

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL PALLESCHI AND DAVID LETHEM,

Defendants.

COMPLAINT

Plaintiff U.S. Securities and Exchange Commission alleges as follows:

I. Introduction

1. This case concerns a multi-year, multi-faceted accounting fraud orchestrated by senior executives of FTE Networks, Inc. (“FTE” or “the Company”), a Naples-based, publicly traded company that provided network infrastructure to the technology and telecommunications industries. From early 2016 until January 2019, Defendants Michael Palleschi, FTE’s Chief Executive Officer, and David Lethem, FTE’s Chief Financial Officer, engaged in two schemes to fraudulently inflate FTE’s revenues and paint a false picture of the Company’s finances. Additionally, Palleschi and Lethem misappropriated millions of dollars.

2. The Defendants’ conduct caused FTE’s public filings with the

Commission to contain numerous false and misleading statements, and also caused FTE's financial statements to be materially false. After the Company uncovered the fraud in 2019, it had to file restated financial statements that showed FTE had overstated its revenues in some quarterly and annual periods in 2017 and 2018 by as much as 108 percent.

3. In the first scheme from January 2017 through January 2019, in a desperate attempt to raise cash for FTE, Palleschi and Lethem secretly caused FTE to issue approximately \$22.7 million in Convertible Notes – i.e., notes that allowed the holder to convert repayment into shares of Company stock. Each Convertible Note contained varying terms and features that Palleschi and Lethem knew required FTE to perform extensive and complex analyses under Generally Accepted Accounting Principles (“GAAP”) to determine the proper accounting treatment and financial statement disclosure. But instead of doing that, Palleschi and Lethem masked the Convertible Notes as conventional promissory notes that involved a less cumbersome accounting treatment by, among other things, creating fake copies of the Notes and forging board of director signatures on purported resolutions approving the Notes.

4. Second, from early 2016 through November 2018, the Defendants fraudulently inflated FTE's revenues by essentially inventing approximately \$12.5 million of revenue and related accounts receivable from purportedly completed construction projects that had not yet been billed and from contracts

for projects that purportedly had been completed and billed but not yet paid. In fact, FTE had not performed the underlying work, and the revenue was fictitious.

5. Third, Palleschi and Lethem misappropriated approximately \$5.4 million from FTE for personal use, including, among other things, unauthorized and undisclosed salary increases, luxury car leases, private jet services, and unauthorized cash payments.

6. As part of these schemes, the Defendants doctored and forged numerous documents and signatures to mislead FTE's auditor, certain FTE board members and employees, and FTE's shareholders. For example, Lethem created fake copies of the Notes that stripped any information that would identify the Notes as Convertible Notes. He provided the fake copies to FTE's accounting personnel, who, in turn, improperly accounted for the Notes as conventional promissory notes. Additionally, for the second scheme, the Defendants jointly drafted and provided a memorandum to FTE's auditor that explained that the unbilled revenues and receivables were real work but could not be billed due to contractual terms with FTE's customer. The memorandum was entirely false.

7. By late 2018, the Convertible Note scheme and other onerous loans that FTE had entered into to attempt to cover the debt created by the Convertible Notes came to light when an FTE employee provided information

to FTE's only independent director about the true nature of FTE's finances. FTE placed Palleschi on unpaid leave on January 19, 2019, and launched an internal investigation in March 2019. The investigation ultimately led to the unraveling of all three schemes, and in May 2020 FTE restated various quarterly and annual financial statements for 2016, 2017, and 2018.

8. By engaging in the conduct described herein, the Defendants directly violated or are liable for aiding and abetting violations of numerous anti-fraud, accounting, books-and-records, proxy, and disclosure provisions of the federal securities laws as described in more detail below. The Commission seeks injunctive relief, disgorgement and prejudgment interest, and civil penalties against both Defendants.

II. Defendants and Related Entity

9. **Palleschi**, 45, is a resident of Naples, Florida. Palleschi was FTE's CEO and Chairman of the Board from January 2014 until January 19, 2019, when FTE placed him on unpaid leave. On May 11, 2019, Palleschi resigned from his positions at FTE.

10. **Lethem**, 62, is a resident of Fort Myers, Florida. During the events alleged in this Complaint, Lethem was FTE's CFO and reported to Palleschi. He resigned from FTE on March 11, 2019.

11. **FTE** is a Nevada corporation currently headquartered in New York, New York and previously headquartered in Naples, Florida. FTE's

common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78l(b)] and traded on the New York Stock Exchange under the ticker symbol FTNW from December 14, 2017 until December 17, 2019. Prior to that, FTE’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and traded on OTC Pink as FTNW. From September 12, 2014 until May 16, 2015, the Commission revoked the registration of FTE’s shares pursuant to Section 12(j) of the Exchange Act [15 U.S.C. § 78l(j)] for failure to file periodic reports with the Commission for more than two years. Currently, FTE’s common stock is not publicly traded on any exchange nor quoted on OTC Pink. However, its common stock remains registered pursuant to Section 12(g) of the Exchange Act.

III. Jurisdiction and Venue

12. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)] (“Securities Act”), and Sections 21(d), 21(e) and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa(a)].

13. This Court has personal jurisdiction over the Defendants and venue in this District is proper under Section 22 of the Securities Act and Section 27 of the Exchange Act because FTE’s headquarters were located in this District during the events in question, Lethem and Palleschi lived in this

District and worked at FTE's headquarters during the events in question, and the Defendants' actions, practices and courses of business constituting the violations alleged in this Complaint occurred in this District.

14. The Defendants, directly and indirectly, made use of means or instruments of transportation or communication in interstate commerce, or of the mails, or of any facility of a national securities exchange in connection with the acts, practices, and courses of business alleged herein.

IV. Facts

A. Background

15. The federal securities laws required FTE, as a registered company, to file periodic reports with the Commission, including annual (Forms 10-K) and quarterly (Forms 10-Q) reports. FTE was required, among other things, to include financial statements in its quarterly and annual reports that accurately and fairly reflected FTE's financial condition. Those financial statements had to comply with GAAP, also known as the Accounting Standards Codification ("ASC"). The Company's annual financial statements also had to be audited. Once filed, FTE's periodic reports and accompanying financial statements became available to the investing public.

16. The Defendants knew FTE filed financial statements in its quarterly and annual reports. They also knew FTE's financial statements needed to be truthful, accurate, and prepared in accordance with GAAP.

17. As FTE's CEO and CFO respectively, Palleschi and Lethem were responsible for reviewing and approving FTE's financial statements and its quarterly and annual reports. At all times relevant to this Complaint, Palleschi signed each of FTE's annual and quarterly reports before they were publicly filed. He certified, among other things, that each report: (a) did not include any material misstatements or omissions; and (b) fairly presented, in all material respects, the financial condition of FTE for that period.

B. The Convertible Note Scheme

18. In the fall of 2016, in an attempt to raise money for the cash-strapped FTE, Palleschi and Lethem began considering having FTE issue Convertible Notes. Unlike conventional promissory notes, in which the issuer agrees to repay the loan over a certain period at a specified interest rate, these Convertible Notes allowed the note holders the ability to convert cash repayment rights into FTE shares, often at favorable share prices.

19. Typically, only businesses that have no other way to obtain financing resort to convertible notes, because they normally involve higher interest rates than conventional promissory notes and the conversion features can wreak havoc with a company's stock price and dilute other shareholders' holdings.

20. For example, the Commission's website states that such notes "can lead to dramatic stock price reductions and corresponding negative effects on

both the company and its shareholders.” NASDAQ’s website similarly explains that “toxic” or “death spiral” convertible notes are “[u]sed by companies that are in such bad shape, that there is no other way to get financing.”

21. Furthermore, under GAAP, FTE was required to separately account for the convertible features of the Notes as derivatives – an accounting treatment markedly different than the accounting for conventional promissory notes. Lethem and Palleschi both knew this.

22. From January 2017 through January 2019, in an ever-increasing risky gambit to acquire cash and repay previous Convertible Notes, FTE entered into approximately 71 Convertible Notes with short-term maturities, steep interest rates, and market-price based formulas for conversion into shares. Palleschi authorized Lethem to have FTE enter into the Notes. Both knew the risks associated with these Notes, chief among them the massive interest payments and convertible features. In fact, Palleschi and Lethem referred to the Notes as “toxic” debt, a common term for convertible notes that reflects how devastating such notes can be for issuers and their shareholders.

23. Palleschi and Lethem concealed the true nature of the toxic Notes from the majority of FTE’s board of directors, FTE accounting personnel, the Company’s auditing firm, and FTE shareholders. They did this by, among other things, creating fake board resolutions purportedly authorizing issuance of the Convertible Notes using forged directors’ signatures, forging directors’

signatures on transfer agent letters related to share conversions, and forging the signature of an employee of the Company's transfer agent.

24. To further conceal the fact that FTE was issuing Convertible Notes, Lethem maintained two copies of the Notes. One was a correct copy. The other, which Lethem referred to as the "accounting" copy, removed from the Notes any references to the conversion rights and made it appear as if the Notes were conventional promissory notes. Lethem provided only the accounting copy to FTE's accounting personnel, who, in turn, improperly accounted for them in FTE's books and records as conventional promissory notes.

25. Lethem, as CFO, reviewed and made revisions to FTE's financial statements with respect to the Notes. He also directed FTE accounting personnel to make specific journal entries in FTE's financial statements about the Notes. When some FTE accounting personnel became suspicious about the true nature of the Notes and asked Lethem whether FTE's purported promissory notes were in fact Convertible Notes, Lethem repeatedly denied that the Notes were anything other than conventional promissory notes.

26. Palleschi and Lethem also lied to FTE's auditor about the true nature of the Notes. When the auditor asked for copies of certain Notes, Lethem refused to provide them and instructed FTE accounting personnel to lie that the Notes were unobtainable. When the auditor learned that one

purported promissory note was, in fact, a Convertible Note, Lethem went so far as to claim that his laptop crashed and FTE had no other copies of the Note, before he ultimately was forced to provide the Note to the auditor.

27. When the auditor asked about two Notes that were approved in FTE's board minutes, Lethem again lied and said the Notes were promissory notes that had been paid in full. He provided heavily doctored documents as support. He and Palleschi then signed and had sent to the auditors a management representation letter expressly stating that FTE did not enter into the two Convertible Notes.

28. As Note holders began to convert their repayment rights into actual shares, other FTE personnel began to get suspicious. In one instance, Lethem and Palleschi lied to the Company's regulatory reporting manager about the nature of shares she had discovered to cover up the fact that FTE had issued the shares as a result of the Convertible Notes. Eventually, Note holders converted the Notes into so many shares that the Company exceeded the total amount of shares it was authorized to issue on the New York Stock Exchange, which hastened discovery of the scheme.

29. At all times, Palleschi and Lethem knew FTE was not properly accounting for the Notes in its public filings and financial statements. They also knew that properly accounting for the Convertible Notes in FTE's public filings and financial statements would allow investors to learn about the

existence of the Notes, which in turn would have a materially negative effect on FTE's stock price. They also caused FTE to fail to file Forms 8-K for several of the Notes as required reportable events.

30. From mid-2017 through late 2018, Palleschi and Lethem each signed eight management representation letters that contained numerous material misstatements of fact. Among other things, the letters falsely stated that: (1) FTE's financial statements were in conformity with GAAP, even though Palleschi and Lethem knew the Notes were not properly accounted for; (2) Palleschi and Lethem had no knowledge of any fraud affecting FTE (despite their own participation in FTE's accounting fraud); and (3) FTE did not enter into the two Convertible Notes identified in FTE's board minutes.

C. The Fraudulent Revenue and Receivables Scheme

31. From early 2016 through late 2018, FTE, at the direction of Palleschi and Lethem, recognized approximately \$12.5 million of revenue and related accounts receivable from purportedly completed construction projects for which the Company had not yet billed ("Unbilled Work"), and from contracts for projects that the Company allegedly had completed and billed for, but which had not yet been paid ("Receivables"). In fact, FTE had not performed the work, and the revenue and receivables were wholly fictitious.

32. Of the \$12.5 million, \$10 million was for the Unbilled Work, which FTE began to recognize in 2016 to boost its poor performance. For the year

ended December 31, 2016, FTE's recognition of \$5.8 million of the Unbilled Work in its financial statements resulted in the Company overstating its revenue by 108 percent and its accounts receivable by 477 percent. Without the Unbilled Work, FTE's auditor would have likely called into question whether FTE was a "going concern"—in other words, whether FTE was financially stable enough to meet its obligations and continue its business for the foreseeable future

33. Throughout 2017 and 2018, at Lethem's direction and with Palleschi's knowledge, FTE continued to add more fictitious revenue to the Unbilled Work balance, entirely for purported work done for one particular customer ("Customer A"). In 2017, they added another \$4.2 million in Unbilled Work. Palleschi and Lethem did this even though Customer A had informed FTE in early 2017 that it would no longer hire FTE to do lucrative construction projects. In fact, Palleschi told another FTE officer that FTE would have a "\$5 million hole" in its revenue because Customer A would not use FTE anymore.

34. At the same time, FTE also improperly recognized an additional \$2.5 million in Receivables, predominantly comprised of construction projects for Customer A. This revenue was also wholly fictitious. After Lethem placed the Receivables on FTE's books, an FTE accounting employee reversed the revenue because it was completely unsupported—only to have Lethem overrule him and order the revenue placed back on FTE's books.

35. During FTE's periodic and year-end audits, FTE's auditor repeatedly questioned the validity of the Unbilled Work and the Receivables. In response, Palleschi, Lethem, and the other FTE officer provided the auditor with numerous false or doctored documents and explanations to justify the fraudulently recognized revenue.

36. Beginning in early 2017, FTE employees, at the direction of Palleschi and Lethem, provided FTE's auditor with fake spreadsheets that were supposed to provide support for the \$5.8 million in Unbilled Work for 2016. Palleschi and Lethem also had numerous conversations with the auditor to sell the validity of the Unbilled Work for the Company's 2016 year-end audit.

37. The Unbilled Work continued to be at the forefront of the auditor's questions and generated conflict between FTE and the auditor each quarter after that. Palleschi and Lethem continued to have FTE provide false materials to the auditor, all the while knowing the Unbilled Work was false and recognizing revenue from it was illegitimate.

38. By FTE's 2018 annual audit, the Unbilled Work balance had grown to approximately \$10 million. Internally, FTE's accounting personnel voiced concerns about the validity of the Unbilled Work and objected to being involved in providing the materials to the auditor to justify it. At that point, Palleschi and Lethem consulted with the third officer, who claimed he found a "treasure trove" of Unbilled Work from Customer A that FTE could provide to the

auditor. This prompted Palleschi to crack that without the “treasure trove,” FTE would go out of business.

39. Palleschi and Lethem provided, or directed others to provide, additional support for the Unbilled Work, which included false invoices and purchase orders from significantly smaller construction jobs that they represented were legitimate invoices and purchase orders from Customer A. In consultation with the third officer, they also drafted a memorandum summarizing FTE’s relationship with Customer A, which provided a false explanation of why FTE was unable to bill Customer A under the terms of its contract.

40. As for the Receivables, Palleschi and Lethem helped doctor an unrelated email from an employee of Customer A into an email purporting to confirm the validity of the Receivables. Lethem then sent the doctored email to FTE’s auditor to support FTE claiming the Receivables as revenue.

41. Palleschi and Lethem knew the Unbilled Work and the Receivables were not real sources of revenue and accounts receivable, that they had caused FTE to improperly recognize revenue, and that the documents and materials they had FTE provide to FTE’s auditor were false. They therefore also knew FTE’s public filings and financial statements were materially inaccurate because they included the Unbilled Work and the Receivables.

D. Palleschi and Lethem's Misappropriation

42. From 2017 until early 2019, Palleschi and Lethem misappropriated millions from FTE in the form of unauthorized and undisclosed salary increases, luxury car leases, private jet services, and other payments.

43. In 2017 and 2018, Palleschi used FTE funds to pay for approximately \$427,000 worth of private jet flights that were entirely for personal reasons, including family trips to Las Vegas costing \$43,853 and Peru costing \$184,387. FTE's Corporate Travel and Business Expense Policy, which applied to all FTE employees and executives, prevented FTE from paying for these flights. On at least two occasions, Palleschi allowed Lethem to use the private jet service for personal trips worth \$50,686.

44. Both Palleschi and Lethem also caused FTE to pay for multiple luxury car leases in amounts far greater than what was authorized under their respective employment agreements. Palleschi's employment agreement authorized a monthly car allowance of \$1,000, which he increased to \$10,000 a month without authorization. He then caused FTE to pay for approximately \$740,000 in car leases and storage fees, which included a Jeep that he used solely at his vacation home, three Audi sports cars, and a Dodge Ram. Lethem caused FTE to spend approximately \$54,000 on an Audi, when he had no auto allowance whatsoever.

45. Not content with luxurious private jet flights and car leases, both Palleschi and Lethem caused FTE to make unauthorized and undisclosed salary payments in excess of what each was entitled to receive. For example, FTE paid Palleschi an authorized salary of \$250,000 a year. Any changes to his salary and employment contract required board approval. Yet, secretly, without even presenting a proposal to the board, Palleschi raised his salary from \$250,000 to \$1 million in November 2016. Palleschi circumvented the normal approval process and instead sent his “revised” employment agreement directly to human resources with an instruction to accrue but defer payment on his new salary. Eventually he collected the increased salary.

46. Palleschi also caused FTE to pay for myriad personal expenses, including his gym memberships, Amazon purchases, dining at steak houses and other expensive restaurants, and trips to adult entertainment clubs.

47. Lethem caused FTE to pay him approximately \$214,000 in excess salary from 2017 through his resignation. He also controlled FTE’s bank accounts and sent almost \$800,000 in cash payments to himself and his wife.

48. All told, Palleschi misappropriated at least \$4.3 million from FTE, and Lethem misappropriated approximately \$1.1 million.

49. In addition to the money Palleschi and Lethem misappropriated from FTE, each also received millions of unauthorized stock awards that were not disclosed in a definitive proxy statement filed with the Commission on

December 10, 2018. That proxy statement also did not disclose some of the funds Palleschi and Lethem misappropriated.

50. The proxy statement, which Palleschi signed, directly related to shareholder votes on whether Palleschi should be an FTE director and on executive compensation as to Palleschi and Lethem. FTE had previously filed this false information with the Commission in a Form 10-K/A in April 2018, which Palleschi and Lethem certified.

E. FTE's Restatement

51. In May 2020, following its internal investigation, FTE filed its Form 10-K for the year ended December 31, 2018 that restated financial statements for the yearly and quarterly periods for 2016, 2017, and 2018 (the "Restatement").

52. As a result of the fraudulent revenue transactions described in this Complaint, the Restatement reduced revenue and accounts receivable for the year ended December 31, 2016 by \$5.8 million, representing reductions of 47 percent and 83 percent, respectively, from originally reported amounts. Additionally, as a result of the revenue transactions for the year ended December 31, 2017 and the quarterly periods ended March 31, June 30 and September 30, 2018, accounts receivable were reduced by between 16 percent and 54 percent from originally reported amounts.

53. As a result of the Convertible Notes transactions, the Restatement

increased net loss before taxes and current liabilities for the year ended December 31, 2017 by \$59.7 million, representing increases of 307 percent and 63 percent, respectively, from originally reported amounts. Liabilities for the quarterly periods ended March 31, June 30, and September 30 of 2017 and 2018 also increased by between 11 percent and 71 percent from originally reported amounts.

V. Claims For Relief

COUNT I

Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(a) (Palleschi and Lethem)

54. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference herein.

55. From early 2016 through January 2019, Palleschi and Lethem, in connection with the purchase and sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange, directly or indirectly, knowingly or severely recklessly, used and employed devices, schemes and artifices to defraud.

56. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) [17 CFR § 240.10b-5(a)] thereunder.

COUNT II

Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(b) (Palleschi and Lethem)

57. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference herein.

58. From early 2016 until January 2019, Palleschi and Lethem, in connection with the purchase and sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange, directly or indirectly and knowingly or severely recklessly made untrue statements of material fact and 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.

59. By reason of the foregoing, Palleschi and Lethem violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) [17 CFR § 240.10b-5(b)] thereunder.

COUNT III

Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(c) (Palleschi and Lethem)

60. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference herein.

61. From early 2016 through January 2019, Palleschi and Lethem, in

connection with the purchase and sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange, directly or indirectly, knowingly or severely recklessly, engaged in acts, practices and courses of business which operated as a fraud and deceit upon any person.

62. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(c) [17 CFR § 240.10b-5(c)] thereunder.

COUNT IV

Violations of Section 17(a)(1) of the Securities Act (Palleschi and Lethem)

63. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference herein.

64. From early 2016 through January 2019, Palleschi and Lethem, in the offer and sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, knowingly or severely recklessly, employed devices, schemes and artifices to defraud.

65. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of

the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT V

**Violations of Section 17(a)(2) of the Securities Act
(Palleschi and Lethem)**

66. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference herein.

67. From early 2016 through January 2019, Palleschi and Lethem, in the offer and sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, negligently obtained money or property by means of untrue statements of material fact and omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made not misleading.

68. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

COUNT VI

**Violations of Section 17(a)(3) of the Securities Act
(Palleschi and Lethem)**

69. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference herein.

70. From early 2016 through January 2019, Palleschi and Lethem, in

the offer and sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, negligently engaged in transactions, practices, and courses of business that operated as a fraud or deceit upon purchasers of securities.

71. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)].

COUNT VII

Aiding and Abetting FTE's Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 (Palleschi and Lethem)

72. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

73. From early 2016 through January 2019, FTE failed to file, in accordance with such rules and regulations as the Commission prescribes as necessary or appropriate, such information and documents as the Commission requires 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 [15 U.S.C. § 78l], or such annual, quarterly, or other reports as the Commission prescribes, or failed to include, in addition to the information expressly required to be included in any

statement or report filed pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] such further material information, if any, as may have been necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

74. Palleschi and Lethem knowingly or recklessly provided substantial assistance to FTE in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 CFR § 240.12b-20], 13a-1 [17 CFR § 240.13a-1], 13a-11 [17 CFR § 240.13a-11] and 13a-13 [17 CFR § 240.13a-13] thereunder.

75. By reason of the foregoing, Palleschi and Lethem aided and abetted FTE's violations of the foregoing statutes and rules, and, unless enjoined, are reasonably likely to continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 CFR § 240.12b-20], 13a-1 [17 CFR § 240.13a-1], 13a-11 [17 CFR § 240.13a-11] and 13a-13 [17 CFR § 240.13a-13] thereunder.

COUNT VIII

Aiding and Abetting FTE's Violations of Section 13(b)(2)(A) of the Exchange Act (Palleschi and Lethem)

76. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

77. From early 2016 through January 2019, FTE failed to make and

keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of assets.

78. Palleschi and Lethem knowingly or recklessly provided substantial assistance to FTE in its violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

79. By reason of the foregoing, Palleschi and Lethem aided and abetted FTE's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and, unless enjoined, are reasonably likely to continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

COUNT IX

Aiding and Abetting FTE's Violations of Section 13(b)(2)(B) of the Exchange Act (Palleschi and Lethem)

80. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

81. From early 2016 through January 2019, FTE failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that: transactions were executed in accordance with management's general or specific authorization; transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and to maintain

accountability for assets; access to assets were permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

82. Palleschi and Lethem knowingly or recklessly provided substantial assistance to FTE in its violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

83. By reason of the foregoing, Palleschi and Lethem aided and abetted FTE's violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] and, unless enjoined, are reasonably likely to continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

COUNT X

Violations of Section 13(b)(5) and Rule 13b2-1 of the Exchange Act (Palleschi and Lethem)

84. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

85. From early 2016 through January 2019, Palleschi and Lethem circumvented and/or failed to implement a system of internal accounting controls and knowingly falsified or caused to be falsified FTE's books, records and accounts as those terms are used in Section 13(b)(2) of the Exchange Act

[15 U.S.C. § 78m(b)(2)].

86. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 CFR § 240.13b2-1] thereunder.

COUNT XI

Violations of Rule 13b2-2 of the Exchange Act (Palleschi and Lethem)

87. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

88. From early 2016 through January 2019, Palleschi and Lethem, directly or indirectly, made and caused to be made, materially false and misleading statements, and omitted to state, and caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with audits and reviews of financial statements and the preparation and filing of documents and reports required to be filed with the Commission.

89. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Exchange Act Rule 13b2-2 [17 CFR § 240.13b2-2].

COUNT XII

Violations of Rule 13a-14 of the Exchange Act (Palleschi and Lethem)

90. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

91. From early 2016 through January 2019, Palleschi and Lethem signed the certifications in FTE's periodic filings identified above and falsely certified, among other things, that the forms fully complied with the requirements of the Exchange Act and fairly presented, in all material respects, the financial condition, the results of the operations of the company, and its cash flows, when, in fact, the reports contained untrue statements of material fact and omitted material information necessary to make the reports not misleading.

92. By reason of the foregoing, Palleschi and Lethem violated, and, unless enjoined, are reasonably likely to continue to violate, Exchange Act Rule 13a-14 [17 CFR § 240.13a-14].

COUNT XIII

Violation of Section 304 of the Sarbanes-Oxley Act of 2002 (Palleschi)

93. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

94. From early 2016 through January 2019, FTE—aided and abetted by Palleschi – violated the financial reporting requirements of the federal

securities laws, including Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 CFR § 240.12b-20], 13a-1 [17 CFR § 240.13a-1], 13a-11 [17 CFR § 240.13a-11] and 13a-13 [17 CFR § 240.13a-13] thereunder.

95. FTE, upon discovering the accounting errors resulting from Palleschi and Lethem's misconduct was required to—and did—prepare restated financial statements for 2017, and the quarterly periods ended March 31, 2018, June 30, 2018, and September 30, 2018.

96. As Chief Executive Officer of FTE, Palleschi was required by Section 304(a) of the Sarbanes-Oxley Act [15 U.S.C. § 7243(a)] to reimburse FTE: (a) for any bonus he received from FTE during or other incentive-based or equity-based compensation the 12-month period following the first public issuance or filing of the financial document embodying the financial reporting requirement, and (b) any profits realized from the sale of the issuer's stock during that 12-month period.

97. Palleschi has not reimbursed FTE for the bonus and equity-based compensation that he received or obtained during the statutory time periods established by Section 304(a) of the Sarbanes-Oxley Act [15 U.S.C. § 7243(a)].

98. The Commission has not exempted Palleschi, pursuant to Section 304(b) of the Sarbanes-Oxley Act [15 U.S.C. § 7243(b)], from the application of Section 304(a) of the Sarbanes-Oxley Act [15 U.S.C. § 7243(a)].

99. By reason of the foregoing, under Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243] Palleschi must reimburse FTE for (a) bonuses, incentive-based compensation, and equity-based compensation received from FTE during the 12-month periods following the public issuance and filing with the SEC of Forms 10-K for fiscal year ending 2017 and Forms 10-Q for the quarterly periods ending March 31, 2018, June 30, 2018, and September 30, 2018, and (b) profits Palleschi realized from any sale of FTE stock during those 12-month periods.

COUNT XIV

Violation of Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 (Palleschi)

100. The Commission realleges Paragraphs 1 through 53 and incorporates them by reference.

101. Palleschi, directly or indirectly, by use of mails, or the means or instrumentalities of interstate commerce or any facility of a national securities exchange, or otherwise, in contravention of Exchange Act Rules 14a-3 and 14a-9, solicited or permitted the use of his name to solicit proxies, consents, or authorizations in respect of non-exempt securities registered with the SEC pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], by means of a proxy statement, form of proxy statement, notice of meeting and other communications that did not contain the information specified in Schedule 14A

and that contained statements, which, at the time and in the light of the circumstances under which they were made, were false and misleading with respect to material facts or which omitted to state material facts necessary in order to make the statements made therein not false or misleading or necessary to correct statements in earlier communications with respect to the solicitation of a proxy for the same meeting or subject matter which became false or misleading.

102. By reason of the foregoing, Palleschi violated, and, unless enjoined, is reasonably likely to continue to violate, Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rules 14a-3 [17 C.F.R. § 240.14a-3] and 14a-9 thereunder [17 C.F.R. § 240.14a-9].

VI. Relief Requested

WHEREFORE, the Commission respectfully requests the Court find that the Defendants committed the violations of the federal securities laws alleged in this Complaint and:

A. Permanent Injunction

Issue Permanent Injunctions, enjoining both Defendants, their agents, servants, employees, attorneys, and representatives, and all persons in active concert or participation with them, and each of them, from violating the provisions of the securities laws as alleged against each Defendant in this Complaint.

B. Disgorgement and Prejudgment Interest

Issue an Order directing the Palleschi and Lethem to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts and/or courses of conduct alleged in this Complaint.

C. Civil Penalties

Issue an Order directing both Defendants to each pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

D. Officer And Director Bar

Issue an Order barring Palleschi and Lethem from serving as an officer or director of any public company pursuant to Section 21(d) of the Exchange Act and Section 305(b)(5) of the Sarbanes-Oxley Act.

E. Reimbursement Under Section 304(a) of the Sarbanes-Oxley Act

Require Palleschi to reimburse FTE as set forth in Count XIII of the Complaint under Section 304(a) of the Sarbanes-Oxley Act.

F. Further Relief

Granting such other and further relief as this Court may deem just and appropriate.

VII. Retention Of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action and over the Defendants in order to implement

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

VIII. Jury Trial Demand

The Commission hereby demands a trial by jury on any and all issues in this action so triable.

Respectfully submitted,

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