emails for AirTouch Japan and Labs but left China with Sylvia on it She thinks there is still some information that could flow from that. For AirTouch corporate we cut off everyone's email except Wyatt, Izza, Belt in case of Telmex correspondence. Cut off Hide's and Jerome's but will have any emails sent to them directed to my email.

As to the server, we have left it here physically primarily so Sylvia can still access financial information.



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FOIA CONFIDENTIAL TREATMENT REQUESTED

DAF017035

SEC-LA4275  
Tr. Ex. 0165 - 00001

As soon as we have to vacate space, I am hoping that Sylvia will have all financial stuff up as far as she can go. Our QuickBooks accounting software can not be downloaded to a pc it runs in a hosted network environment. IT guy would maintain server for us at his business for free but only for month or so.

We have down loaded as much as we can from all various drives. I will not get into specifics but Company emails are not maintained for lengthy period of time but we have downloaded what we could get to.

We did an inventory of all computer equipment Most is fairly old. It appears that when employees were terminated all took their laptops. I need to find their offer letters to determine if that condition was in there.

My focus today will be to go through Jerome's personal file drawers He has piles of unfiled documents that he kept under lock and key. Second will be to finalize my write up on the EMI inventory investigation. We have a \$2.2 mil liability to EMI at 3/31/2013. Third will be to start writing up my findings from the expense report investigation and determine if we have another material weakness to report

Sorry to bother you with all this detail but think it is important for you to know and comment if you have any concerns about they actions I am taking

Steve

## **Exhibit B**



## AirTouch-Jerome

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**From:** "J.Steven Roush" [REDACTED]  
**To:** Larry Paulson [REDACTED]; larrympaulson@gmail.com; Jaymie Canton [REDACTED]; jcanton@nataregard.com  
**Cc:** Daniel [REDACTED]  
**Date:** Wed, 10 Apr 2013 16:53:23 -0700

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Ironically after our call Jerome showed up in the office I am not sure what his real motive was was coming but 2 guys that take care of fish tanks showed up too.

I sat Jerome down and discussed the following:

1. EMI inventory issue
2. I got his building and office keys
3. 8-K announcing his departure
4. Missing furniture et al He said he would return He thought he was doing us a favor since we would have to pay to remove it
5. Told him as part of my review of 12/31/2012 financials that I had looked at credit card statements and noted lack of documentation and approvals. I had also noted what appeared to be some personal use of the cards. His response was due to lack of personnel but control existed that Hide reviewed his statement monthly and reviewed Hide. Based on discussions with Sylvia and then Hide does not appear that was case
6. Told him the Board wants his car back. You can guess his response. His response was at the time AirTouch did not have credit standing to lease (we had raised the \$12mil not sure why not?) I questioned Hide who said yes at time Hide leased his car he had to give a personal guarantee Jerome did not want to give. Jerome then convinced Hide that rather than Company paying all the embedded interest in a lease that outright purchase would save money. He says we owe it to him for all the hard work and fact he has not been paid in addition to fact he legally is entitled to it. I told him I do not want to debate issue

We then discussed other issues involving D&O, signing of 10-Q and 10-K, occupancy issues and bank signatory issues.

## **Exhibit C**

**Automobile-confidential-action required**

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From: Larry Paulson [REDACTED]

[REDACTED]

[REDACTED] Daniel Donahue

[REDACTED]

[REDACTED]

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Jerome,

The Airtouch board does not acknowledge the legitimacy of your transfer of company property, the BMW automobile to yourself. This is not an appropriate action given you were the CFO and the board of directors had no knowledge of this action. The board would not have approved this transfer given your employment agreement with the company; regardless of a 2010 letter from Hide.

We request that you return the BMW to the company along with title and all related documentation immediately.

Thank you  
Larry

Larry M Paulson

[REDACTED]

## Exhibit D

## AirTouch investigation-expense account reporting

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**From:** "J.Steven Roush" [REDACTED]  
**To:** Larry Paulson [REDACTED] Jayme Canton [REDACTED]  
**Cc:** Daniel Donahue [REDACTED]  
**Date:** Wed, 17 Apr 2013 19:22:11 -0700  
**Attachments:** AirTouch Investigation-expense accounts.doc (35.84 kB)

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Gentlemen I apologize for the detail in this draft memo but it is needed to see the patterns/trends that I describe

This has taken a lot of time but we needed to follow this up

Steve

**CONFIDENTIAL; NOT FOR FURTHER DISTRIBUTION**

To: The Audit Committee of the Board of Directors of AirTouch Communications, Inc.

From: J. Steven Roush, Chair of the Audit Committee

Re: Investigation of Expense Report Documentation

Date: April 17, 2013 DRAFT

Background: While conducting the investigation of the TM Cell revenue recognition and EMI inventory restatements an issue regarding support for expense reports was called to my attention. I felt it was prudent to look into employees expense accounts from both a reporting and a documentation standpoint. Specific emphasis placed on Hide(CEO) and Jerome(CFO)

Approach: I started first with Jerome Kaiser by obtaining his expense report file for 2012 and 2013. It appears he was completing formal expense reports but with no supporting documentation for January through April of 2012. From May 2012 forward no report had been prepared and once again no evidence of supporting documentation. The Controller was taking the credit card statements and entering the charges into the accounting records after asking Jerome what accounts certain expenses should be charged to.

I then obtained the credit/debit card statements for 2012 and the 3 months of 2013 and started my review. I did not review all the months in 2012(since I was focusing more on patterns) but did look at the three for 2013

I listed expenses out which in my judgment had strange patterns such as frequency or to vendors in amounts that seemed inordinate based on the size of AirTouch's operations.

The following examples are not all inclusive of my findings but are indications of patterns.

11/29/2012 two gas fill ups Chevron \$28/\$37

12/9 two gas fill ups Chevron\$37/50

11/10/2012 Beacon Car wash/gas \$55 Chevron \$43

11/17 Chevron-Lake Forest(LF) \$17

11/18 Chevron LF \$43

11/18 Chevron-Fresno \$79

All of above shows filling up of two cars? plus his trip to Fresno

11/19/2012 Beacon Car Wash/gas \$100

11/22 Chevron \$90

11/22 Vons Groceries-Chula Vista \$60

11/24 Chevron \$78

Appears he took trip to San Diego over Thanksgiving

10/13 Chevron-Fresno \$27

10/13 Chevron LF \$87

10/13 Red Robin -Fresno \$61

10/14 Chevron-Fresno \$78

10/16 Chevron-LF \$90

10/17 Chevron -LF \$43

10/20 Chevron-LF 41

10/21 Chevron LF \$57

Appears he took trip to Fresno and filled up more then one car when he returned

8/31-9/2 Appears trip to Fresno-various gas/food etc total \$370

9/5 Beacon Bay Car Wash/gas \$105

9/6 Chevron-LF \$74

Appears filling up 2 cars

9/5/2012 Beacon Bay/gas \$106

9/6 Chevron-LF \$74

9/7 Gullivers Resturant (friday night) \$138

9/8 Chevron -LF \$85

9/8 Target-Fresno \$151

9/9 Chevron-Clovis \$87

9/9 Red Robin Restaurant-Fresno \$73

Appears trip to Fresno, meals, groceries, etc plus multiple gas fill ups

There are multiple examples of the above throughout 2012

Now for the next questionable batch:

9/8 Target-Fresno \$151

9/15 Target \$115

9/16 Target \$55

9/22 Target \$127

11/17 Target-Tulare \$163

11/18 Target -Fresno \$295

11/18 Par 3 Golf Food-Chowchilla \$79

11/19 Target-Irvine \$140

I am sure he will respond that all Target stuff was for office but note a number were purchased while on trips to Fresno. His son lives in Fresno

The strange pattern with Target purchases were pervasive through out. Target purchases alone in March 2012 were \$1466 Another strange thing with Target purchases from Irvine store there were always two separate charges on the same day(example 3/23 one charge for \$100 and another for \$138)

Following are some other strange looking charges:

3/14/2012 Aaron Bros \$804

3/19 Bed Bath & Beyond \$120

3/20 Pier 1 \$65

3/20 Pier 1 \$654

3/20 California Silk Plant \$1325

3/22 Z Gallerie \$97

3/23 Yankee Candle \$101

3/22 Z Gallerie \$162

1/30 Ballard Design \$155

2/3 Ballard Design \$422



3/1 Ballard Design \$1956

All of the above look like decorating items. I am told that Jerome's wife does some home decorating. I am jumping to no conclusions. Strangely enough AirTouch had moved into their new space in November 2011 and these charges are 5 months after

Following are some other unusual looking charges:

8/3-8/4 2012 Edwards Theatres \$19/\$44

8/8 Sirius XM radio \$175

8/12(Saturday) Ruby's Diner \$71

7/4(Holiday) Ruby's Diner \$160

7/4(Holiday) Outback Steakhouse \$65

8/19(Sunday) Claim Jumper \$115

I have saved the best for last. On 12/30/2012 while Jerome and wife were in Hawaii they bought two inter island plane tickets for \$192 each. Hide approved one ticket so Jerome could get some place to take Board call? On the same day in Santa Maria, CA two cars were rented from Avls for \$143 and \$162 and on 12/30 a charge for gas at a Chevron in Fresno for \$110(fill up for 2 cars?).

Starting in 2013 Jerome's credit card maxed out at \$10,000 she is activated a terminated employees card(John Collins) and started using it. On 2/22/2012 three cash advances for \$385.74, \$425 and \$425. On 3/8/2012 he had three more cash advances each for the exact same amounts as above. He told Sylvia this was to cover tips/drinks etc while traveling.

Ironically the credit card file for 2011 is missing but Sylvia was able to obtain statements for November ,December 2011 and January 2012. Some charges I pulled off them as follows:

10/8/2011(Saturday) Red Robin \$60

10/9(Sunday) The Magic Nut \$36

10/9(Sunday) French steak House \$180

10/9 Target \$153

10/9 Target \$241

10/15(Saturday) Romano Grill \$53

10/23 Chevron-LF \$65

10/22 Chevron-LF \$80  
10/22 Target \$152  
10/22 Target \$202  
12/18(Sunday) Ruby's Diner \$45  
12/17 Yankee Candle \$110  
12/17 American Greetings \$126  
12/17 Bed Bath & Beyond \$284  
12/21 Macy's East \$235  
12/24(Sunday) Paradise Restaurant \$148  
11/19(Saturday) Pancake House \$32  
11/18 CVS Pharmacy  
11/20(Sunday) BJ Restaurant \$105

It would appear to me from the above charges that the practices in 2012 and 2013 were also pervasive in 2011

Even though his official resignation was 4/4/2013, we had double gas bills charged on 4/8/2013 and single one on 4/10. I got all cards cancelled on 4/10/2013.

In order to conclude my investigation I would have to sit down with Jerome and get his explanation for these charges. If this was a full blown forensic investigation many more steps would need to be taken.

In a very unsophisticated approach I have attempted to quantify the magnitude of the above issues. Total credit card charges for Jerome for 2012 were \$82,430. I am estimating the personal charges to be about \$500/month. This is exclusive of the questionable Target, home furnishing and other charges.

**Conclusion:**

It would appear to me:

1. There were not adequate controls over expense account reporting. Reports were not being prepared, supporting documentation (ie receipts) and explanation for charges were not attached and no evidence of review and approval existed.
2. There are numerous charges for Jerome Kaiser that strongly appear to be personal in nature such as double fill up of gas on the same day, restaurant charges on weekends and holidays, movie tickets, etc

3 There are other charges that appear very suspect in nature such as the number of and dollar amounts of charges to Target. Also charges to various home furnishing stores are suspect.

**OPEN ITEMS**

1. Discuss with Board what further actions are needed
2. Determine if this constitutes a material weakness for disclosure
3. Incorporate my limited review of other individuals expense reports into here

## **Exhibit E**

## Demand Notifications

---

From: [REDACTED]  
[REDACTED]  
[REDACTED]

Date: Mon, 22 Apr 2013 15:45:53 -0700

---

I may have missed this w my travel so update me. Have we sent these formal Demands out from the board as yet? If not I suggest ASAP and they respond in writing.

Missing anything more? They should be pressed to clarify all but we need to notify them of our demands.

1. Demand that Jerome return the company auto, produce his expenses verification and missing records.
2. Demand that all IP, company properties, computers, designs and company know how be returned to the company ASAP.
3. Demand a full representation of all questionable agreements, side deals and relationships thus far with vendors be fully disclosed.
4. Demand that Hide disclose in writing if he has or is using any ATCH company IP or company info proprietary to the company for his new company.
5. Demand that they explain in detail how it is possible for both of them to resign from the company leaving the company with missing financial files, incomplete records, outstanding bills and shoddy financial controls?

Jayme

Dr. James Canton  
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Replicant: Dr. Future

FOIA CONFIDENTIAL TREATMENT REQUESTED

DAF017160  
SEC-LA-4275-000027388

AP No. 3- 16033  
Plaintiff Exhibit No. 206

## **Exhibit F**

**Re: Jerome-auto**

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**From:** "J.Steven Roush" [REDACTED]  
**To:** Larry Paulson [REDACTED]  
**Date:** Tue, 16 Apr 2013 14:18:23 -0700

---

Larry I can not be sure of transfer date He down loaded the form from DMV and had the 3/19 date on it Not sure when he took to DMV

---

**From:** Larry Paulson [REDACTED]  
**To:** J.Steven Roush [REDACTED]  
**Sent:** Tuesday, April 16, 2013 2:15 PM  
**Subject:** Re: Jerome-auto

Did he transfer on 3/19 as per computer? Or later?

On Apr 16, 2013, at 2:08 PM, J.Steven Roush wrote:

**8-K says 4/4/2013 resigned**  
His email to employees saying all terminated was as of 3/15/2013

---

**From:** Larry Paulson <larrympaulson@gmail.com>  
**To:** J.Steven Roush <roush007@yahoo.com>  
**Sent:** Tuesday, April 16, 2013 1:34 PM  
**Subject:** Re: Jerome-auto

What was date he informed us of resignation?  
Larry

On Apr 16, 2013, at 12:43 PM, J.Steven Roush wrote:

----- Forwarded Message -----

**From:** J.Steven Roush [REDACTED]  
**To:** J Steven Roush [REDACTED]  
**Sent:** Monday, April 15, 2013 7:02 PM  
**Subject:** Jerome-auto

Jerome asked Sylvia for blank check He writes and signs for car purchase on 8/26/2011 for \$98,315.50 to Crevier BMW. We closed our funding around 8/2/2011. At 8/31/2011 we had cash of \$8.7 mil

On or about 3/19/2013 he asks for the file which has car title. He says the Board authorized it. On his computer find Application to transfer title 3/19/2013

It appears that the Crevier vendor file has been purged there was a check to them for \$1914 on 10/25/2012 that I can find no support for. I checked with dealership and this was for rear tires. Sylvia said that at one point he was talking about upgrading his sound system

I will try and call Crevier . I called Crevier 4/16/2013 They will not release service records to me since they have already been notified of title transfer

I had previously asked Jerome about car purchase. He said they could not lease because AirTouch did not have credit standing. I asked Hide and he said Jerome said buying would save a lot in interest charges under the lease

Larry M Paulson  
[larrympaulson@gmail.com](mailto:larrympaulson@gmail.com)

Larry M Paulson

FOIA CONFIDENTIAL TREATMENT REQUESTED

DAF022942  
SEC-LA-4275-000033205

AP No. 3- 16033  
Plaintiff Exhibit No. 210





FOIA CONFIDENTIAL TREATMENT REQUESTED

AP No. 3- 16033  
Plaintiff Exhibit No. 210

DAF022943  
SEC-LA-4275-000033206

# Exhibit G



**Official Offer Program for Mr Jerome Kaiser by Waxess USA**

March 13, 2010

Dear Jerome san:

Here is the revised and official offer from Waxess USA Inc.

As Vice President and Chief Financial Officer (CFO), you shall be responsible for all finance activities of the Company and be its financial spokesperson to the investment community. You shall report directly to the President/Chief Executive Officer (CEO) and directly assist the other C-Level Officers on all strategic and tactical matters as they relate to budget management, cost benefit analysis, forecasting needs, logistics, the securing of new funding, and the strategic vision of the Company.

**Responsibilities Guide Lines**

You shall be responsible to:

- 1.) Oversee the management and coordination of all fiscal reporting activities for the Company including revenues/expense, cash flow, and balance sheet reports.
- 2.) Make all appropriate and necessary SEC filings on a timely basis.
- 3.) Oversee the coordination and activities of the independent auditors.
- 4.) Develop and maintain all appropriate and necessary internal financial controls to safeguard financial assets of the Company.
- 5.) Create and maintain a budget and financial forecast with respect to the operations of the Company.
- 6.) Oversees all payroll and banking activities.
- 7.) Oversee all AR and AP.
- 8.) Oversees all business and health insurance plans.

**Offer Program**

- A.) Our annual salary compensation amount is US\$200,000.00
- B.) Full health Insurance coverage of \$1,300 a month will be paid for by the Company for you and your family you until Waxess USA Inc gets on a group plan. At that time the company will provide medical and dental coverage for you and your family.
- C.) 15 day annual paid vacation days

SEC-JK-E-0002000

SEC-LA4275  
Tr. Ex. 0119 - 00002

D) Immediately subsequent to the closing of the RM/PIPE, you shall be granted that number of stock options to acquire common stock in the surviving public company equal to 3.0% of the common stock issued and outstanding at the closing of the RM/PIPE at an exercise price equal to the price of the PIPE. Said options will vest ratably over 2 years after every six months of continued employment.

E) Starting Date for employment is March 15, 2010. The monthly salary will be paid on 1<sup>st</sup> and 15<sup>th</sup> in a bi monthly manner.

F) Immediately subsequent to the closing of the RM/PIPE, you shall be provided a company car for your use. The Company agrees to provide gas and maintenance for the vehicle at no cost to you.

Employment shall be "at will". In the case of termination, you shall continue to receive your salary and health benefits that are in place at the time of your termination for a period of 180 days and \$15,000 in Executive Outplacement Service. You will also receive at no cost to you the company vehicle that you are driving at the time of your termination including "pink slip" and fully paid registration. You will also receive any cell phone or computer system that you are using at the time of your termination.

Sincerely



Hide Kanakubo

CEO

Waxes USA Inc

4533 MacArthur Blvd, Suite 276

Newport Beach, CA 92660

Agreed and accepted:

  
\_\_\_\_\_  
Jerome S. Kaiser

3/13/10

Date

SEC-JK-E-0002001

SEC-LA4275  
Tr. Ex. 0119 - 00003

