

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOSEPH P. MICATROTTO, SR., aka JOSEPH P.  
MICATROTTO,

Defendant.

CIVIL ACTION  
FILE NO.

**COMPLAINT**

Plaintiff, United States Securities and Exchange Commission (“Commission”), alleges as follows:

**NATURE OF THE ACTION**

1. This case concerns fraud and other misconduct by Joseph P. Micatrotto, Sr., aka Joseph P. Micatrotto (“Micatrotto”), the former Chief Executive Officer, President, and Chairman of the Board of Directors of Buca, Inc. (“Buca”), a publicly traded, Minneapolis-based Italian restaurant company. Buca filed with the Commission proxy statements and Forms 10-K for the years 2000 to 2003 that materially understated Micatrotto’s compensation and failed to disclose two significant related party transactions involving Micatrotto. Micatrotto reviewed and signed Buca’s Forms 10-K for the years 2000 to 2003 that incorporated the annual proxy statements and financial statements for those same years, and he certified the accuracy of Buca’s Forms 10-K for the years 2002 and 2003.

2. Buca's understatement of Micatrotto's compensation arose because Micatrotto improperly billed Buca for a wide variety of personal and non-business expenses. From 2000 to 2003, Micatrotto improperly submitted and obtained reimbursement from Buca for personal expenses totaling nearly \$850,000. Despite his authority over the content of Buca's public filings, Micatrotto took no steps to ensure that Buca accurately verified and reported in its proxy statements the payment of these expenses as compensation to him. As a result, Buca's proxy statements for the years 2000 through 2003 understated Micatrotto's annual compensation in amounts ranging from 27% to 74%.

3. Micatrotto also participated in two related party transactions that were not timely or properly disclosed in Buca's financial statements or proxy statements. First, in 2001 Micatrotto bought an Italian villa, placed its title in the name of him and his wife, and then arranged for Buca to pay for the purchase and for certain improvements to the villa. Second, in June 2003 Micatrotto received and used \$65,000 from one of Buca's vendors, funds intended as a contribution towards a Buca corporate conference.

### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78aa].

5. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

### **THE DEFENDANT**

6. Joseph P. Micatrotto is 54 years old and resides in Las Vegas, Nevada. Micatrotto was the CEO, President, and a director of Buca from 1996 until 2004. He was the

Chairman of Buca's Board of Directors from 1999 until 2004. Micatrotto went on a disability leave in March 2004 and resigned from all positions in May 2004.

## **FACTS**

### **Background**

7. Buca, Inc. is a publicly traded company incorporated in Minnesota in 1996 and headquartered in Minneapolis. Buca is the holding company for two restaurant chains, Buca di Beppo and Vinny T's of Boston. Buca's stock is traded on NASDAQ. Buca is required to file certain documents with the Commission, including annual reports on Forms 10-K, quarterly reports on Forms 10-Q, and proxy statements. From 2000 through 2004, Buca also filed with the Commission several S-8 registration statements in connection with offerings of its securities. These registration statements incorporated by reference Buca's financial statements and certain other Commission filings.

8. Micatrotto had significant responsibilities with respect to ensuring the accuracy of Buca's Commission filings. He reviewed Buca's proxy statements and Forms 10-K and 10-Q before they were filed with the Commission. He signed all of Buca's Forms 10-K and 10-Q. In addition, he signed management representation letters to Buca's independent auditors in connection with their audit of Buca's financial statements. Micatrotto also certified the accuracy of Buca's Forms 10-K, and the financial statements included in those reports, for the years 2002 and 2003. Finally, he completed proxy questionnaires each year in connection with the preparation of Buca's proxy statements.

9. As Buca's top officer, Micatrotto helped create a corporate culture that lacked sufficient controls to protect Buca from fraud. For example, Buca had very few policies regarding billing travel and entertainment expenses to the company, and did not even implement

an official policy concerning the appropriate use of such expenses until after Micatrotto's resignation in 2004. Micatrotto regularly submitted reimbursement requests accompanied by little or no supporting documentation, enabling him to bill Buca for a wide variety of personal and inappropriate expenses.

**Micatrotto Used Buca Funds to Buy and Renovate an Italian Villa**

10. In 2001, Micatrotto and an individual who was one of Buca's wine vendors jointly purchased and held title to a villa in Sermenino, Italy. To obtain reimbursement from Buca, Micatrotto submitted a series of check requests reflecting the property's purchase price of approximately \$167,000. Buca accounting personnel approved the check requests and Buca paid Micatrotto and the vendor for the purchase. Despite the fact that Buca effectively paid for the villa, Micatrotto placed its title in his and his wife's name. Thereafter, Micatrotto ordered extensive renovations to the villa, and obtained reimbursement from Buca for renovation expenses totaling approximately \$45,000. Micatrotto failed to identify the purchase and renovation of the villa in any of his proxy questionnaires, even though the questionnaires requested disclosure of all related party transactions involving an amount greater than \$60,000. Micatrotto failed to identify the transaction in Buca's management representation letters to its independent auditors in connection with their audits of Buca's financial statements, letters which he signed. As a result, Micatrotto's purchase and renovation of the villa was not disclosed in Buca's proxy statements for 2001 and 2002, or in its financial statements and Forms 10-K for the same years.

11. After Buca's audit committee learned and reviewed the details of the villa purchase and renovation, it arranged for an unwinding of the transaction. In January 2004, the Board of Directors requested that Micatrotto and his wife sign an agreement assigning ownership of the property to Buca. Micatrotto transferred title of the villa into Buca's name in March 2004. In unwinding this transaction, Buca did not pay Micatrotto any additional consideration.

**Micatrotto Received Funds from a Buca Vendor**

12. In June 2003, one of Buca's vendors made a \$65,000 check payable to "MVI," with the vendor's understanding that it was a contribution to Buca's annual corporate conference. Micatrotto received the check and deposited it into his personal bank account, endorsing it "Joseph P. Micatrotto, MVI, Micatrotto Ventures, Inc." Micatrotto failed to identify this transaction in his proxy questionnaire or in Buca's management representation letter to its independent auditor. As a result, Micatrotto's receipt of \$65,000 from a Buca vendor was not disclosed in Buca's proxy statement for 2003, nor in its financial statements and Form 10-K for the same year.

**Micatrotto's Undisclosed Compensation**

13. Micatrotto improperly obtained reimbursement for personal expenses from Buca. From 2000 through 2003, Micatrotto submitted for reimbursement virtually all of his expenses, both personal and business, and obtained numerous cash advances from Buca. Micatrotto also submitted and received reimbursement for the same expenses multiple times. The amount of unsupported, duplicate, or personal expenses reimbursed to Micatrotto from 2000 to 2003 totaled approximately \$849,100. Among other things, Micatrotto:

- Submitted for reimbursement the same airline tickets two, three, or four times, totaling almost \$127,000;
- Withdrew nearly \$131,000 in cash from ATMs and then sought reimbursement from Buca for the amounts withdrawn;
- Obtained reimbursement for a trip to Hawaii that included a Board of Directors trip and his son's wedding, including the entire bill for the groom's dinner; and

- Obtained reimbursement for other personal expenses such as dog kenneling, car washes, gifts for his wife, and the remodeling of his homes in California, Las Vegas, and Minneapolis.

14. Micatrotto also used Buca's expense reimbursement system to award himself an unauthorized housing allowance. From 2001 to 2002, Micatrotto submitted expense forms for housing allowances of \$11,500 per month, for a total of \$152,996. Micatrotto's employment contract covering that time period did not allow for any such housing allowance.

15. Buca, as a public company, was required to report in its Forms 10-K any transaction involving the company and any director, executive officer, or member of their immediate families which exceeded \$60,000. Buca was also required to report in its proxy statements the executive compensation of certain officers including Micatrotto. Buca's Forms 10-K incorporated by reference the executive compensation section of its proxy statements.

16. Buca's proxy statements and Forms 10-K for the years 2000 through 2003 materially understated Micatrotto's compensation. The difference between Micatrotto's reported compensation and actual compensation for these years is detailed below:

	Year			
	2000 (as reported in 2003)	2001 (as reported in 2004)	2002 (as reported in 2004)	2003 (as reported in 2004)
<b>Micatrotto Compensation</b>				
Compensation, As Reported	327,828	378,985	691,211	699,090
Actual Compensation	447,828	658,485	948,911	890,990
<b>Impact of Unreported Compensation as a Percentage of Reported Compensation</b>	<b>37%</b>	<b>74%</b>	<b>37%</b>	<b>27%</b>

17. Micatrotto knew, or was reckless in not knowing, that Buca's proxy statements and Forms 10-K materially understated his compensation for the years 2000 through 2003. He also knew, or was reckless in not knowing, that Buca's proxy statements and financial statements omitted to disclose the two related party transactions identified above.

**COUNT I**

**Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]**

18. Paragraphs 1 through 17 are realleged and incorporated by reference herein.

19. At the times alleged in this complaint, Defendant Micatrotto, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, has employed devices, schemes and artifices to defraud.

20. Buca filed several S-8 registration statements with the Commission in connection with the offerings of its securities. These registration statements incorporated by reference Buca's financial statements and other Commission filings.

21. In the offer and sale of securities and as part of the scheme to defraud, Micatrotto made untrue statements of material fact and omitted to state material facts to investors and prospective investors regarding his executive compensation and involvement in two related-party transactions, as more fully described above.

22. Micatrotto knew or was reckless in not knowing of the facts and circumstances described above.

23. By reason of the activities described above, Defendant Micatrotto violated Section 17(a) of the Securities Act.

**COUNT II**

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and  
Rule 10b-5 [17 C.F.R. § 240.10b-5] Promulgated Thereunder**

24. Paragraphs 1 through 17 are realleged and incorporated by reference as set forth fully herein.

25. At the times alleged in the Complaint, Defendant Micatrotto, in connection with the purchase and sale of securities described above, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, has employed devices, schemes, and artifices to defraud; has made untrue statements of material fact and has omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and has engaged in acts, practices, and courses of business which have operated and will operate as a fraud and deceit upon purchasers and sellers of such securities, all as more fully described above.

26. Defendant Micatrotto knew or was reckless in not knowing of the activities described above.

27. By reason of the activities described above, Defendant Micatrotto violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

**COUNT III**

**Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and  
Rules 13b2-1 and 13b2-2 [17 C.F.R. 240.13b2-1 and 240.13b2-2] Promulgated Thereunder**

28. Paragraphs 1 through 17 are realleged and incorporated by reference herein.

29. Defendant Micatrotto violated Section 13(b)(5) of the Exchange Act by knowingly circumventing or knowingly failing to implement a system of internal accounting controls at Buca, or knowingly falsifying Buca's books, records, or accounts. Additionally, Micatrotto violated Exchange

Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified, the books, records, and accounts of Buca subject to Section 13(b)(2)(A) of the Exchange Act. Furthermore, Micatrotto violated Exchange Act Rule 13b2-2 by making, or causing to be made, materially false or misleading statements or omissions to an accountant or auditor.

30. By reason of the activities described above, Micatrotto violated these provisions.

#### **COUNT IV**

##### **Violations of Rule 13a-14 [17 C.F.R. 240.13a-14]**

31. Paragraphs 1 through 17 are realleged and incorporated by reference herein.

32. On March 26, 2003 and March 12, 2004, acting under Section 302 of the Sarbanes-Oxley Act of 2002 and Rule 13a-14 promulgated thereunder, Micatrotto certified Buca's 2002 and 2003 10-Ks. Specifically, Micatrotto certified that he had reviewed the report and that, based on his knowledge, the filings did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and based on his knowledge, the financial statements and other financial information included in the reports fairly presented in all material respects the financial condition, results of operation, and cash flows of Buca of, and for, the periods presented in the annual reports.

33. Micatrotto knew that the reports he certified contained untrue statements of material fact and omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

34. By reason of the activities described above, Micatrotto violated Rule 13a-14 promulgated under Section 302 of the Sarbanes-Oxley Act of 2002.

**COUNT V**

**Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n] and  
Rules 14a-3 and 14a-9 [17 C.F.R. 240.14a-3 and 240.14a-9] Promulgated Thereunder**

35. Paragraphs 1 through 17 are realleged and incorporated by reference herein.

36. Section 14(a) of the Exchange Act requires registrants that solicit any proxy or consent or authorization in connection with any security registered pursuant to Section 12 of the Exchange Act (other than an exempted security), to comply with such rules as the Commission may promulgate. Rule 14a-3 provides that no solicitation of a proxy may occur unless each person solicited is concurrently furnished or has previously been furnished with a proxy statement containing the information specified in Schedule 14A. Rule 14a-9 prohibits, among other things, the use of proxy statements which omit to state any material fact necessary in order to make the statements therein not false or misleading.

37. Micatrotto, a Buca director, violated Section 14(a) of the Exchange Act. Micatrotto stood for re-election as a director in 2002. Buca's proxy statements for the years 2001 through 2003 materially understated Micatrotto's compensation and omitted disclosure of the two related party transactions discussed in greater detail above. Micatrotto reviewed the proxy statements and knew them to be false and misleading, yet allowed the statements to be filed.

38. By reason of the activities described above, Micatrotto violated Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder.

**COUNT VI**

**Aiding and Abetting Buca's Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]  
and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. 240.12b-20, 240.13a-1, and 240.13a-13]  
Promulgated Thereunder**

39. Paragraphs 1 through 17 are realleged and incorporated by reference herein.

40. Based on the conduct alleged herein, Buca violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

41. Defendant Micatrotto, in the manner set forth above, knowingly provided substantial assistance to Buca, as an issuer of a security registered pursuant to Section 12 of the Exchange Act, in its failing to file with the Commission, in accordance with rules and regulations the Commission has prescribed, information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act and annual reports and quarterly reports as the Commission has prescribed.

42. By reason of the activities described above, Micatrotto aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

#### **COUNT VII**

##### **Aiding and Abetting Buca's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)-(b)(2)(B)]**

43. Paragraphs 1 through 17 are realleged and incorporated by reference herein.

44. Based on the conduct alleged herein, Buca violated Section 13(b)(2)(A) of the Exchange Act by keeping books and records with fraudulent entries related to Micatrotto's compensation. Buca violated Section 13(b)(2)(B) of the Exchange Act by maintaining a system of internal controls that permitted Micatrotto to obtain a significant amount of unreported compensation and to conceal related party transactions.

45. Defendant Micatrotto, in the manner set forth above, knowingly provided substantial assistance to Buca in connection with its failure to make and keep books and records, and accounts, which, in reasonable detail, accurately and fairly reflected Buca's transaction and dispositions of its assets.

46. Defendant Micatrotto, in the manner set forth above, knowingly provided substantial assistance to Buca in connection with its failure to devise and maintain a system of internal accounting

controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

47. By reason of the activities described above, Micatrotto aided and abetted, and, unless enjoined, will continue to aid and abet further violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Defendant Micatrotto committed the alleged violations.

II.

Issue an Order of Permanent Injunction restraining and enjoining:

- A. Defendant Micatrotto and his officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violations of Sections 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; Sections 10(b), 13(b)(5), and 14(a) [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78n(a)] of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-3, and 14a-9 thereunder [17 C.F.R. 240.10b-5, 17 C.F.R. 240.13a-14, 17 C.F.R. 240.13b2-1, 17 C.F.R. 240.13b2-2, 17 C.F.R. 240.14a-3, and 17 C.F.R. 240.14a-9];
- B. Defendant Micatrotto from aiding or abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a),

78m(b)(2)(A), and 78(b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. 240.12b-20, 17 C.F.R. 240.13a-1, and 17 C.F.R. 240.13a-13].

III.

Issue an Order requiring Defendant Micatrotto to disgorge all ill-gotten gains that he has received as a result of the acts complained of herein, with prejudgment interest thereon.

IV.

Issue an Order requiring Defendant Micatrotto to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

V.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] prohibiting Defendant Micatrotto from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VI.

Retain jurisdiction of this action to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant an Order for such further relief as the Court may deem necessary and appropriate.

s/ Cassandra Becker  
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Christopher S. Shearer  
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