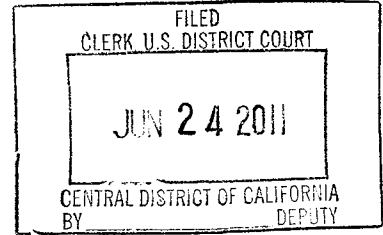


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8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 PETER L. JENSEN AND THOMAS C.  
16 TEKULVE, JR.,

17 Defendants.

Case No. **CV 11-05316 P (AGP)**  
**COMPLAINT**

18 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

19 **JURISDICTION AND VENUE**

20 1. This Court has jurisdiction over this action pursuant to Sections 20(b),  
21 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§  
22 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), 21A(a)(1)(A)  
23 and 27(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§  
24 78u(d)(1), 78u(d)(3)(A), 78u(e), 78u-1(a)(1)(A) & 78aa(a). Defendants have,  
25 directly or indirectly, made use of the means or instrumentalities of interstate  
26 commerce, of the mails, or of the facilities of a national securities exchange in  
27 connection with the transactions, acts, practices and courses of business alleged in  
28 this Complaint.

1 2. Venue is proper in this district pursuant to Section 22(a) of the  
2 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.  
3 § 78aa(a), because the defendants reside in and/or transact business in this district  
4 and certain of the transactions, practices, and courses of business constituting  
5 violations of the federal securities laws occurred within this district.

6 **SUMMARY**

7 3. This case involves a fraudulent scheme by the senior management of  
8 Basin Water, Inc. to overstate the company's financial results for each of its  
9 quarters beginning with its initial quarter as a public company (the first quarter of  
10 its fiscal year 2006 ended March 31, 2006) through its fiscal year 2007 ended  
11 December 31, 2007. The company's senior management responsible for the fraud  
12 were its founder, Chairman of the Board and Chief Executive Officer, Defendant  
13 Peter L. Jensen, and its Chief Financial Officer, Defendant Thomas C. Tekulve, Jr.  
14 The Defendants materially overstated and caused Basin to materially overstate its  
15 revenues by improperly recognizing and reporting substantial amounts of revenue  
16 from the company's purported sales of water treatment systems. The purported  
17 revenue failed to meet the most basic Generally Accepted Accounting Principles  
18 ("GAAP") for recognizing revenue. In particular, as explained below, several  
19 sales were contingent on the customer's acceptance of the treatment system or  
20 resale of the system to an ultimate customer; several sales did not occur in the  
21 quarter for which revenue was recognized; several sales were recorded even  
22 though the company never delivered the treatment system; and in several sales,  
23 collectability was not reasonably assured and the company in fact did not receive  
24 the required payments from the customer. Finally, in 2007, the Defendants caused  
25 the creation of two special purpose entities to which Basin purportedly sold  
26 systems in sham transactions that had no economic substance and which involved  
27 Basin round-tripping its own cash to purchase the revenue. The Defendants  
28 materially overstated Basin's 2006 revenues by 13% and its 2007 revenues by 74%

1 as well as materially overstating Basin's revenues for interim quarterly periods.

2 On August 11, 2008, the company announced it was restating its financial results  
3 for these periods, which restatement was issued on February 10, 2009.

4 4. Prior to the August 11, 2008, announcement that Basin would restate,  
5 between December 12, 2006 and August 7, 2008, on the basis of material  
6 nonpublic information that the company's financial results were being and had  
7 been materially overstated, Defendant Peter L. Jensen engaged in insider trading,  
8 selling 1,660,943 shares of company stock, gaining and realizing profits of  
9 \$9,173,075. Additionally, he made charitable donations of 290,000 shares of  
10 company stock, taking a total of \$763,345 in tax deductions. All of these sales of  
11 stock and charitable donations were made within twelve months of Basin filing a  
12 Form 10-Q or Form 10-K which was subsequently restated due to the material  
13 noncompliance of Basin, as a result of misconduct, with financial reporting  
14 requirements under the securities laws, as alleged below.

15 5. By engaging in this conduct, the Defendants violated the antifraud  
16 provisions of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); the antifraud  
17 provisions of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-  
18 5 thereunder, 17 C.F.R. § 240.10b-5, both as primary violators, and as control  
19 persons pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a); the  
20 books and records provisions of Section 13(b)(5) of the Exchange Act, 15 U.S.C. §  
21 78m(b)(5), and Rule 13b2-1 thereunder, 17 C.F.R. § 240.13b2-1, and the officer  
22 certification provisions of Rule 13a-14, 17 C.F.R. § 240.13a-14. Defendant  
23 Thomas C. Tekulve, Jr. also violated the prohibition against making  
24 misrepresentations to auditors, Rule 13b2-2, 17 C.F.R. § 240.13b2-2. The  
25 Defendants aided and abetted the company's violations of the issuer reporting  
26 provisions of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules  
27 12b-20, 13a-1 and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1 &  
28 240.13a-13, and are also liable to the same extent as Basin because they were its

1 control persons. Finally, the Defendants failed to comply with the reimbursement  
2 provisions of Section 304(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. §  
3 7243(a). The Commission seeks permanent injunctions prohibiting future  
4 violations, disgorgement of ill-gotten gains together with prejudgment interest  
5 thereon, civil penalties, officer and director bars, and reimbursement of bonuses  
6 and any other incentive-based or equity-based compensation and any profits  
7 realized from the sale of company securities for the twelve-month period following  
8 each of the false filings with the Commission.

### 9 THE DEFENDANTS

10 6. **Peter L. Jensen (“Jensen”)** was the founder, chief executive officer  
11 and chairman of the board of Basin Water, Inc. from December 1999 until  
12 February 19, 2008, when he resigned as CEO. Jensen continued to be a member of  
13 the board of directors, however, until March 11, 2008. Jensen received a masters’  
14 degree in Chemical Engineering from the Massachusetts Institute of Technology in  
15 1974. Jensen resides in San Diego, California.

16 7. **Thomas C. Tekulve, Jr. (“Tekulve”)** was the chief financial officer  
17 of Basin Water, Inc. from September 2004 to May 2008 and Vice President of  
18 Business Development from June 2008, until he resigned effective October 8,  
19 2008. As CFO, Tekulve was responsible for creating the financial structure and  
20 organization within Basin. Prior to his tenure at Basin, Tekulve was an officer of  
21 two other public companies: from 1999 to 2004 he was the VP Finance of  
22 Southwest Water, Inc., and from 1994 to 1998 he was the CFO of Safeguard  
23 Health Enterprises. Tekulve was licensed by the State of Oregon as a certified  
24 public accountant in 1978. During the relevant period, Tekulve’s CPA license was  
25 on inactive status. Tekulve earned an MBA degree in 1987. Tekulve resides in  
26 Yorba Linda, California.

### 27 RELATED ENTITY

28 8. **Basin Water, Inc. (“Basin”)** was a Delaware corporation

1 headquartered in Rancho Cucamonga, California. During the relevant period,  
2 Basin was engaged in the business of designing, manufacturing and servicing  
3 groundwater treatment systems. It was founded by Jensen on or about December  
4 1999. Basin became a public company on May 11, 2006, when its stock was  
5 initially registered with the Commission pursuant to Section 12(g) of the Exchange  
6 Act, 15 U.S.C. § 78l(g). Basin's stock traded on the Nasdaq National Market until  
7 July 31, 2006, when its common stock became registered pursuant to Section 12(b)  
8 of the Exchange Act, 15 U.S.C. § 78l(b), and began trading on the Nasdaq Global  
9 Market. On July 16, 2009, Basin filed a bankruptcy petition under Chapter 11 of  
10 the Bankruptcy Code. On August 5, 2009, the Nasdaq delisted Basin's stock  
11 effective August 17, 2009. Basin's stock is presently quoted on OTC Link  
12 (formerly known as the "Pink Sheets").

### 13 **THE FRAUDULENT SCHEME**

14 9. Beginning with Basin's very first public filing with the Commission  
15 on June 26, 2006, for its quarter ended March 31, 2006 -- its first quarter 2006  
16 Form 10-Q -- the Defendants embarked on a scheme to fraudulently inflate Basin's  
17 revenues. As set forth with particularity below, the Defendants caused material  
18 overstatements in almost all of Basin's quarterly filings and both of its annual  
19 filings for its fiscal years 2006 and 2007. On February 10, 2009, after each of the  
20 defendants had resigned from their positions as CEO and CFO, respectively, Basin  
21 restated its financial results, filing amended Forms 10-Q and 10-K for each of the  
22 relevant periods. The Defendants' fraudulent acts caused the following  
23 overstatements of Basin's financial results:

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26 ///

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**Basin's Overstated Financial Results – 2006**

	<b>Q1 2006</b>	<b>Year-To-Date Q2 2006</b>	<b>Q3 2006</b>	<b>Year-To-Date Q3 2006</b>	<b>FY 2006</b>
<b>Reported System Sales</b>	\$3,091,000	\$7,258,000	\$3,936,000	\$11,194,000	\$13,861,000
<b>Adjusted System Sales</b>	\$1,591,000	\$5,908,000	\$3,484,533	\$9,392,533	\$11,930,283
<b>Percentage Overstatement of System Sales</b>	94%	23%	13%	19%	16%
<b>Reported Total Revenue</b>	\$3,703,000	\$8,666,000	\$4,846,000	\$13,512,000	\$17,114,000
<b>Adjusted Total Revenue</b>	\$2,203,000	\$7,316,000	\$4,394,533	\$11,710,533	\$15,183,283
<b>Percentage Overstatement of Total Revenue</b>	68%	18%	10%	15%	13%
<b>Reported Gross Profit</b>	\$1,147,000	\$2,545,000	\$309,000	\$2,805,000	\$(2,992,000)
<b>Adjusted Gross Profit</b>	\$277,479	\$1,762,431	\$85,765	\$1,231,765	\$(3,789,492)
<b>Percentage Overstatement of Gross Profit</b>	313%	44%	260%	128%	21%

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**Basin's Overstated Financial Results – 2007**

	<b>Q2 2007</b>	<b>YTD Q2 2007</b>	<b>Q3 2007</b>	<b>YTD Q3 2007</b>	<b>Q4 2007</b>	<b>FY 2007</b>
<b>Reported System Sales</b>	\$5,199,0000	\$6,128,000	\$3,773,000	\$9,901,000	\$3,576,000	\$13,477,000
<b>Adjusted System Sales</b>	\$1,234,746	\$2,163,746	\$1,852,490	\$4,016,236	\$1,474,064	\$5,490,297
<b>Percentage Overstatement of System Sales</b>	321%	183%	104%	147%	143%	145%
<b>Reported Total Revenue</b>	\$6,414,000	\$8,021,000	\$5,346,000	\$13,367,000	\$5,417,000	\$18,784,000
<b>Adjusted Total Revenue</b>	\$2,449,746	\$4,056,746	\$3,425,490	\$7,482,236	\$3,315,064	\$10,797,297
<b>Percentage Overstatement of Total Revenue</b>	162%	98%	56%	79%	63%	74%
<b>Reported Gross Profit</b>	\$25,000	\$(262,000)	\$(6,779,000)	\$(7,041,000)	\$894,000	\$(6,147,000)
<b>Adjusted Gross Profit</b>	\$(515,161)	\$(802,161)	\$(6,995,399)	\$(7,797,560)	\$183,706	\$(7,613,857)
<b>Percentage Overstatement Gross Profit</b>	105%	67%	3%	10%	387%	19%

10. During the period when he was causing Basin to fraudulently inflate its revenues, beginning on December 12, 2006, and continuing through August 7, 2008, prior to Basin's August 11, 2008, announcement that it would restate its

1 2006 and 2007 financial statements, on the basis of material nonpublic information  
2 regarding Basin's true financial condition, and in breach of his duty of trust or  
3 confidence owed directly, indirectly or derivatively to Basin and its shareholders,  
4 Jensen sold 1,660,943 shares of Basin stock and gifted 290,000 more to his *alma*  
5 *mater*, MIT, gaining and realizing profits of \$9,173,075 and taking charitable tax  
6 deductions of \$763,345 as alleged below. Jensen has not reimbursed Basin for any  
7 of the profits realized from these sales and gifts of Basin securities.

8 11. During the period when they were causing Basin to fraudulently  
9 inflate its revenues and for the twelve-month period following each of the false  
10 filings with the Commission, Jensen received \$476,894 and Tekulve received  
11 \$479,759 in salary, and Jensen received \$210,385 and Tekulve received \$150,000  
12 in bonuses, some or all of which constituted incentive-based compensation.  
13 Additionally, during the same period, the Defendants each received equity-based  
14 compensation: Jensen received approximately \$135,281 in Basin stock; and  
15 Tekulve received approximately \$79,921 in Basin stock and \$407,617 in Basin  
16 stock options. Neither Jensen nor Tekulve has ever reimbursed Basin for any of  
17 this incentive-based or equity-based compensation.

18 **A. The Defendants Materially Overstate Basin's Q1 2006 Financial Results**  
19 **By Recognizing Revenue On A Sale That Had Not Been Finalized, And**  
20 **For Which \$1.35 Million Was Uncollectable**

21 12. In or about December 2005, Jensen contacted Martin Benowitz  
22 ("Benowitz"), an attorney he knew represented foreign investors, proposing that an  
23 investor group purchase two Basin units in exchange for money and five percent of  
24 the shares of BionBasin, Inc. ("BION"), a wholly owned subsidiary of Basin.  
25 Subsequently, on or about December 22, 2005, Tekulve, pursuant to Jensen's  
26 instructions, sent to Benowitz by fax a letter "Agreement for purchase of two Basin  
27 Water ion exchange units," copying Jensen by email. Jensen then sent an email to  
28 Benowitz instructing him to redline his comments and return the letter to Tekulve.



1 After Benowitz did so on December 26, Tekulve emailed him a revised version,  
2 copying Jensen, on December 28. Benowitz then signed the letter as the “legal  
3 representative” of Opus Trust, Inc., an investor group purportedly based in the  
4 Caribbean island of Nevis, and faxed it to Tekulve on or about December 29, 2005  
5 (the “Opus Letter”). The Opus Letter had a designated space for Jensen to sign on  
6 behalf of Basin in his capacity as Basin’s president, which Jensen never signed.

7 13. The Opus Letter provided, among other things, that:

- 8 a. The agreement was between Basin and Opus;
- 9 b. The two systems to be sold were units located in the East  
10 Valley Water District;
- 11 c. In addition to the \$150,000 down payment for the systems,  
12 which Opus paid by checks transmitted to Tekulve on or about  
13 December 29, 2005, Opus was required to pay \$1.35 million  
14 balance within two years, and Basin would grant Opus Trust  
15 5% or 500,000 shares of stock in its wholly-owned subsidiary,  
16 BION, upon Opus Trust’s final payment for the units; and
- 17 d. A “definitive purchase agreement” would be prepared by the  
18 seller, Basin, and was subject to review by Opus and its  
19 counsel.

20 14. On December 29, 2005, after receiving the signed Opus Letter from  
21 Benowitz as well as an email from Benowitz stating that he would be sending the  
22 \$150,000 down payment by Federal Express to Basin that evening, Tekulve sent an  
23 email to Benowitz stating: “Marty, That’s Great! Next week I’ll get going on the  
24 definitive agreement. I hope to have a draft to you by the first part of the week of  
25 January 9<sup>th</sup>.”

26 15. In negotiating the agreement with Jensen and Tekulve in 2005,  
27 Benowitz made clear that he wanted an extension of the agreement in case there was  
28 a delay in BION going public. Jensen and Tekulve assured Benowitz that it should

1 never reach the point of Opus Trust having to come up with the \$1,350,000 balance  
2 because BION would either be a public company or Basin would have sold it.

3 16. On March 3, 2006, Tekulve sent an email to Jensen attaching the  
4 Opus Letter signed by Benowitz, stating:

5 Attached is the Benowitz letter.

6 I don't think you or I ever signed it!

7 This copy has the comments I've made – several items I'd like to  
8 change/clarify with him, since the December date is not critical.

9 But we'll need this one in Q1 (Obviously).

10 17. Over three months later, after the close of Basin's first quarter on  
11 March 31, 2006, on or about June 16, Tekulve sent Jensen an email attaching a  
12 redline version of a draft Unit Purchase Agreement with Opus Trust, pointing out,  
13 among other things, that the length of time for Opus Trust to make the final  
14 payment had been extended to three years, that the units Opus Trust would own "as  
15 of March 30" would be certain units in Salinas, and that the BION stock would  
16 have to be issued immediately and escrowed, rather than being issued after Opus  
17 made its final payment, because to do otherwise would "reduce today's revenues."

18 18. On June 20, 2006, Tekulve sent to Benowitz a redline version of the  
19 draft Unit Purchase Agreement, which identified units in Salinas as the units to be  
20 sold to Opus Trust, which differed from the Salinas units identified in the version  
21 he sent to Jensen on June 16.

22 19. On or about June 22, 2006, Jensen signed and initialed a "Unit  
23 Purchase Agreement" ("Opus Agreement") purporting to be dated "as of March  
24 30, 2006," on behalf of BION.

25 20. On or about June 22, 2006, Tekulve emailed to Benowitz the Opus  
26 Agreement, noting in his diary "I finalized the Benowitz deal & sent email off,  
27 [Benowitz] will sign in am." On or about June 23, 2006, Benowitz signed and initialed  
28 the Opus Agreement on behalf of Opus Trust, and caused it to be faxed to Tekulve.

1           21. The terms of the Opus Agreement differ from those in the Opus letter  
2 in that:

- 3           a. The Agreement was between BION, rather than Basin, and  
4           Opus Trust;
- 5           b. Different systems, located in Salinas, California, rather than the  
6           East Valley Water District, had been substituted for the units  
7           that were the subject of the Opus Letter;
- 8           c. The Agreement contained a liquidated damages clause, limiting  
9           Basin's right to recover to payments already made by Opus  
10          Trust should Opus Trust default on its obligation to purchase  
11          the units, which payments totaled \$150,000 at the time the  
12          Agreement was executed; and
- 13          d. The balance would be paid by Opus Trust in three years, rather  
14          than two years, and that that period could be extended by two  
15          years upon the request of Opus Trust and payment of an  
16          additional \$250,000 by Opus Trust.

17           22. Notwithstanding their understanding with Benowitz that Opus Trust  
18 would never have to pay the remaining \$1,350,000 of the purchase price for the  
19 two water systems, and the lack of a definitive agreement reflecting the  
20 understanding of the parties, Jensen and Tekulve caused Basin to recognize  
21 \$1,500,000 in revenue from a purported sale to Opus Trust based on the Opus  
22 Letter. In fact, as of March 30, 2006, no definitive purchase agreement had been  
23 prepared or signed. Nor had Basin signed the Opus Letter. The revenue  
24 recognized on the Opus Trust transaction constituted 41% of the company's  
25 quarterly revenues.

26           23. On June 23, 2006, one day after completing the backdated Opus  
27 Agreement, Jensen and Tekulve each signed a letter to Singer Lewak Greenbaum  
28 & Goldstein, LLP ("SingerLewak"), Basin's auditors. Jensen and Tekulve

1 confirmed “that we are responsible for the fair presentation of the interim financial  
2 information in conformity with accounting principles generally accepted in the  
3 United States of America and Rule 10-01(a)-(c) of Regulation S-X.” They further  
4 represented in this Management Representation Letter, among other things, that:

- 5 a. The interim financial information is presented in accordance  
6 with GAAP applicable to interim financial information applied  
7 on an basis substantially consistent with the same period in the  
8 prior year, the immediately preceding quarter and the prior  
9 fiscal year;
- 10 b. They had made available to SingerLewak all financial records  
11 and related data;
- 12 c. They had no knowledge of any fraud or suspected fraud  
13 affecting the Company involving management;
- 14 d. There are no material transactions that have not been properly  
15 recorded in the accounting records underlying the interim  
16 financial information;
- 17 e. The Company has complied with all aspects of contractual  
18 agreements that would have a material effect on the interim  
19 financial information in the event of noncompliance; and
- 20 f. No events or transactions other than those disclosed in the  
21 interim financial information have occurred subsequent to  
22 March 31, 2006 that would require adjustment to, or disclosure  
23 in, the interim financial information.

24 Each of these representations was false because recognition of revenue from the  
25 Opus Trust transaction did not comply with GAAP, and these revenues were  
26 material to Basin’s financial statements.

27 24. Specifically, recognizing \$1.5 million in revenue from the purported  
28 sale to Opus Trust for the quarter ended March 31, 2006, violated the GAAP

1 requirements for recognizing revenue because, as Commission Staff Accounting  
2 Bulletin (“SAB”) 104 provides, among other provisions, for revenue to be  
3 recognized: (1) persuasive evidence of an arrangement must exist; and (2)  
4 reasonable assurance of collectability is required (citing Accounting Research  
5 Bulletin (“ARB”) 43). Here, there was no persuasive evidence of an arrangement  
6 as of March 31, 2006, when revenue was recognized because no definitive  
7 purchase agreement had been prepared; the parties to the final agreement, executed  
8 in June 2006, were different, and the terms of the June 2006 agreement were  
9 materially different because different systems were being sold to Opus, a  
10 liquidated damages clause had been inserted into the agreement, and the term for  
11 payment to Basin had been extended from two years to three years. Additionally,  
12 collectability was not reasonably assured because of the liquidated damages clause,  
13 the three year payment period, and Jensen’s and Tekulve’s utter failure to conduct  
14 any due diligence to determine Opus Trust’s ability to pay. In fact, Opus Trust  
15 never did make any payments for the systems other than the \$150,000 down  
16 payment in made in December 2005.

17       25. On June 26, 2006, Tekulve caused Basin to issue its first quarter  
18 earnings release at about 5:00 a.m. Pacific Time. Tekulve caused it to be filed with  
19 the Commission on Form 8-K and signed the filing. The headline on the press  
20 release was “**Revenues Increase to \$3.7 Million, Gross Profit Increase [sic] to**  
21 **\$1.1 Million.**” In the press release, it is represented that:

22           Revenues increased 311% to \$3.7 million for the first quarter of 2006  
23           as compared to \$0.9 million for the same period of 2005. Revenues  
24           from both system sales and contract revenues continue to grow  
25           compared to the prior year quarter.

26  
27           Gross profit increased for the quarter by 267% to \$1.1 million  
28           compared to \$0.3 million for 2005 as a result of the increased volume

1 in system sales. Gross profit as a percentage of revenues was 31%. . .  
2 Additionally, Jensen is quoted in the press release as saying: “[W]e are pleased  
3 with our first quarter results. . . . We anticipate that our revenues will continue to  
4 grow during the next several quarters. . . .” These representations were materially  
5 false and misleading because \$1.5 million -- over half -- of Basin’s system sales  
6 revenues consisted of the improperly recognized revenue from the Opus Trust  
7 transaction. The press release also stated that the company would provide more  
8 detail regarding its first quarter results in a conference call and web cast to be held  
9 at 1:30 p.m. Pacific Time that same day. Tekulve had prepared the script for that  
10 call earlier that day.

11 26. Shortly thereafter that same day, Jensen and Tekulve caused Basin to  
12 file with the Commission its first quarterly report on Form 10-Q, for its first  
13 quarter 2006 (“Q1 2006”) ended March 31, 2006. Jensen read the Form 10-Q  
14 before it was filed, and Tekulve signed the Form 10-Q as Basin’s CFO. Among  
15 other results, Basin’s Form 10-Q reported system sales of \$3,091,000 and total  
16 revenues of \$3,703,000. These system sales and revenues included the \$1,500,000  
17 in revenue purportedly earned from a sale of systems to Opus Trust. Additionally,  
18 the Form 10-Q states that its revenue increase “by \$2.8 million, or 313%” from its  
19 first quarter of the prior year “occurred primarily as a result of growth in sales of  
20 our groundwater treatment systems.” Basin’s Form 10-Q does not disclose that  
21 41% of its purported revenues and 76% of its profits were derived from a  
22 purported sale to a single customer for which revenues were not in fact properly  
23 recognized.

24 27. On or about June 26, 2006, Jensen and Tekulve each certified, among  
25 other things, with regard to the Form 10-Q, that:

- 26 a. He had reviewed the Form 10-Q;
- 27 b. Based on his knowledge, the Form 10-Q did not contain any  
28 untrue statement of material fact or omit to state a material fact

1 necessary to make the statements made, in light of the  
2 circumstances under which they were made, not misleading  
3 with respect to the period covered by the report;

4 c. Based on his knowledge, the financial statements, and other  
5 financial information included in the report fairly presented in  
6 all material respects the financial condition, results of  
7 operations and cash flows of Basin as of and for the periods  
8 presented in the report; and

9 d. He had disclosed to Basin's auditors and the audit committee of  
10 Basin's Board of Directors any fraud that involved company  
11 management.

12 These certifications were false in that the Form 10-Q contained material  
13 misrepresentations and omissions of material fact regarding Basin's quarterly  
14 revenues, and did not fairly represent Basin's financial condition, and Jensen and  
15 Tekulve had not disclosed to either Basin's auditors or its audit committee their  
16 fraud in causing the improper revenue recognition.

17 **Basin Files A Securities Registration Statement Incorporating By**  
18 **Reference Future Annual And Quarterly Filings**

19 28. On May 15, 2006, Jensen and Tekulve signed, and caused Basin to  
20 file, a registration statement on Form S-8 ("S-8 Registration Statement") with the  
21 Commission registering the offering of approximately 6.7 million shares of its  
22 common stock, which offering included any shares issuable pursuant to Basin's  
23 equity incentive, stock option, and employee stock purchase plans. The S-8  
24 Registration Statement incorporated by reference all documents to be filed by  
25 Basin pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, 15  
26 U.S.C. §§ 78m(a), 78m(c), 78n or 78o(d), after the date of the S-8 Registration  
27 Statement and prior to the filing of a post-effective amendment indicating that all  
28 securities offered had been sold or deregistering the securities then remaining

1 unsold. A document incorporated by reference was to become and became a part  
2 of the S-8 Registration Statement from the date that the document was filed with  
3 the Commission, including the materially false and misleading Forms 8-K, 10-Q,  
4 and 10-K identified in this Complaint.

5 **C. The Defendants Materially Overstate Basin's Year-To-Date Financial**  
6 **Results In Its Second Quarter 2006 Form 10-Q**

7 29. Early the morning of August 14, 2006, Tekulve caused Basin to issue  
8 its second quarter 2006 earnings release. Tekulve caused it to be filed with the  
9 Commission on Form 8-K and signed the filing. The headline on the press release  
10 stated in relevant part: **"Quarterly Revenues Increase to \$5 Million, Gross**  
11 **Profit to \$1.4 Million."** In the press release, it is represented that:

12 Revenues increased by 200% to \$8.7 million for the six months ended  
13 June 30, 2006 compared to \$2.9 million for the same period in 2005.

14 Revenue from . . . system sales. . . continue to increase compared to  
15 the prior year as a result of growth in placement of our groundwater  
16 treatment systems.

17 Gross profit for the six months ended June 30, 2006 was \$2.5 million  
18 compared to \$0.9 million for the same period in 2005.

19 Jensen is quoted in the release as saying "We are pleased with our second quarter  
20 results which reflect continued growth in all areas of our business. . . ." The  
21 representations in the release were false and misleading because they did not  
22 disclose that \$1.5 million of the \$8.7 million in revenues for the first six months of  
23 2006 was the revenue that was improperly recognized from the Opus Trust  
24 transaction.

25 30. Also on August 14, 2006, Jensen and Tekulve each signed a letter to  
26 SingerLewak, Basin's auditors. Jensen and Tekulve confirmed "that we are  
27 responsible for the fair presentation of the interim financial information in  
28 conformity with accounting principles generally accepted in the United States of



1 America and Rule 10-01(a)-(c) of Regulation S-X.” They further represented in  
2 this Management Representation Letter, among other things, that:

- 3 a. The interim financial information is presented in accordance  
4 with GAAP applicable to interim financial information applied  
5 on an basis substantially consistent with the same period in the  
6 prior year, the immediately preceding quarter and the prior  
7 fiscal year;
- 8 b. They had made available to SingerLewak all financial records  
9 and related data;
- 10 c. They had no knowledge of any fraud or suspected fraud  
11 affecting the Company involving management;
- 12 d. There are no material transactions that have not been properly  
13 recorded in the accounting records underlying the interim  
14 financial information;
- 15 e. The Company has complied with all aspects of contractual  
16 agreements that would have a material effect on the interim  
17 financial information in the event of noncompliance; and
- 18 f. No events or transactions other than those disclosed in the  
19 interim financial information have occurred subsequent to June  
20 30, 2006 that would require adjustment to, or disclosure in, the  
21 interim financial information.

22 Each of these representations was false because recognition of revenue from the  
23 Opus Trust transaction did not comply with GAAP, and these revenues were  
24 material to Basin’s year-to-date financial statements included in its second quarter  
25 financial statements.

26 31. At about noon Pacific Time on August 14, 2006, Jensen and Tekulve  
27 caused Basin to file with the Commission its quarterly report on Form 10-Q, for its  
28 second quarter 2006 (“Q2 2006”) ended June 30, 2006. Jensen read the Form 10-

1 Q before it was filed, and Tekulve signed the Form 10-Q as Basin's CFO. Among  
2 other results, Basin's Form 10-Q reported system sales of \$7,258,000 for the first  
3 six months of 2006 and total revenues of \$8,666,000 for that period. These system  
4 sales and revenues included the \$1,500,000 in revenue purportedly earned from a  
5 sale of systems to Opus Trust. Basin's Form 10-Q does not disclose that 17% of  
6 its purported revenues and 31% of its profits were derived from a purported sale to  
7 a single customer for which revenues were not in fact properly recognized.

8 32. On or about August 14, 2006, Jensen and Tekulve each certified,  
9 among other things, with regard to the Form 10-Q, that:

- 10 a. He had reviewed the Form 10-Q;
- 11 b. Based on his knowledge, the Form 10-Q did not contain any  
12 untrue statement of material fact or omit to state a material fact  
13 necessary to make the statements made, in light of the  
14 circumstances under which they were made, not misleading  
15 with respect to the period covered by the report;
- 16 c. Based on his knowledge, the financial statements, and other  
17 financial information included in the report fairly presented in  
18 all material respects the financial condition, results of  
19 operations and cash flows of Basin as of and for the periods  
20 presented in the report; and
- 21 d. He had disclosed to Basin's auditors and the audit committee of  
22 Basin's Board of Directors any fraud that involved company  
23 management.

24 These certifications were false in that the Form 10-Q contained material  
25 misrepresentations and omissions of material fact regarding Basin's year to date  
26 revenues, and did not fairly represent Basin's financial condition, and Jensen and  
27 Tekulve had not disclosed to either Basin's auditors or its audit committee their  
28 fraud in causing the improper revenue recognition.

1           33. At about 1:30 p.m. Pacific Time on August 14, 2006, Jensen and  
2 Tekulve participated on behalf of Basin in an analyst conference call, for which  
3 Tekulve had drafted the script that morning. Among other representations, Jensen  
4 stated that: “for the six months of 2006, revenues grew to \$8.7 million compared to  
5 \$2.9 million for the same period in 2005, a 200% increase.” This statement was  
6 materially false and misleading because \$1.5 million of the revenues, or 17%, were  
7 revenues that were improperly recognized pursuant to the transaction with Opus  
8 Trust. Jensen similarly falsely represented that “Gross profits for the six month  
9 period grew by 177% to 2.5 million compared to 0.9 million in the same period  
10 ’05,” when in fact gross profits for the period had only grown by 96% if the  
11 revenue improperly recognized from the Opus Trust transaction was excluded.

12 **D. The Defendants Materially Overstate Basin’s Q3 2006 Revenues By**  
13 **Recognizing \$451,000 On A Contingent Sale Of Systems Basin Never**  
14 **Shipped And Continue To Overstate Basin’s Year-To-Date Results**

15           34. In 2005, James Sabzali (“Sabzali”), general manager of the chemical  
16 division of Thermax, Inc., contacted Jensen on behalf of Thermax. Sabzali told  
17 Jensen that Thermax had a client in Venezuela, PDVSA, for which Thermax was  
18 interested in purchasing Basin units. After protracted negotiations during which  
19 Jensen repeatedly pressed Sabzali for Thermax to send him a purchase order, on  
20 July 5, 2006, Sabzali sent an email to Jensen and others at Basin stating that  
21 PDVSA had verbally committed to buying a softening system from Thermax; that  
22 once Thermax received a purchase order and first partial payment from PDVSA  
23 which was expected in late August, it would issue a purchase order to Basin, which  
24 it expected to do in late September; and that it anticipated shipment by Basin  
25 would be needed in early January 2007. On July 7, 2006, Jensen forwarded the  
26 email to Tekulve, whom he had periodically informed regarding the negotiations  
27 with Thermax.

28           35. On August 18, 2006, Pat Kelly, Basin’s head of manufacturing,

1 reminded Jensen in an email that, with regard to the potential order from Thermax,  
2 Basin had done no engineering work on modifying its units for ocean travel, that  
3 “At best all we would be able to accomplish in the way of revenue recognition in  
4 Q3, if an order came in Q3, would be parts delivery and some subassembly  
5 efforts.”

6 36. Jensen repeatedly pressed Thermax for a purchase order, informing  
7 Sabzali that Basin needed the purchase order in September before the end of the  
8 quarter because it would be a significant component to Basin’s quarterly reported  
9 financial information.

10 37. On or about September 12, 2006, Sabzali sent a memorandum on  
11 behalf of Thermax to Jensen “RE: Purchase Order for PDVSA Softening System,”  
12 which set forth several “caveats” that would apply to the purchase order Thermax  
13 “will be sending Basin Water later this month.” These caveats included that the  
14 purchase order from Thermax “is predicated on Thermax Inc. receiving a similar  
15 purchase order from PDVSA,” and that if PDVSA failed to issue a purchase order  
16 to Thermax by November 30, Thermax’s purchase order to Basin would be  
17 canceled.

18 38. Jensen was angered by the “caveat” that Thermax would have to  
19 receive a purchase order from PDVSA before issuing a purchase order to Basin; he  
20 therefore called Sabzali and told him this caveat was “unacceptable” and that such  
21 a purchase order is “absolutely not valid at all,” and that he expected Thermax to  
22 send a purchase order without that contingency.

23 39. On September 28, 2006, Jensen received a purchase order from  
24 Thermax. The purchase order stated that it was subject to terms and conditions  
25 stated on Addendum “A.” That Addendum, which Sabzali had put on a separate  
26 page at Jensen’s request, contained the provision that the date of shipment and  
27 terms and conditions were “TBA,” which Jensen understood meant “to be  
28 advised.” Additionally, with respect to the terms and conditions, the purchase

1 order provided that it was “Agreed that the T&C to Basin will reflect the T&Cs on  
2 PDVSA’s PO to Thermax Inc.,” which Jensen understood to be similar, if not  
3 identical, to the prior purchase order he had rejected. Jensen nevertheless had no  
4 discussions and raised no concerns about the purchase order with anyone at Basin;  
5 nor did he further discuss this condition with Thermax.

6 40. Also on September 28, 2006, Tekulve received the Thermax purchase  
7 order including Addendum A, and forwarded it by email to Basin’s controller,  
8 understanding that it was subject to the terms and conditions set forth in  
9 Addendum A.

10 41. On the morning of November 14, 2006, Tekulve caused Basin to issue  
11 its third quarter 2006 earnings release. Tekulve caused it to be filed with the  
12 Commission on Form 8-K and signed the filing. The headline on the press release  
13 stated in relevant part: **“Quarterly Revenues at \$4.8 Million, Nine-Month  
14 Revenues Increase 75% from 2005 to \$13.5 Million”** In the press release, it is  
15 represented that:

16 For the third quarter of 2006, revenues of \$4.8 million were a slight  
17 improvement over the third quarter of 2005. Meanwhile 2006 nine-  
18 month revenues increased by 75% to \$13.5 million compared to \$7.7  
19 million for the first nine months of 2005. System sales revenues for  
20 the third quarter 2006 were \$3.9 million compared to \$4.2 million in  
21 the same period in 2005.

22 Jensen is also quoted in the press release. The above representations were false  
23 and misleading because they did not disclose that \$451,000, or 9%, of the \$4.8  
24 million in third quarter revenue was revenue improperly recognized from the  
25 Thermax transaction, and that almost \$2 million of the \$13.5 million in revenues  
26 for the first nine months of 2006 was revenue that was improperly recognized from  
27 the Opus Trust and Thermax transactions (\$1.5 million and \$451,000 respectively).

28 42. Also on November 14, 2006, Jensen and Tekulve caused Basin to file

1 with the Commission its quarterly report on Form 10-Q, for its third quarter 2006  
2 (“Q3 2006”) ended September 30, 2006. Jensen read the Form 10-Q before it was  
3 filed, and Tekulve signed the Form 10-Q as Basin’s CFO. Among other results,  
4 Basin’s Form 10-Q reported quarterly system sales of \$3,936,000 and total  
5 revenues of \$4,846,000. These system sales and revenues included recognition of  
6 \$451,000 in revenue purportedly earned from the sale of systems to Thermax  
7 which was not in fact properly recognized.

8 43. Additionally, the Form 10-Q reports \$11,194,000 in system sales and  
9 \$13,512,000 in total revenue for the first nine months of 2006. These systems  
10 sales and revenues included almost \$2 million in revenues improperly recognized  
11 from the Opus Trust (\$1.5 million) and Thermax (\$451,000) transactions.

12 44. On or about November 14, 2006, Jensen and Tekulve each certified,  
13 among other things, with regard to the Form 10-Q, that:

- 14 a. He had reviewed the Form 10-Q;
- 15 b. Based on his knowledge, the Form 10-Q did not contain any  
16 untrue statement of material fact or omit to state a material fact  
17 necessary to make the statements made, in light of the  
18 circumstances under which they were made, not misleading  
19 with respect to the period covered by the report;
- 20 c. Based on his knowledge, the financial statements, and other  
21 financial information included in the report fairly presented in  
22 all material respects the financial condition, results of  
23 operations and cash flows of Basin as of and for the periods  
24 presented in the report; and
- 25 d. He had disclosed to Basin’s auditors and the audit committee of  
26 Basin’s Board of Directors any fraud that involved company  
27 management.

28 These certifications were false in that the Form 10-Q contained material

1 misrepresentations and omissions of material fact regarding Basin's quarterly  
2 revenues, and did not fairly represent Basin's financial condition, and Jensen and  
3 Tekulve had not disclosed to either Basin's auditors or its audit committee their  
4 fraud in causing the improper revenue recognition in connection with the Opus  
5 Trust and Thermax transactions.

6 45. At about 1:30 p.m. Pacific Time on November 14, 2006, Jensen and  
7 Tekulve participated on behalf of Basin in an analyst conference call, for which  
8 Tekulve had drafted the script that morning. They were joined by Michael Stark  
9 ("Stark"), who had just been appointed the new president and chief operating  
10 officer. Among other representations, Jensen represented that "our revenues of  
11 \$4.8 million were a slight improvement over the prior quarter. Meanwhile, nine  
12 months 2006 revenues increased by 75% to \$13.5 million compared to \$7.7 million  
13 for the nine months of 2005." This statement was materially false and misleading  
14 because \$1.5 million of the revenues and \$451,000, totaling 13%, were revenues  
15 that were improperly recognized pursuant to the transactions with Opus Trust and  
16 Thermax, respectively.

17 46. Thermax never received a purchase order from PDVSA, and never  
18 made any payments to Basin, and Basin never in fact shipped any units to Thermax  
19 pursuant to the September 28, 2006, purchase order, notwithstanding that Jensen  
20 was responsible for keeping in contact with Thermax in order to obtain a shipping  
21 date from them. Nor did Basin attempt to collect from Thermax based on the  
22 purchase order.

23 **E. The Defendants Materially Overstate Basin's FY 2006 Revenues**

24 47. On the morning of March 29, 2007, Tekulve caused Basin to issue its  
25 Fiscal Year 2006 earnings release. Tekulve caused it to be filed with the  
26 Commission on Form 8-K and signed the filing. The headline on the press release  
27 stated in relevant part: "**Twelve Month Revenues Increase 40% from 2005 to**  
28 **\$17.1 Million**" In the press release, it is represented that:

1 For the year ended 2006, revenues increased by 40% to \$17.1 million  
2 compared to \$12.2 million for the year 2005. For the year, system  
3 sales revenues were \$13.9 million, compared to \$10.0 million in the  
4 same twelve-month period in 2005.

5 Jensen is quoted as saying, among other things, that “We have grown our revenues  
6 significantly this year.” These statements were false and misleading in light of the  
7 fact that almost \$2 million – a material portion – of the \$17.1 million in revenues  
8 was improperly recognized as a result of the Opus Trust (\$1.5 million) and  
9 Thermax (\$451,000) transactions.

10 48. At about 1:30 Pacific Time on March 29, 2007, that same day, Jensen  
11 and Tekulve participated on behalf of Basin in an analyst conference call, together  
12 with Stark, for which call Tekulve had drafted the script that morning. Among  
13 other representations, Jensen represented that “For the full year 2006, revenues  
14 increased by 40% to 17.1 million in 2006 compared to \$12.2 million in 2005.”  
15 This statement was materially false and misleading because \$1.5 million and  
16 \$451,000, totaling 11% of Basin’s FY 2006 revenue, were revenues that were  
17 improperly recognized pursuant to the transactions with Opus Trust and Thermax,  
18 respectively.

19 49. Jensen also stated in the earnings conference call that “On our sales  
20 for standard systems, we recorded revenues of \$8 million with a gross margin of  
21 3.5 million, a gross profit margin of 44%. This is in line with our typical margins.”  
22 This statement was materially false and misleading because \$1.5 million and  
23 \$451,000, totaling 11% of Basin’s FY 2006 systems revenue, were revenues that  
24 were improperly recognized pursuant to the transactions with Opus Trust and  
25 Thermax, respectively. Basin’s annual system revenues were accordingly  
26 overstated by 16%.

27 50. On March 30, 2007, Jensen and Tekulve each signed a letter to  
28 SingerLewak, Basin’s auditors. Jensen and Tekulve confirmed “that we are



1 responsible for the fair presentation of the interim financial information in  
2 conformity with accounting principles generally accepted in the United States of  
3 America and Rule 10-01(a)-(c) of Regulation S-X.” They further represented in  
4 this Management Representation Letter, among other things, that:

- 5 a. The financial statements were fairly presented in conformity  
6 with GAAP;
- 7 b. They had made available to SingerLewak all financial records  
8 and related data;
- 9 c. They had no knowledge of any fraud or suspected fraud  
10 affecting the Company involving management;
- 11 d. There are no material transactions that have not been properly  
12 recorded in the accounting records underlying the financial  
13 statements;
- 14 e. The Company has complied with all aspects of contractual  
15 agreements that would have a material effect on the interim  
16 financial information in the event of noncompliance; and
- 17 f. The Company has properly recorded all revenue transactions in  
18 accordance with revenue recognition policies, including under  
19 the percentage-of-completion method.

20 51. Each of these representations was false because recognition of  
21 revenue from the Opus Trust and Thermax transactions did not comply with  
22 GAAP, the Thermax revenue, recognized under a percentage-of-completion  
23 method, was not recognized consistent with GAAP or Basin’s own internal  
24 revenue recognition policy governing use of percentage-of-completion  
25 methodology, and these revenues were material to Basin’s financial statements.

26 52. On April 2, 2007, Jensen and Tekulve caused Basin to file with the  
27 Commission its annual report on Form 10-K, for its fiscal year 2006 (“FY 2006”)  
28 ended December 31, 2006. Jensen read the Form 10-K before it was filed, and

1 Jensen and Tekulve signed the Form 10-K.

2 53. Basin's FY 2006 Form 10-K reported system sales of \$13,861,000 for  
3 the year and \$17,114,000 in total revenues for the year. These system sales and  
4 total revenues included the \$1,500,000 in revenue purportedly earned from a sale  
5 of systems to Opus Trust in Q1 and \$451,000 in revenue purportedly earned from a  
6 sale to Thermax. Basin's Form 10-K does not disclose that 13% of its purported  
7 system sales and 11% of its revenues were derived from the sales to Opus Trust  
8 and Thermax, for which revenues were not in fact properly recognized.

9 54. On or about April 2, 2007, Jensen and Tekulve each certified, among  
10 other things, with regard to the Form 10-K, that:

- 11 a. He had reviewed the Form 10-K;
- 12 b. Based on his knowledge, the Form 10-K did not contain any  
13 untrue statement of material fact or omit to state a material fact  
14 necessary to make the statements made, in light of the  
15 circumstances under which they were made, not misleading  
16 with respect to the period covered by the report;
- 17 c. Based on his knowledge, the financial statements, and other  
18 financial information included in the report fairly presented in  
19 all material respects the financial condition, results of  
20 operations and cash flows of Basin as of and for the periods  
21 presented in the report; and
- 22 d. He had disclosed to Basin's auditors and the audit committee of  
23 Basin's Board of Directors any fraud that involved company  
24 management.

25 These certifications were false in that the Form 10-K contained material  
26 misrepresentations and omissions of material fact regarding Basin's quarterly  
27 revenues, and did not fairly represent Basin's financial condition, and Jensen and  
28 Tekulve had not disclosed to either Basin's auditors or its audit committee their

1 fraud in causing the improper revenue recognition in connection with the Opus  
2 Trust and Thermax transactions.

3 **F. The Defendants Materially Overstate Basin's Q2 2007 And Year-To-**  
4 **Date Revenues By Engaging In A Sham \$3.8 Million Sale To A Special**  
5 **Purpose Entity They Directly Or Indirectly Cause To Be Created**

6 55. Initially, in most cases Basin was placing units on customer sites and  
7 signing long-term leases with those customers. In or about early 2007, Basin  
8 began to engage in transactions pursuant to which it recognized additional revenue  
9 by purporting to sell the systems rather than by leasing them. Tekulve was  
10 primarily responsible for carrying out Basin's plan.

11 56. Basin paid a consultant, Charles Litt, to obtain financial partners to  
12 facilitate purchase of units from Basin. Litt introduced Basin to CCH Netherlands  
13 and its related companies ("CCH"), and to Lloyd Ward ("Ward"), a Dallas, Texas  
14 attorney. Because CCH did not want to do a transaction with Basin in its own  
15 name, Ward created VL Capital, LLC. Tekulve was Ward's sole contact at Basin.

16 57. VL Capital, LLC ("VL Capital") was registered in Delaware as an  
17 LLC on June 29, 2007, one day before the end of Basin's Q2 2007 on June 30,  
18 2007, and Ward was its Managing Member, and sole member. VL Capital was  
19 created to purchase units from Basin. It had no other business. Accordingly, it  
20 was a "special purpose entity" ("SPE"). Tekulve received the invoices from Ward  
21 relating to formation of VL Capital and drafting of documents relating to the  
22 agreements between Basin and VL Capital and VL Capital and CCH; Basin agreed  
23 to pay and paid these fees.

24 58. Jensen participated with Tekulve in internal Basin discussions about  
25 engaging in transactions with VL Capital, and was insistent that Tekulve ensure  
26 that revenue be recognized in the second quarter of 2007 pursuant to purported  
27 sales by Basin to VL Capital.

28 59. Just before the end of Basin's Q2 2007, Basin purportedly sold and

1 delivered ten operating treatment systems to VL Capital. Tekulve caused Basin to  
2 record \$3.8 million in revenue from the sale of these systems, which revenue  
3 represented the majority of its quarterly revenues. Jensen was aware that revenue  
4 was recognized in Q2 2007 from the purported transaction with VL Capital.

5 60. Recognition of the \$3.8 million in revenue was improper under GAAP  
6 for four reasons:

- 7 a. Basin did not have a definitive agreement with VL Capital in  
8 Q2 2007. Tekulve, who negotiated and/or drafted all  
9 agreements with VL Capital, knew this. Indeed, the purported  
10 arrangement between the parties changed several times. In a  
11 letter dated June 27, 2007, (the "VL Letter"), two days before  
12 VL Capital was even legally formed, VL Capital purported to  
13 advise Tekulve (who had in fact negotiated the terms of the  
14 letter) that it had approved the purchase of treatment systems  
15 from Basin, but that such purchase was subject to: (1) the  
16 negotiation and preparation of documentation acceptable to VL  
17 Capital and its counsel; (2) the nonoccurrence of any material  
18 adverse changes with respect to the financial or business  
19 condition of Basin or the parties to any water service  
20 agreement; and (3) the final acceptance of the financing terms  
21 by VL Capital and its lender. Tekulve signed this letter as  
22 "Acknowledged and Agreed" on or about June 28, 2007. Basin  
23 and VL did not in fact sign agreements until on or about  
24 September 14, 2007, and October 19, 2007, (the "VL  
25 Agreements"), which agreements were signed by Tekulve on  
26 behalf of Basin, namely the Security Agreement and Agreement  
27 to Sell & Purchase "dated as of September 14, 2007 and  
28 effective as of June 30, 2007"; the Escrow Agreement dated "as

1 of September 14 2007”; and the First Amendment to Escrow  
2 Agreement “made as of October 19, 2007.” The terms of the  
3 agreements ultimately signed in fact did differ from the terms  
4 set forth in the VL Letter, as explained below.

5 b. Basin’s sale to VL Capital had no economic substance as, under  
6 both the VL Letter and the subsequent VL Agreements, all  
7 negotiated by Tekulve, Basin essentially paid VL Capital to  
8 purchase the systems. Specifically:

9 (i) Under the VL Letter, VL Capital was to pay Basin the \$5  
10 million purchase price for the ten systems by making a  
11 \$500,000 cash down payment at the April 1, 2008, closing  
12 and 72 monthly payments of \$62,500 beginning April 1,  
13 2008. The VL Letter, however, also provided that Basin  
14 assigned all of its rights to payments from its customers to  
15 VL Capital at \$69,250 per month for 80 months beginning  
16 on July 1, 2007, resulting in Basin having paid \$623,250 in  
17 nine monthly payments prior to the \$500,000 down  
18 payment owed by VL Capital becoming due on April 1,  
19 2008. Additionally, once VL Capital began making the  
20 monthly payments of \$62,500 to Basin, Basin would  
21 nevertheless continue to pay VL Capital “for varying  
22 amounts, initially at \$69,250 per month,” which would  
23 result in a \$6,750 monthly deficit to Basin;

24 (ii) Under the Agreement to Sell and Purchase, “made as of  
25 the 14<sup>th</sup> of September, 2007 and effective as of June 30,  
26 2007,” VL Capital was to pay Basin \$56,250 per month  
27 (rather than \$62,500) for 72 months beginning April 1,  
28 2008, and, pursuant to the First Amendment to Escrow

1 Agreement, “made as of October 19, 2007,” no later than  
2 “the Closing Date (as defined in the Purchase  
3 Agreement),” which date, September 7, 2007, had already  
4 passed, Basin itself was to round-trip its cash by depositing  
5 \$189,000 into an escrow account as part of the \$500,000  
6 down payment, which VL Capital was purporting to pay to  
7 Basin. The escrow deposits of \$189,000 and \$311,000  
8 were made on October 19, 2007 by Basin and VL Capital  
9 respectively.

10 c. The VL Letter contained the contingency that for the \$500,000  
11 down payment to become due from VL Capital, Basin had to  
12 obtain within 90 days from the date of closing written consent  
13 to the sale of the systems from each of the ten customers who  
14 had leased them; Basin in fact never satisfied this contingency,  
15 as Tekulve, who was responsible for obtaining the consents,  
16 only obtained four of them;

17 d. Collectability was not reasonably assured because VL Capital  
18 was a newly formed SPE with no operations, and absent each of  
19 Basin’s customers making payments that Basin had assigned to  
20 VL Capital, VL Capital would have been unable in turn to  
21 make payments to Basin.

22 Because of these facts, revenue recognition did not comply with GAAP, including  
23 SAB 104 and ARB 43, which require that collectability be reasonably assured.  
24 Additionally, because Basin retained a majority of the risk from the transaction,  
25 VL Capital’s financial statements should have been consolidated with Basin’s  
26 financial statements under GAAP, specifically Financial Accounting Standards  
27 Board Interpretation No. 46 (revised December 2003) (“FIN46R”).

28 61. Even though Basin was in fact financing the transaction with VL

1 Capital, as explained above, VL Capital entered into a purported agreement with  
2 CCH dated June 29, 2007, which described the “transaction structure” as: “[Basin]  
3 will sell the equipment used to perform the WSA [water services] agreements to  
4 VLC[apital] and VLC will purchase said equipment utilizing funding from CCH.”  
5 Tekulve saw or was otherwise aware of this letter. The letter also stated that “The  
6 initial closing shall take place no later than June 30th 2007,” the final day of  
7 Basin’s second quarter. This letter was materially misleading, including to Basin’s  
8 auditors, as Basin, not CCH, was financing the transaction through assignment by  
9 Basin of its rights to lease payments for nine months prior to VL Capital being  
10 required to pay Basin. Indeed, Tekulve understood that Basin, rather than CCH,  
11 was “obviously” financing at least the majority of the transaction with VL Capital.

12 62. On or about August 8, 2007, pursuant to a request by Basin’s auditor,  
13 Basin’s Director of Finance, Douglas Hansen (“Hansen”), prepared a  
14 memorandum, or “white paper,” which, after being reviewed and approved by  
15 Tekulve, was provided to Basin’s auditors and discussed with Basin’s Audit  
16 Committee on or about August 9, 2007, and which purported to justify recognition  
17 of revenue based on the June 27, 2007, VL Letter signed by Tekulve on June 28.  
18 The memorandum was materially misleading in part because it failed to disclose  
19 that VL Capital was an SPE with no operations which Basin caused to be created  
20 for the sole purpose of creating purported revenues. The memorandum was also  
21 materially misleading because it failed to explain the timing of the respective  
22 payments by Basin and VL Capital to each other, which resulted in Basin  
23 effectively financing the transaction. Specifically, the memorandum does not  
24 explain that Basin would be making payments commencing immediately, on July  
25 1, 2007, which payments totaled a greater amount than the \$500,000 down  
26 payment payable by VL Capital to Basin on April 1, 2008. Additionally, the  
27 memorandum misleadingly states that “collectability is reasonably assured”  
28 because VL Capital had “already placed \$500,000 in escrow” “as of” June 30,

1 2007, when in fact no monies had yet been deposited into escrow. Indeed, when  
2 monies were subsequently deposited on October 19, 2007, pursuant to the VL  
3 Agreements rather than the VL Letter, \$189,000 of the funds were deposited by  
4 Basin itself, rather than VL Capital.

5 63. On August 13, 2007, Tekulve signed a letter to SingerLewak, Basin's  
6 auditors. Tekulve confirmed "that we are responsible for the fair presentation of  
7 the interim financial information in conformity with accounting principles  
8 generally accepted in the United States of America and Rule 10-01(a)-(c) of  
9 Regulation S-X." He further represented in this Management Representation  
10 Letter, among other things, that:

- 11 a. The interim financial information is presented in accordance  
12 with GAAP applicable to interim financial information applied  
13 on an basis substantially consistent with the same period in the  
14 prior year, the immediately preceding quarter and the prior  
15 fiscal year;
- 16 b. He had made available to SingerLewak all financial records and  
17 related data;
- 18 c. He had no knowledge of any fraud or suspected fraud affecting  
19 the Company involving management;
- 20 d. There are no material transactions that have not been properly  
21 recorded in the accounting records underlying the interim  
22 financial information;
- 23 e. The Company has complied with all aspects of contractual  
24 agreements that would have a material effect on the interim  
25 financial information in the event of noncompliance;
- 26 f. He had responded fully to all inquiries made by the auditors;
- 27 g. He confirmed that "the transaction with VL Capital on June 28,  
28 2007 for the sale of 10 water treatment units is recorded in the



1 proper period and the valuation of the transaction is proper in  
2 accordance with [GAAP]”; and

- 3 h. No events or transactions other than those disclosed in the  
4 interim financial information have occurred subsequent to June  
5 30, 2007, that would require adjustment to, or disclosure in, the  
6 interim financial information.

7 Each of these representations was false because recognition of revenue from the  
8 VL Capital transaction did not comply with GAAP, and these revenues were  
9 material to Basin’s financial statements.

10 64. Late on the evening of August 13, 2007, Tekulve caused Basin to  
11 issue its Q2 2007 earnings release for release the next day. Tekulve caused it to be  
12 filed August 14, 2007, with the Commission on Form 8-K and signed the filing.  
13 The headline on the press release stated in part: **“Quarterly Revenues at \$6.4**  
14 **Million”** In the press release, it is represented that:

15 For the second quarter of 2007, revenues of \$6.4 million increased  
16 \$1.4 million when compared to revenues of \$5.0 million in the second  
17 quarter of 2006, a 28% increase. System sales revenues were \$5.2  
18 million for the second quarter of 2007, compared to \$4.2 million in  
19 the same period in 2006. As anticipated, the increase in system sales  
20 revenue this quarter was due primarily to a third party financing  
21 arrangement whereby Basin Water sold 10 water treatment systems of  
22 various capacities which had previously been placed with customers.

23 The release also reported that six month results included revenues of \$8 million.

24 All of these representations were materially false and misleading as the \$3.8  
25 million in revenue recognized from the VL Capital transaction was not, in fact, the  
26 result of a “third party financing arrangement” and had no economic substance.

27 65. On or about August 14, 2007, Tekulve also caused Basin to file with  
28 the Commission its quarterly report on Form 10-Q, for its second quarter 2007

1 (“Q2 2007”) ended June 30, 2007. Jensen read the Form 10-Q before it was filed,  
2 and Tekulve signed the Form 10-Q as Basin’s CFO. Among other results, Basin’s  
3 Form 10-Q reported system sales of \$5,199,000 and total revenues of \$6,414,000.  
4 These system sales and revenues included the \$3.8 million in revenue purportedly  
5 earned from the sale of systems to VL Capital. In describing Basin’s revenues, the  
6 Form 10-Q states that:

7 Revenues from system sales increased \$1.0 million, or 24%, in the  
8 second quarter of 2007 when compared to the same period in 2006.

9 This was due to the previously announced third party financing  
10 arrangement whereby we sold 10 water treatment systems of various  
11 capacities for \$3.8 million which had previously been placed with  
12 customers.

13 This statement is false and misleading as the “third party” to which Basin claims to  
14 have sold the systems was in fact an SPE created solely for making the purchase of  
15 these systems and substantially increasing Basin’s quarterly revenues, and the  
16 “financing” was in fact provided by Basin.

17 66. On or about August 14, 2007, Jensen and Tekulve each certified,  
18 among other things, with regard to the Form 10-Q, that:

- 19 a. He had reviewed the Form 10-Q;
- 20 b. Based on his knowledge, the Form 10-Q did not contain any  
21 untrue statement of material fact or omit to state a material fact  
22 necessary to make the statements made, in light of the  
23 circumstances under which they were made, not misleading  
24 with respect to the period covered by the report;
- 25 c. Based on his knowledge, the financial statements, and other  
26 financial information included in the report fairly presented in  
27 all material respects the financial condition, results of  
28 operations and cash flows of Basin as of and for the periods

1 presented in the report; and

2 d. He had disclosed to Basin's auditors and the audit committee of  
3 Basin's Board of Directors any fraud that involved company  
4 management.

5 These certifications were false in that the Form 10-Q contained material  
6 misrepresentations and omissions of material fact regarding Basin's quarterly  
7 revenues, and did not fairly represent Basin's financial condition, and Jensen and  
8 Tekulve had not disclosed to either Basin's auditors or its audit committee their  
9 fraud in causing the improper revenue recognition.

10 67. At about 1:30 p.m. Pacific Time on August 14, 2007, Jensen and  
11 Tekulve participated on behalf of Basin in an analyst conference call, together with  
12 Stark, for which call Tekulve had drafted the script the previous day. Among other  
13 representations, Basin's officers represented that Basin had "third party financed"  
14 thirteen systems, including "today's 10," and that "there is a total of 10 systems  
15 that were sold." This representation, which was misleading because the "third  
16 party financing" was in fact provided by Basin itself, was not corrected by either  
17 Jensen or Tekulve to disclose the material facts surrounding the purported sales to  
18 VL Capital, or that the revenue from these purported sales was, in fact, improperly  
19 recognized.

20 **G. The Defendants Materially Overstate Basin's Q3 2007 And Year-To-**  
21 **Date Revenues By Engaging In A Sham \$2.1 Million Sale To Another**  
22 **Special Purpose Entity They Caused To Be Created**

23 68. Water Services Solutions, LLC ("WSS") was registered as an LLC on  
24 September 27, 2007, three days before the end of Basin's Q3 2007 on September  
25 30, 2007. Ward was its Managing Member, and sole member. Like VL Capital,  
26 WSS was created solely to purchase units from Basin. It had no other business.  
27 Accordingly, like VL Capital, it was an SPE.

28 69. Seventeen days before it was legally formed, on September 10, 2007,

1 WSS transmitted a letter to Tekulve signed by Ward, which proposed that WSS  
2 purchase systems then being manufactured by Basin for lease to the City of  
3 Cottonwood for \$4.4 million less the present value of expected costs of insurance  
4 and property taxes related to the purchase (the "WSS Letter"). Tekulve signed the  
5 WSS Letter as "acceptable and agreed to" on or about September 24, 2007.

6 70. Tekulve caused Basin to recognize \$2.1 million in revenue in Q3 2007  
7 relating to the purported sale of the units to WSS based on the "percentage of  
8 completion method" for recognizing revenue. Recognition of this revenue was  
9 improper, however, because:

- 10 a. Basin did not have a definitive agreement with WSS, as  
11 required by the WSS letter, such agreement (the WSS  
12 Agreement") not being prepared and signed by Tekulve until  
13 the end of the next quarter, December 2007, and being made  
14 "as of December 27, 2007 and effective as of September 24,  
15 2007"; additionally, the WSS Agreement contained materially  
16 different terms, such as a lower purchase price of \$3,845,073,  
17 and payment of the \$25,000 down payment at the December 27,  
18 2007, closing date;
- 19 b. WSS had not made the initial down payment of \$25,000  
20 required by the WSS Letter "to be held in escrow pending  
21 execution of definitive documentation" and in fact, never paid  
22 it;
- 23 c. Collectability was not probable in that WSS had no assets and  
24 was dependent on a \$2.1 million loan from a third party,  
25 National City Energy Capital, LLC based in Cincinnati, Ohio,  
26 and the initial closing date of the loan was December 31, 2007,  
27 as set forth in the September 28, 2007, correspondence from  
28 National City to WSS which Tekulve received that same day;

1 that loan was never finalized or funded as National City  
2 “walked away” from the transaction in the summer of 2008, as  
3 Tekulve was aware; and

- 4 d. Delivery by Basin of the systems, which were being  
5 manufactured, had not occurred.

6 71. On or about October 31, 2007, pursuant to a request by Basin’s  
7 auditor, Basin’s Director of Finance, Hansen, prepared a memorandum, or “white  
8 paper,” which, after being reviewed and approved by Tekulve on or about  
9 November 1, was provided to Basin’s auditors. The memorandum purported to  
10 justify recognition of revenue based on the September 10, 2007, WSS Letter  
11 signed by Tekulve on September 24. The memorandum was materially misleading  
12 in part because it failed to disclose that WSS was an SPE with no operations which  
13 Basin caused to be created for the sole purpose of creating purported revenues.  
14 Additionally, the memorandum misleadingly states that “collectability is  
15 reasonably assured” because WSS “is backed by National City, a large Chicago  
16 bank,” when National City was, in fact, National City Energy Capital LLC, based  
17 in Cincinnati, Ohio; and because the \$25,000 deposit had been made into an  
18 escrow account when in fact no such deposit had been made. In fact, as stated  
19 above, the National City financing and \$25,000 escrow deposit never occurred.

20 72. On November 13, 2007, Tekulve signed a letter to SingerLewak,  
21 Basin’s auditors. Tekulve confirmed “that we are responsible for the fair  
22 presentation of the interim financial information in conformity with accounting  
23 principles generally accepted in the United States of America and Rule 10-01(a)-  
24 (c) of Regulation S-X.” He further represented in this Management Representation  
25 Letter, among other things, that:

- 26 a. The interim financial information is presented in accordance  
27 with GAAP applicable to interim financial information applied  
28 on an basis substantially consistent with the same period in the

1 prior year, the immediately preceding quarter and the prior  
2 fiscal year;

3 b. He had made available to SingerLewak all financial records and  
4 related data;

5 c. He had no knowledge of any fraud or suspected fraud affecting  
6 the Company involving management;

7 d. There are no material transactions that have not been properly  
8 recorded in the accounting records underlying the interim  
9 financial information;

10 e. The Company has complied with all aspects of contractual  
11 agreements that would have a material effect on the interim  
12 financial information in the event of noncompliance;

13 f. He had responded fully to all inquiries made by the auditors;

14 g. He confirmed that “the transaction with Water Services  
15 Solutions, LLC (WSS) on September 24, 2007 of [sic] water  
16 treatment units is recorded in the proper period and the  
17 valuation of the transaction is proper in accordance with  
18 [GAAP]”; and

19 h. No events or transactions other than those disclosed in the  
20 interim financial information have occurred subsequent to  
21 September 30, 2007, that would require adjustment to, or  
22 disclosure in, the interim financial information.

23 Each of these representations was false because recognition of revenue from the  
24 WSS transaction did not comply with GAAP, and these revenues were material to  
25 Basin’s financial statements.

26 73. On or about November 13, 2007, Tekulve caused Basin to file with  
27 the Commission its quarterly report on Form 10-Q, for its third quarter 2007 (“Q3  
28 2007”) ended September 30, 2007. Jensen read the Form 10-Q before it was filed,

1 and Tekulve signed the Form 10-Q as Basin's CFO. Among other results, Basin's  
2 Form 10-Q reported system sales of \$3,773,000 and total revenues of \$5,346,000.  
3 These system sales and revenues included the \$2.1 million in revenue purportedly  
4 earned from the sale of systems to WSS, resulting in material overstatements of  
5 Basin's system sales and total revenues of 104% and 56% respectively.  
6 Additionally, the Form 10-Q reports for the nine months ended September 30,  
7 2007, \$9,901,000 in system sales and \$13,367,000 in total revenues, which  
8 revenues include both the \$3.8 million in revenue purportedly earned from the sale  
9 of systems to VL Capital, and the \$2.1 million in revenue from the purported sales  
10 to WSS, totaling \$5.9 million or 60% of Basin's year-to-date system sales and 45%  
11 of its total revenues.

12 74. On or about November 13, 2007, Jensen and Tekulve each certified,  
13 among other things, with regard to the Form 10-Q, that:

- 14 a. He had reviewed the Form 10-Q;
- 15 b. Based on his knowledge, the Form 10-Q did not contain any  
16 untrue statement of material fact or omit to state a material fact  
17 necessary to make the statements made, in light of the  
18 circumstances under which they were made, not misleading  
19 with respect to the period covered by the report;
- 20 c. Based on his knowledge, the financial statements, and other  
21 financial information included in the report fairly presented in  
22 all material respects the financial condition, results of  
23 operations and cash flows of Basin as of and for the periods  
24 presented in the report; and
- 25 d. He had disclosed to Basin's auditors and the audit committee of  
26 Basin's Board of Directors any fraud that involved company  
27 management.

28 These certifications were false in that the Form 10-Q contained material

1 misrepresentations and omissions of material fact regarding Basin's quarterly  
2 revenues, and did not fairly represent Basin's financial condition, and Jensen and  
3 Tekulve had not disclosed to either Basin's auditors or its audit committee their  
4 fraud in causing the improper revenue recognition.

5 75. On the morning of November 14, 2007, Tekulve caused Basin to issue  
6 its Q3 2007 earnings release. Tekulve caused it to be filed with the Commission  
7 that day on Form 8-K and signed the filing. The headline on the press release  
8 stated in part: "**Quarterly Revenues Increase 10% to \$5.3 Million Over Prior**  
9 **Quarter**" In the press release, it is represented that:

10 For the third quarter of 2007, revenues of \$5.3 million increased \$0.5  
11 million when compared to revenues of \$4.8 million in the third quarter  
12 of 2006, a 10% increase. System sales revenues were \$3.8 million. . .

13 The release also reported that nine month results included revenues of \$13.4  
14 million. All of these representations were materially false and misleading as the  
15 \$5.3 million in quarterly revenue included \$2.1 million recognized from the WSS  
16 transaction, and the \$13.4 million year-to-date revenue included both the \$2.1  
17 million in revenue from the WSS transaction and the \$3.8 million from the VL  
18 Capital transaction, none of which was properly recognized.

19 76. At about 1:30 p.m. Pacific Time on November 14, 2007, Jensen and  
20 Tekulve participated on behalf of Basin in an analyst conference call, together with  
21 Stark, for which call Tekulve had drafted the script earlier that day, making  
22 changes together with Jensen and Stark. During this call, in response to an  
23 analyst's question as to whether all of Basin's \$3.8 million in systems sales were  
24 all "new" revenues or "do we have any of those third party financings we had in  
25 the last quarter?", Tekulve represented that "there is a single third party financing  
26 but that's on a new sale. It simply was a lease arrangement that we third party  
27 financed." This representation, was materially false and misleading because it did  
28 not disclose that over half of the systems revenue, \$2.1 million, constituted that



1 “single third party financing”; that the financing had not in fact yet occurred; the  
2 transaction had not been finalized; and revenue should not in fact have been  
3 recognized on it. Nor did Tekulve disclose that the transaction was with a “third  
4 party,” WSS, which was in fact an SPE created by Basin for no other purpose than  
5 to purchase the Cottonwood systems to boost Basin’s revenue.

6 **H. Tekulve Materially Overstates Basin’s FY 2007 Revenues**

7 77. On or about December 26, 2007, five days before the end of Basin’s  
8 fiscal year, Tekulve initiated documentation of two additional purported sales to  
9 SPEs, one with VL Capital and one with WSS. Although, as he noted in his  
10 calendar on December 28, 2007, Tekulve found it to be “a pain,” he further noted  
11 “but we need the revenues.”

12 78. Tekulve caused Basin to enter into an agreement with WSS “as of the  
13 26<sup>th</sup> day of December 2007 and effective as of the same date” which purported to  
14 sell an existing system to WSS for \$1,353,079. Tekulve signed this agreement on  
15 behalf of Basin.

16 79. Tekulve also caused Basin to enter into an agreement with VL Capital  
17 “as of the 31<sup>st</sup> day of December 2007 and on [sic] that same date” which purported  
18 to sell an existing system to VL Capital for \$763,330. Tekulve signed this  
19 agreement on behalf of Basin.

20 80. Tekulve caused Basin to recognize the full amount of revenue of  
21 \$1,353,079 on the second WSS agreement and \$489,000 on the second VL Capital  
22 agreement, purporting to use the “percentage of completion” method for  
23 recognizing revenue, recognizing a total of \$1,842,079 in revenue.

24 81. Recognition of revenue on these purported sales was improper for  
25 several reasons. First, delivery had not occurred, and services had not been  
26 rendered. Second, collectability was not reasonably assured as the payment terms  
27 only required small down payments of \$5,000 by WSS and \$10,000 by VL Capital  
28 into an escrow or trust account respectively, which payment was conditioned on

1 customer acceptance of the systems; larger payments of \$561,606 by WSS and  
2 \$30,568 by VL Capital after customer acceptance; and a long-term loan by Basin  
3 for the balance (ten year repayment by WSS with no payment due for the first five  
4 years, and no payment due at all if the lessee purchased the system within five  
5 years; and nine year repayment by VL Capital). This final provision meant that  
6 Basin was round-tripping its own cash to pay for the revenues that Tekulve wrote  
7 in his calendar "we need."

8       82. On March 17, 2008, Tekulve signed a letter to SingerLewak, Basin's  
9 auditors. Tekulve confirmed "that we [Basin management] are responsible for the  
10 fair presentation of the interim financial information in conformity with accounting  
11 principles generally accepted in the United States of America." He further  
12 represented in this Management Representation Letter, among other things, that:

- 13       a. The financial statements were fairly presented in conformity  
14       with GAAP;
- 15       b. He had made available to SingerLewak all financial records and  
16       related data;
- 17       c. He had no knowledge of any fraud or suspected fraud affecting  
18       the Company involving management;
- 19       d. There are no material transactions that have not been properly  
20       recorded in the accounting records underlying the financial  
21       statements;
- 22       e. The Company has complied with all aspects of contractual  
23       agreements that would have a material effect on the interim  
24       financial information in the event of noncompliance; and
- 25       f. The Company has properly recorded all revenue transactions in  
26       accordance with revenue recognition policies, including under  
27       the percentage-of-completion method.

28 Each of these representations was false because recognition of revenue from the

1 two WSS and two VL Capital transactions did not comply with GAAP, and these  
2 revenues were material to Basin's financial statements.

3 83. At or about 1:01 p.m. on March 17, 2008, Tekulve caused Basin to  
4 issue its FY 2007 earnings release. Tekulve caused it to be filed with the  
5 Commission that day on Form 8-K and signed the filing. The headline on the press  
6 release stated in part: "**Twelve Month Revenues Increase 10% to \$18.8 Million**"

7 In the press release, it is represented that:

8 For the year ended 2007, revenues increased by 10% to \$18.8 million  
9 compared to \$17.1 million for the year 2006. For the year, system  
10 sales revenues were \$13.5 million. . . .

11 For the fourth quarter of 2007, revenues of \$5.4 million were  
12 approximately 50% higher than our revenues for the fourth quarter of  
13 2006. For the fourth quarter of 2007, system sales revenues were \$3.6  
14 million. . . .

15 All of these representations were materially false and misleading as (1) the  
16 quarterly revenue included the \$1,353,079 in revenue recognized on the second  
17 WSS agreement and the \$489,000 recognized on the second VL Capital agreement,  
18 purporting to use the "percentage of completion" method for recognizing revenue –  
19 a total of \$1,842,079 in revenue; and (2) the annual revenue included both the  
20 improperly recognized \$1,842,079 in fourth quarter revenues, but also \$2.1 million  
21 in revenue from the third quarter WSS transaction and the \$3.8 million from the  
22 second VL Capital transaction, none of which was properly recognized. These  
23 \$7.7 million in revenues were material, constituting 42% of Basin's reported  
24 annual revenue.

25 84. Also on March 17, 2008, Tekulve caused Basin to file with the  
26 Commission its annual report on Form 10-K, for its fiscal year 2007 ("FY 2007")  
27 ended December 31, 2007. Tekulve signed the Form 10-K as Basin's CFO.  
28 Basin's FY 2007 Form 10-K reported total revenues of \$18,784,000, and system

1 sales of \$13,477,000. Although the Form 10-K does disclose that VL Capital and  
2 WSS accounted for 26% and 14% of those revenues respectively, it does not  
3 disclose that VL Capital and WSS were SPEs created by Basin for the sole purpose  
4 of Basin “selling” them systems on which it would then recognize revenue, and  
5 that Basin itself was “lending” its own monies to these entities in order to purchase  
6 that revenue. The Form 10-K further failed to disclose that none of the revenues  
7 purportedly received from transactions with VL Capital and WSS were properly  
8 recognized.

9 85. On or about March 17, 2008, Tekulve certified, among other things,  
10 with regard to the Form 10-K, that:

- 11 a. He had reviewed the Form 10-K;
- 12 b. Based on his knowledge, the Form 10-K did not contain any  
13 untrue statement of material fact or omit to state a material fact  
14 necessary to make the statements made, in light of the  
15 circumstances under which they were made, not misleading  
16 with respect to the period covered by the report;
- 17 c. Based on his knowledge, the financial statements, and other  
18 financial information included in the report fairly presented in  
19 all material respects the financial condition, results of  
20 operations and cash flows of Basin as of and for the periods  
21 presented in the report; and
- 22 d. He had disclosed to Basin’s auditors and the audit committee of  
23 Basin’s Board of Directors any fraud that involved company  
24 management.

25 These certifications were false in that the Form 10-K contained material  
26 misrepresentations and omissions of material fact regarding Basin’s quarterly and  
27 annual revenues, and did not fairly represent Basin’s financial condition, and  
28 Tekulve had not disclosed to either Basin’s auditors or its audit committee his and

1 Jensen's fraud in causing the improper revenue recognition in connection with the  
2 SPE transactions.

3 86. At about 1:30 p.m. Pacific Time on March 17, 2008, Tekulve and  
4 Stark participated on behalf of Basin in an analyst conference call, for which  
5 Tekulve had edited the script earlier that day. Among other representations,  
6 Tekulve represented that "Our annual revenues were \$18.8 million, an increase of  
7 \$1.7 million or 10% growth over the prior year. . . . We also achieved nearly  
8 similar levels of system sales as we did in 2006." This statement was materially  
9 false and misleading because it failed to disclose that 42% of Basin's annual  
10 revenues, and 58% of its system sales, were improperly recognized pursuant to the  
11 transactions with the SPEs. Moreover, when an analyst asked "who is VL Capital?  
12 And then, who is Water Services Solutions? Are those metropolitans or  
13 municipalities?" the analyst was told VL Capital was "a financing group," and  
14 regarding VL Capital and WSS, "They're the owners of the assets," when in fact,  
15 the purported transactions with VL and WSS were financed by Basin itself, and  
16 VL Capital and WSS in fact did not own the assets. Finally, when asked about  
17 "The issuance of \$3.4 million of notes receivable? What was that in connection  
18 with?", Tekulve responded "That was actually in connection with the V LC  
19 transaction. It was a combination – the sale to V LC was a combination of cash  
20 and a long term note receivable," without explaining that the transactions with VL  
21 Capital in fact had no economic substance and revenue should not have been  
22 recognized from them.

23 **I. Defendant Jensen Engages In Insider Trading, Gaining And Realizing**  
24 **Over \$9.1 Million From Selling Basin Stock And Taking Charitable Tax**  
25 **Deductions Of \$763,345, And Fails To Reimburse Basin For His**  
26 **Realized Profits**

27 87. Defendant Jensen sold Basin stock on the basis of material nonpublic  
28 information about the true financial condition of Basin described in detail above, in

1 breach of a duty of trust or confidence that he owed directly, indirectly, or  
 2 derivatively, to Basin and its shareholders by reason of his position as CEO,  
 3 Chairman of the Board and/or member of the Board when he became aware of the  
 4 material nonpublic information, through brokerage accounts he controlled in his  
 5 own name at Charles Schwab & Co., Inc. ("CS"), and in his and his wife's names  
 6 jointly with right of survivorship at Cannacord Adams, Inc. ("CA") and Albert  
 7 Fried & Company, LLC ("AF"), gaining and realizing profits as set forth below; as  
 8 well as donating shares of Basin stock to his *alma mater*, MIT, and taking  
 9 charitable tax deductions, also set forth below:

10 **Jensen's Sales and Charitable Contributions of Basin Stock**

<b>Date</b>	<b>Sale or Contribution</b>	<b>Number of Shares</b>	<b>Price</b>	<b>Profit</b>	<b>Account</b>	<b>Tax Deduction</b>
6/26/06	<i>Q1 2006 Form 10-Q filed including improper Opus Trust revenue</i>					
11/14/06	<i>Q3 2006 Form 10-Q filed including improper Thermax revenue</i>					
12/12/06	Sale	50,000	\$6.41	\$320,500	CA	
12/29/06	Gift	5,000				\$35,000
<b>2006 TOTAL</b>		<b>55,000</b>		<b>\$320,500</b>		<b>\$35,000</b>
2/20/07	Sale	57,281	\$8.00	\$458,248	CA	
2/21/07	Sale	42,719	\$8.00	\$341,752	CA	
	<i>2006 Form 10-K filed including improper Opus Trust and Thermax Revenue</i>					
4/2/07						
7/2/07	Sale	15,400	\$9.00	\$138,605	CA	
7/3/07	Sale	14,951	\$9.01	\$134,655	CA	
7/5/07	Sale	69,649	\$9.03	\$628,930	CA	
7/16/07	Sale	32,110	\$10.00	\$321,177	CA	
7/17/07	Sale	7,890	\$10.00	\$78,900	CA	

<b>Date</b>	<b>Sale or Contribution</b>	<b>Number of Shares</b>	<b>Price</b>	<b>Profit</b>	<b>Account</b>	<b>Tax Deduction</b>
7/19/07	Sale	40,000	\$12.72	\$508,800	CA	
8/14/07	<i>Q2 2007 Form 10-Q filed including improper VL revenue</i>					
10/25/07	Gift	85,000				\$371,803
11/14/07	<i>Q3 2007 Form 10-Q filed including improper WSS revenue</i>					
<b>2007 TOTAL</b>		<b>365,000</b>		<b>\$2,611,067</b>		<b>\$371,803</b>
3/17/08	<i>2007 Form 10-K filed including improper VL and WSS revenue</i>					
4/10/08	Gift	200,000				\$356,542
5/15/08	Sale	78,129	\$5.01	\$391,426	CA	
5/16/08	Sale	2,607	\$5.00	\$13,035	CA	
5/20/08	Sale	169,264	\$5.00	\$846,320	CA	
6/10/08	Sale	1,092	\$4.20	\$4,586	CS	
6/11/08	Sale	23,908	\$4.20	\$100,414	CS	
6/13/08	Sale	4,100	\$4.25	\$17,425	CS	
6/16/08	Sale	20,900	\$4.25	\$88,825	CS	
6/20/08	Sale	20,000	\$4.39	\$87,800	CS	
6/24/08	Sale	2,696	\$4.50	\$12,132	CS	
6/26/08	Sale	3,968	\$4.50	\$17,856	CS	
7/2/08	Sale	13,336	\$4.50	\$60,161	CS	
7/10/08	Sale	30,000	\$4.43	\$132,900	AF	
7/11/08	Sale	30,000	\$4.32	\$129,600	AF	
7/14/08	Sale	88,000	\$4.34	\$381,920	AF	
7/15/08	Sale	500	\$4.21	\$2,105	AF	
7/17/08	Sale	5,000	\$4.24	\$21,200	AF	
7/18/08	Sale	693	\$4.20	\$2,911	AF	

Date	Sale or Contribution	Number of Shares	Price	Profit	Account	Tax Deduction
7/21/08	Sale	81,500	\$4.21	\$343,115	AF	
7/23/08	Sale	500	\$4.20	\$2,100	AF	
7/28/08	Sale	4,000	\$4.00	\$16,000	AF	
7/29/08	Sale	5,100	\$3.94	\$20,094	AF	
7/30/08	Sale	6,000	\$3.89	\$23,340	AF	
7/31/08	Sale	15,000	\$3.82	\$57,300	AF	
8/1/08	Sale	12,000	\$3.86	\$46,320	AF	
8/4/08	Sale	9,300	\$3.77	\$35,061	AF	
8/6/08	Sale	20,850	\$3.75	\$78,188	AF	
8/7/08	Sale	882,500	\$3.75	\$3,309,375	AF	
<b>2008 TOTAL</b>		<b>1,530,943</b>		<b>\$6,241,508</b>		<b>\$356,542</b>
<b>GRAND TOTAL</b>		<b>1,950,943</b>		<b>\$9,173,075</b>		<b>\$763,345</b>

88. Jensen has not reimbursed Basin for any of the profits realized from these sales and gifts of Basin securities.

**J. Basin Announces It Intends To Restate Its Financial Statements For Each Of The Relevant Periods, And Its Stock Price Collapses**

89. On August 11, 2008, four days after Jensen made his final sale on the basis of material nonpublic information, profiting by over \$3.3 million on that sale alone, Basin issued a press release, announcing that Basin believed "that it may be necessary to restate previously issued financial statements for certain periods as a result of the Company's revenue recognition relating to certain specific transactions." Basin also announced that it would not timely file its report on Form 10-Q for the quarter ending June 30, 2008. Basin further announced that it no longer believed that it would achieve analysts' revenue estimates and did not



1 intend to provide any further revenue guidance for the year. On August 11, 2008,  
2 Basin also filed its report on Form 8-K regarding the August 11 press release and  
3 its contents and attaching a copy of it as an exhibit.

4 90. On August 11, 2008, Basin's stock price closed at \$2.36 per share,  
5 down from the previous day's close of \$3.62, a 35% decline.

6 91. On February 10, 2009, Basin filed a restatement on Form 10-K/A  
7 ("Restatement") with the Commission. The Restatement amended the annual  
8 report on Form 10-K for the year ended December 31, 2007, filed with the  
9 Commission on March 17, 2008. The Restatement also included amended and  
10 restated consolidated financial statements and related financial information for the  
11 years ended December 31, 2006 and 2007, including the financial results in each of  
12 the quarterly periods in 2006 and 2007. The Restatement contained a list of  
13 "significant determinations" including conclusions that

- 14 a. Basin improperly recognized \$1.5 million in revenues with  
15 respect to the Opus Trust transaction in Q1 2006. Instead,  
16 Basin should have recognized the down payment, "\$0.2  
17 million," that it received in Q2 2006 "when the transaction  
18 documentation was completed and executed" and "the  
19 remaining \$1.3 million as revenues upon collection."
- 20 b. Basin improperly recognized revenues with respect to the  
21 Thermax transaction because there was no shipping date for the  
22 units purportedly sold, no shipping date ever specified, and the  
23 units were never shipped. Basin conceded that Thermax  
24 claimed a right of return but also stated that Basin disputed that  
25 claim. Basin reversed the revenues "in the amount of \$0.1  
26 million and \$0.6 million in 2007 and 2006, respectively."
- 27 c. Basin improperly recognized revenues in the VL Capital and  
28 WSS and transactions because "the financial statements of VLC

1 and WSS should be consolidated with those of the Company in  
2 accordance with FIN 46(R). This analysis is based on the fact  
3 that the structure of the transactions with VLC and WSS did not  
4 effectively transfer sufficient risk to the other parties to the  
5 transactions, leaving the Company with the majority of the  
6 risks. In addition, in the transactions with WSS, the contract  
7 conditions of the transactions were not fulfilled. As a result, the  
8 Company incorrectly recognized revenues from these  
9 transactions.” Although Basin correctly concluded that the VL  
10 Capital and WSS transactions should not have been reflected in  
11 the financial statements under FIN 46R, the transactions should  
12 not have been reported as revenue for the reasons set forth  
13 above before even reaching an analysis of FIN 46R.

14 On February 10, 2009, Basin’s stock price closed at \$0.96, up one cent from the  
15 previous day’s close.

16 **FIRST CLAIM FOR RELIEF**

17 **Fraud In The Offer Or Sale Of Securities**

18 **Violations of Section 17(a) of the Securities Act**

19 **(Against All Defendants)**

20 92. The Commission realleges and incorporates by reference paragraphs  
21 1 through 91 above.

22 93. The Defendants, by engaging in the conduct described above, directly  
23 or indirectly, in the offer or sale of securities by the use of means or instruments of  
24 transportation or communication in interstate commerce or by use of the mails:

- 25 a. with scienter, employed devices, schemes, or artifices to  
26 defraud;  
27 b. obtained money or property by means of untrue statements of a  
28 material fact or by omitting to state a material fact necessary in

1 order to make the statements made, in light of the  
2 circumstances under which they were made, not misleading; or  
3 c. engaged in transactions, practices, or courses of business which  
4 operated or would operate as a fraud or deceit upon the  
5 purchaser.

6 94. By engaging in the conduct described above, the Defendants violated,  
7 and unless restrained and enjoined will continue to violate, Section 17(a) of the  
8 Securities Act, 15 U.S.C. § 77q(a).

9 **SECOND CLAIM FOR RELIEF**

10 **Fraud In Connection With The Purchase Or Sale Of Securities**

11 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**  
12 **(Against All Defendants, Both As Primary Violators And As Control Persons)**

13 95. The Commission realleges and incorporates by reference paragraphs 1  
14 through 91 above.

15 96. The Defendants and Basin, by engaging in the conduct described  
16 above, directly or indirectly, in connection with the purchase or sale of a security,  
17 by the use of means or instrumentalities of interstate commerce, of the mails, or of  
18 the facilities of a national securities exchange, with scienter:

- 19 a. employed devices, schemes, or artifices to defraud;  
20 b. made untrue statements of a material fact or omitted to state a  
21 material fact necessary in order to make the statements made, in  
22 light of the circumstances under which they were made, not  
23 misleading; or  
24 c. engaged in acts, practices, or courses of business which operated  
25 or would operate as a fraud or deceit upon other persons.

26 97. By engaging in the conduct described above, the defendants violated,  
27 and unless restrained and enjoined will continue to violate, Section 10(b) of the  
28 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §

1 240.10b-5.

2 98. The Defendants were control persons of Basin because each  
3 possessed, directly or indirectly, the power to direct or cause the direction of the  
4 management and policies of Basin. Accordingly, pursuant to Section 20(a) of the  
5 Exchange Act, 15 U.S.C. § 78t(a), each Defendant is liable to the Commission  
6 same extent as Basin would be.

7 **THIRD CLAIM FOR RELIEF**

8 **Issuer Reporting Violations**

9 **Section 13(a) of the Exchange Act,**

10 **and Rules 12b-20, 13a-1 and 13a-13 thereunder**

11 **(Against All Defendants, Both As Aiders And Abettors**

12 **And As Control Persons)**

13 99. The Commission realleges and incorporates by reference paragraphs 1  
14 through 91 above.

15 100. Basin violated Section 13(a) of the Exchange Act, 15 U.S.C. §  
16 78m(a), and Rules 12b-20, 13a-1 and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20,  
17 240.13a-1 & 240.13a-13, by filing with the Commission required periodic reports  
18 for the first through third quarters of its fiscal years 2006 and 2007, and annual  
19 reports for its fiscal years 2006 and 2007 which failed to include material  
20 information necessary to make the required statements, in light of the  
21 circumstances under which they were made, not misleading.

22 101. The Defendants knowingly provided substantial assistance to Basin's  
23 violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-  
24 13 thereunder.

25 102. By engaging in the conduct described above and pursuant to Section  
26 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), the Defendants aided and abetted  
27 Basin's violations, and unless restrained and enjoined will continue to aid and abet  
28 violations, of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules

1 12b-20, 13a-1 and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1 &  
2 240.13a-13.

3 103. The Defendants were control persons of Basin because each  
4 possessed, directly or indirectly, the power to direct or cause the direction of the  
5 management and policies of Basin. Accordingly, pursuant to Section 20(a) of the  
6 Exchange Act, 15 U.S.C. § 78t(a), each Defendant is liable to the Commission  
7 same extent as Basin would be.

8 **FOURTH CLAIM FOR RELIEF**

9 **Record-Keeping Violations**

10 **Violations of Section 13(b)(5) of the Exchange Act and**

11 **Rule 13b2-1 thereunder**

12 **(Against All Defendants)**

13 104. The Commission realleges and incorporates by reference paragraphs 1  
14 through 91 above.

15 105. By engaging in the conduct described above, the Defendants violated,  
16 and unless restrained and enjoined will continue to violate, Section 13(b)(5) of the  
17 Exchange Act, 15 U.S.C. § 78m(b)(5), by knowingly falsifying books, records and  
18 accounts issuers are required to make and keep, in reasonable detail, accurately and  
19 fairly reflecting the issuer's transactions and dispositions of its assets; and  
20 Exchange Act Rule 13b2-1, 17 C.F.R. § 240.13b2-1, by, directly or indirectly,  
21 falsifying or causing to be falsified issuer books, records, and accounts.

22 **FIFTH CLAIM FOR RELIEF**

23 **Misrepresentations To Accountants**

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

25 **(Against Defendant Tekulve)**

26 106. The Commission realleges and incorporates by reference paragraphs 1  
27 through 91 above.

28 107. Defendant Tekulve, by engaging in the conduct described above,

1 directly or indirectly:

- 2 a. made or caused to be made materially false or misleading
- 3 statements to accountants in connection with; or
- 4 b. omitted to state, or caused another person to omit to state,
- 5 material facts necessary in order to make statements made, in
- 6 light of the circumstances under which such statements were
- 7 made, not misleading, to accountants in connection with:
  - 8 i. an audit, review or examination of the financial
  - 9 statements of the issuer required to be made; or
  - 10 ii. the preparation or filing of a document or report required
  - 11 to be filed with the Commission.

12 108. By engaging in the conduct described above, defendant Tekulve  
13 violated, and unless restrained and enjoined will continue to violate, Exchange Act  
14 Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

15 **SIXTH CLAIM FOR RELIEF**

16 **False Certification Violations**

17 **Violations of Exchange Act Rule 13a-14**

18 **(Against All Defendants)**

19 109. The Commission realleges and incorporates by reference paragraphs 1  
20 through 91 above.

21 110. The Defendants, by engaging in the conduct described above, falsely  
22 certified, among other things, that Basin's 2006 and 2007 Forms 10-Q and 10-K  
23 fully complied with the requirements of the Exchange Act and fairly presented, in  
24 all material respects, the financial condition and results of operations of the  
25 company, when, in fact, the reports contained untrue statements of material fact  
26 and omitted material information necessary to make the reports not misleading.

27 111. By engaging in the conduct described above, the Defendants violated,  
28 and unless restrained and enjoined will continue to violate, Exchange Act Rule

1 13a-14, 17 C.F.R. § 240.13a-14.

2 **SEVENTH CLAIM FOR RELIEF**

3 **Failure To Reimburse**

4 **Violations of Section 304 of the Sarbanes-Oxley Act of 2002**

5 **(Against All Defendants)**

6 112. The Commission realleges and incorporates by reference paragraphs 1  
7 through 91 above.

8 113. The Defendants, by engaging in the conduct described above, failed to  
9 reimburse the issuer, Basin, for any bonus or other incentive based or equity-based  
10 compensation received by them from Basin during the twelve-month period  
11 following each of the public filings of the Forms 10-K and 10-Q alleged herein,  
12 which filings required restatement due to the material noncompliance of Basin, as a  
13 result of misconduct, with financial reporting requirements under the securities laws.

14 114. Defendant Jensen, by engaging in the conduct described above, failed  
15 to reimburse the issuer, Basin, for any profits realized from the sale of Basin  
16 securities during the twelve-month period following each of the public filings of  
17 the Forms 10-K and 10-Q alleged herein, which filings required restatement due to  
18 the material noncompliance of Basin, as a result of misconduct, with financial  
19 reporting requirements under the securities laws.

20 115. By engaging in the conduct described above, the Defendants violated  
21 Section 304(a)(1) of the Sarbanes-Oxley Act, 15 U.S.C. § 7243(a)(1), and  
22 defendant Jensen violated Section 304(a)(2) of the Sarbanes-Oxley Act, 15 U.S.C.  
23 § 7243(a)(2).

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the Commission respectfully requests that the Court:

26 **I.**

27 Issue findings of fact and conclusions of law that Defendants committed the  
28 alleged violations.

1 **II.**

2 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
3 permanently enjoining Defendants Jensen and Tekulve and their agents, servants,  
4 employees and attorneys, and those persons in active concert or participation with  
5 any of them, who receive actual notice of the judgment by personal service or  
6 otherwise, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),  
7 and Sections 10(b) and 13(b)(5) of the Exchange Act, 15 U.S.C. §§ 78j(b) &  
8 78m(b)(5), and Rules 10b-5, 13a-14 and 13b2-1 thereunder, 17 C.F.R. §§ 240.10b-  
9 5, 240.13a-14 & 240.13b2-1, and from aiding and abetting any violation of Section  
10 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1 and 13a-  
11 13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1 & 240.13a-13, and further  
12 permanently enjoining Tekulve and his agents, servants, employees and attorneys,  
13 and those persons in active concert or participation with any of them, who receive  
14 actual notice of the judgment by personal service or otherwise, from violating  
15 Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

16 **III.**

17 Order defendants Jensen and Tekulve to disgorge all ill-gotten gains from  
18 their illegal conduct, together with prejudgment interest thereon.

19 **IV.**

20 Order defendants Jensen and Tekulve to pay civil penalties under Section  
21 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the  
22 Exchange Act, 15 U.S.C. § 78u(d)(3).

23 **V.**

24 Order defendant Jensen to pay civil penalties for insider trading under  
25 Section 21A(a) of the Exchange Act, 15 U.S.C. § 78u-1(a).

26 **VI.**

27 Order defendants Jensen and Tekulve to pay reimbursement of all bonus or  
28 other incentive-based or equity-based compensation received by them from Basin



1 during the twelve-month period following each of the public filings of the Forms  
2 10-K and 10-Q alleged herein.

3 **VII.**

4 Order defendant Jensen to pay reimbursement of all profits realized from the  
5 sale of Basin securities during the twelve-month period following each of the  
6 public filings of the Forms 10-K and 10-Q alleged herein.

7 **VIII.**

8 Enter an order against defendants Jensen and Tekulve pursuant to Section  
9 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the  
10 Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting each of them from acting as an  
11 officer or director of any issuer that has a class of securities registered pursuant to  
12 Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports  
13 pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

14 **IX.**

15 Retain jurisdiction of this action in accordance with the principles of equity  
16 and the Federal Rules of Civil Procedure in order to implement and carry out the  
17 terms of all orders and decrees that may be entered, or to entertain any suitable  
18 application or motion for additional relief within the jurisdiction of this Court.

19 **X.**

20 Grant such other and further relief as this Court may determine to be just and  
21 necessary.

22  
23 DATED: June 24, 2011

24   
25 KAREN MATTESON  
26 Attorney for Plaintiff  
27 Securities and Exchange Commission  
28