

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, DC 20549

Plaintiff,

v.

CHARLES JOHNSON, JR., CHRIS BENYO,
MICHAEL KENNEDY, JOHN TULI, AND
KENT WAKEFORD,

Defendants.

JURY DEMANDED

C.A. No. __ - ____

COMPLAINT

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

SUMMARY

1. This action arises from a series of fraudulent actions by defendants to materially and improperly inflate the announced and reported revenues of PurchasePro.com, Inc. (“PurchasePro”), and to otherwise misrepresent PurchasePro’s business activities, for the last quarter of PurchasePro’s 2000 fiscal year, which ended December 31, 2000 (“Q 4 2000”) and the first quarter of PurchasePro’s 2001 fiscal year, which ended on March 31, 2001 (hereinafter “Q1 2001”). Defendant Charles Johnson, Jr., PurchasePro’s founder and former Chief Executive Officer, directed the overall fraudulent scheme while two former executives of PurchasePro—defendants Chris Benyo and Michael Kennedy—and two former executive-level employees of America Online, Inc. (“AOL”)—John Tuli and Kent Wakeford—took knowing and deliberate steps in furtherance of the fraudulent scheme.

2. As detailed below, each of the defendants engaged in conduct designed to cause or assist PurchasePro to issue public announcements of financial results, and reports filed with the Commission, that were false and misleading. For example, PurchasePro included in its financial statements “revenues” that the defendants knew or were reckless in not knowing could not legitimately be included as revenue in the relevant periods because such revenues derived from PurchasePro’s “sales” of marketplace licenses (*i.e.* a license and software package to facilitate online business-to-business commerce) that were subject to and contingent upon undisclosed reciprocal agreements between PurchasePro and its customers, sales contracts that were executed after the close of the quarter, or fictitious contracts or transactions between PurchasePro and AOL.

3. To facilitate these fraudulent efforts, the defendants also falsified or caused the falsification of PurchasePro books and records and misled or caused others to mislead PurchasePro’s internal accountants or outside auditors.

4. By reason of the foregoing fraudulent activities, the revenues announced or later reported by PurchasePro for Q4 2000 and Q1 2001 were materially misleading. Thus, the Form 10-K for 2000 and Form 10-Q for Q1 2001 that PurchasePro filed with the Commission contained statements that were materially false or omitted material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

5. By knowingly or recklessly engaging in the transactions, acts, omissions, practices, and courses of business alleged herein, the defendants violated, and are liable for the violations of, the federal securities laws and regulations as set forth below. Unless enjoined, these defendants are likely to commit similar violations in the future.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. The defendants directly or indirectly used the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, omissions, practices, and courses of business described herein.

7. Venue lies in this district pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 22 of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77v(a)] because certain acts or transactions constituting the violations occurred in this district.

THE DEFENDANTS

8. Charles Johnson, Jr., age 43, formed PurchasePro in 1996 and was the company’s CEO and Chairman of its Board of Directors until PurchasePro terminated his employment and he resigned from the Board in May 2001. Johnson resides in Las Vegas, Nevada.

9. Chris Benyo, age 43, was PurchasePro’s Senior Vice President for Marketing and Network Development during the relevant period. Benyo currently resides in Greer, South Carolina.

10. Michael Kennedy, age 51, was PurchasePro’s Chief Technology Officer during the relevant period. Kennedy currently resides in Morristown, New Jersey.

11. John Tuli, age 36, was Vice-President of Business Development for NetScape, a division of AOL, during the relevant period. Tuli currently resides in Weston, Massachusetts.

12. Kent Wakeford, age 35, was AOL's Executive Director of Business Affairs during the relevant period. Wakeford currently resides in New York, New York.

CORPORATE ENTITY

13. During the relevant period, PurchasePro was a Nevada corporation, headquartered in Las Vegas, that provided Internet business-to-business electronic-commerce software and services. PurchasePro's signature product, the marketplace software license, allowed users to operate online, e-commerce business-to-business centers designed to facilitate faster and cheaper transactions among the marketplace host and its customers or suppliers.

14. At all relevant times, PurchasePro's common stock was registered with the Commission pursuant to Exchange Act Section 12(g) and traded on the Nasdaq National Market. The company filed a voluntary Chapter 11 bankruptcy petition in September 2002, and has operated as a debtor-in-possession since then. In January 2003, the company changed its name to Pro-After, Inc. and, with the bankruptcy court's approval, sold substantially all its assets to a privately held company.

FACTS

I. Financial Fraud and Improper Conduct - Q4 2000

A. Johnson Materially and Artificially Inflated PurchasePro's Earnings for Q4 2000

15. On February 12, 2001, PurchasePro issued a press release and conducted an investor conference call announcing, among other things, that the company's revenues for Q4 2000 totaled \$33.6 million. Later, on April 2, 2001, PurchasePro filed its fiscal year 2000 Form

10-K with the Commission, in which PurchasePro, among other things, confirmed its announcement and reported Q4 2000 revenues totaling \$33.6 million.

16. The \$33.6 million in revenue announced and reported by PurchasePro was materially overstated. As detailed below, Johnson, along with others, all acting knowingly or recklessly, materially inflated PurchasePro's reported revenue for Q4 2000 by \$3.92 million (over 11% of the reported revenues) by improperly recognizing revenue from end-of-the-quarter contracts with three customers—The Thread, ProfitScape, and V-Twin Holdings—that were the subject of contingent side agreements that were not disclosed to PurchasePro's auditors. Johnson used these side deals to induce these customers to buy software licenses they either did not want or for which they would have been unable to pay without such side deals. Recognizing revenue from each of these agreements was improper under generally accepted accounting principles (GAAP) and was otherwise fraudulent and misleading.

i. The \$720,000 Thread.com Transaction

17. On December 30, 2000 a clothing company called The Thread.com—which had a poor credit history and a questionable ability to afford PurchasePro's software—bought a PurchasePro marketplace software license in the amount of \$720,000 in exchange for PurchasePro's promise to invest \$250,000 in its next round of financing — money it required to have any chance of paying PurchasePro. In or about December 2000, Johnson, among others, participated in the transaction negotiations and promised that PurchasePro would invest in The Thread's next round of financing. Johnson knew or was reckless in not knowing that PurchasePro's promised investment was designed to bolster the clothing company's creditworthiness and thereby enable it to pay for PurchasePro's marketplace software license.

Johnson knowingly or recklessly failed to disclose this relationship to PurchasePro's auditors. As a result, PurchasePro improperly included revenue from this sale in the quarterly revenue figure publicly announced on February 12, 2001 and reported in its Form 10-K filing with the Commission on April 2, 2001.

ii. The \$2.2 Million ProfitScape Transaction

18. On December 29, 2000 a payment solutions company called ProfitScape.com bought two PurchasePro marketplace software licenses totaling \$2.2 million, in exchange for a simultaneous \$1 million loan from PurchasePro. Johnson knew or was reckless in not knowing that ProfitScape would not have bought at least one of the marketplace licenses for \$1.1 million and in any event would not have been able to pay for it without the \$1 million loan from PurchasePro.

19. Later, during the year-end audit of PurchasePro's fiscal year 2000 financial statements, PurchasePro's auditors required payment of the loan before they would approve PurchasePro's recognition of at least \$1 million in revenue. Johnson, among others, arranged for an outside third party to substitute for PurchasePro as the lender, by committing to reimburse the outside party. Johnson knowingly or recklessly failed to disclose this relationship to PurchasePro's auditors. As a result, PurchasePro improperly included \$2.2 million from this sale in the quarterly revenue figure publicly announced on February 12, 2001 and reported in its Form 10-K filing with the Commission on April 2, 2001.

iii. The \$1 Million V-Twin Holdings Transaction

20. On December 29, 2000 a motorcycle company called V-Twin Holdings, Inc.—which had cash flow problems and a questionable ability to pay—bought five marketplace

software licenses totaling \$1 million, in exchange for Johnson's promise to personally invest in the company. Johnson knew or was reckless in not knowing that V-Twin would not have bought the software licenses and in any event would not be able to pay for them without his promised investment. Johnson knowingly or recklessly failed to disclose this relationship to PurchasePro's auditors. As a result, PurchasePro improperly included revenue from these sales in the quarterly revenue figure publicly announced on February 12, 2001 and reported in its Form 10-K filing with the Commission on April 2, 2001.

B. Johnson and Wakeford Caused PurchasePro to Improperly Issue \$30 Million in Warrants to AOL in Q4 2000

21. In December 2000, as part of an overall restructuring of several agreements between PurchasePro and AOL, the two companies entered into an amended warrant agreement (the "Warrant Agreement"), under which AOL would earn warrants, *i.e.*, the right to purchase PurchasePro stock at a specified price, in exchange for AOL's referring to PurchasePro third-party customers who generated recognized revenue for PurchasePro. Specifically, for each dollar in revenue that PurchasePro recognized from a third-party customer that was referred by AOL, AOL would receive three dollars in warrants. Each warrant would permit AOL to purchase a share of PurchasePro stock for one cent, at a time when PurchasePro stock was trading at over \$12 per share. The Warrant Agreement provided that AOL could earn a maximum of \$30 million in warrants during Q4 2000, in exchange for referring to PurchasePro \$10 million in recognized revenue from third-party sales.

22. Initially, in or about December 2000, Johnson and Wakeford planned a revenue swap, whereby AOL directly would pay PurchasePro approximately \$10 million for various products, including subscriptions, licenses, and advertising, and PurchasePro would forward \$30

million worth of warrants to AOL, purportedly under the PurchasePro-AOL Warrant Agreement.

23. Accordingly, in a letter dated December 21, 2000, Johnson stated to AOL that PurchasePro recognized over \$10 million in revenue and that AOL earned \$30 million in warrants. This letter was false and misleading in that, as Johnson knew or was reckless in not knowing, AOL had not made referrals that would qualify as recognized revenue under the Warrant Agreement, and AOL thus did not earn such warrants.

24. Indeed, later in Q4 2000, Johnson and Wakeford realized that AOL's direct payments did not satisfy the definition of recognized revenue under the Warrant Agreement. Accordingly, Johnson and Wakeford knowingly or recklessly entered into a scheme to create the false appearance that AOL had referred over \$10 million of recognized revenue from third-party sales to PurchasePro in Q4 2000, so that AOL could receive the \$30 million in warrants. In exchange, Wakeford promised to deliver third party revenue to PurchasePro in Q1 2001 (and beyond) by means of an aggressive marketplace license sales campaign.

25. Johnson and Wakeford, among others, acting knowingly or recklessly, created or caused others to create false, fictitious records to make it appear that AOL had made Q4 2000 referrals that did not in fact occur. In particular, Johnson directed others at PurchasePro to create referral forms, which falsely credited AOL for customer referrals it did not make. Wakeford either signed these forms or caused them to be signed.

26. Ultimately, PurchasePro's annual report on Form 10-K falsely stated that AOL had referred \$10.5 million in third-party sales to PurchasePro during Q4 2000. Not only was this false and deceptive, but given the importance of PurchasePro's strategic relationship with AOL and PurchasePro's desire to be perceived as a leader in the Internet business-to-business industry,

the misrepresentations regarding AOL's Q4 2000 third-party referrals was material.

II. Financial Fraud - Q1 2001

A. PurchasePro Materially and Artificially Inflated Its Announced Earnings for Q1 2001 by over 65%

27. On April 26, 2001, PurchasePro issued a press release and hosted a conference call with analysts and investors, announcing, among other things, that the company's revenues for Q1 2001 totaled \$29.8 million. On May 29, 2001, PurchasePro filed its Q1 2001 Form 10-Q with the Commission, in which PurchasePro reported revenues of \$16.02 million.

28. PurchasePro's announced and subsequently reported revenues were both materially overstated.

29. As detailed below, Johnson, with assistance from Benyo, Kennedy, Tuli, and Wakeford, all acting knowingly or recklessly, materially inflated PurchasePro's announced revenue total by \$19.3 million, 65% of the total revenue, and the company's reported revenues by at least \$6.02 million, 37% of its total. Specifically, both PurchasePro's announced and reported revenues included \$6.02 million in "revenue" improperly recognized from marketplace software license sales by PurchasePro to YellowBrix, China.com and Garg Data International Inc. Recognizing the revenue from these sales was improper under GAAP and was otherwise fraudulent and misleading because, in the case of YellowBrix and Garg Data, the sales were contingent upon undisclosed reciprocal agreements and, in the case of Garg Data and China.com, the sales were executed after the close of the quarter. PurchasePro's announced earnings included an additional \$13.3 million in "revenue" improperly recognized from PurchasePro's marketplace license sale to Bigstep, Inc. and from two transactions with AOL. Recognizing revenue from these transactions was improper under GAAP and was otherwise fraudulent and

misleading because, in the case of Bigstep, the sale was contingent upon undisclosed reciprocal agreements, and in the case of AOL, one of the transactions was executed after the close of the quarter while the other was entirely fraudulent.

**B. PurchasePro Improperly Recognized
Q1 2001 Marketplace License Sales**

i. The \$1.1 Million Bigstep Transaction

30. In Q1 2001, a website services company called Bigstep, Inc. bought a marketplace license from PurchasePro for approximately \$1.1 million in exchange for PurchasePro's promise to buy approximately \$1.4 million of goods and services from Bigstep. As shown below, Johnson knew or was reckless in not knowing that, but for this reciprocal commitment and other simultaneous promises by AOL and its employees, Bigstep would not have bought this marketplace license.

31. In or about March 2001, R. Geoffrey Layne, PurchasePro's Executive Vice President, informed Johnson of the contingent nature of the transaction and Bigstep's reluctance to proceed without PurchasePro's reciprocal commitment. Johnson directed Layne to execute this transaction, but instructed Layne to ensure that PurchasePro's cross commitment was not documented or otherwise disclosed. Johnson further instructed Layne to avoid following through on PurchasePro's commitment for at least two weeks after the date of the license sale.

32. Johnson did not disclose this contingent agreement to PurchasePro's outside auditors, and, as noted above directed Layne to conceal its existence.

33. After factoring in AOL's commission, a portion of which PurchasePro netted against its revenues, Johnson included \$671,000 in "revenue" from the sale to Bigstep, Inc. in PurchasePro's April 26th earnings announcement. PurchasePro's auditors, however,

subsequently became aware of information concerning the contingent side agreement, and did not permit inclusion of the revenue in the Form 10-Q that PurchasePro filed with the Commission on May 29, 2001.

ii. The \$440,000 Yellowbrix Transaction

34. Also in Q1 2001, an information services company called YellowBrix bought a marketplace license from PurchasePro for approximately \$440,000 in exchange for PurchasePro's promise to buy \$390,000 of goods and services from YellowBrix. As shown below, Johnson knew or was reckless in not knowing that, but for this reciprocal commitment and other simultaneous promises by AOL and its employees, YellowBrix would not have bought this marketplace license.

35. In or about March, 2001, Layne informed Johnson of the reciprocal promises and YellowBrix's reluctance to proceed without PurchasePro's commitment. Similar to the instructions he provided regarding Bigstep, Johnson directed Layne to execute this transaction, but to make sure that PurchasePro's cross commitment was not documented or otherwise disclosed. Johnson again instructed Layne to avoid following through on PurchasePro's commitment for at least two weeks after the date of the license sale.

36. Johnson did not disclose this reciprocal commitment to PurchasePro's outside auditors, and, as noted above directed Layne to conceal its existence.

37. After factoring in AOL's commission, a portion of which PurchasePro netted against its revenues, Johnson included \$268,400 in "revenue" from this contract in PurchasePro's April 26th earnings announcement and it was also reported as revenue in the Form 10-Q that PurchasePro filed with the Commission on May 29, 2001.

iii. The \$3.7 Million China.com Transaction

38. After the close of Q1 2001, in early April 2001, an e-commerce company called China.com faxed a signed, but undated \$3.7 million marketplace license contract with PurchasePro to AOL's offices in New York.

39. At Johnson's direction, a PurchasePro employee backdated the contract with China.com for inclusion in PurchasePro's Q1 2001 revenue total, by writing the date "3/30/01" under the signature block. Also at Johnson's instruction, a PurchasePro employee altered the date of a fax machine, so as to make it appear, misleadingly, as if the contract was originally transmitted and received in Q1 2001. The employee discussed altering the fax machine date with both Johnson and Wakeford, each of whom attempted to help alter and postdate the fax machine. In this way, Johnson and Wakeford knowingly or recklessly took steps to deceive PurchasePro's outside auditors concerning the timing of the China.com contract.

40. Johnson did not disclose the true timing of this contract to PurchasePro's outside auditors, and, as noted above directed the PurchasePro employee to conceal this information.

41. After factoring in AOL's commission, a portion of which PurchasePro netted against its revenues, Johnson included \$2.257 million in "revenue" from this contract in PurchasePro's April 26th earnings announcement and it was also reported as revenue in the Form 10-Q that PurchasePro filed with the Commission on May 29, 2001.

iv. The \$3.5 Million Garg Data International Transaction

42. Also in early April 2001, Shawn McGhee, PurchasePro's Chief Operating Officer, at Johnson's direction, executed multiple and reciprocal transactions with Sushil Garg and Garg Data International, Inc., to obtain Garg Data's purchase of a \$3.5 million marketplace

software license. In an effort to characterize this \$3.5 million purported “sale” as having occurred in Q1 2001, and with the knowledge or at the direction of Johnson, McGhee and Garg signed a contract that, misleadingly, bore no date other than an “effective date” of March 30, 2001. The use of an “effective date” of March 30 for the transaction was designed to allow PurchasePro to record the transaction, improperly, as a sale in the prior reporting period.

43. Johnson knew or was reckless in not knowing that Garg’s purchase was not finalized or executed prior to the close of Q1 2001, and that Garg would not have purchased the license without the contingent reciprocal agreements from PurchasePro.

44. Johnson, acting knowingly or recklessly, did not disclose to PurchasePro’s outside auditors that this “sale” was executed in early April 2001, after the close of Q1 2001, and that the sale was subject to contingent reciprocal agreements from PurchasePro. As a result, PurchasePro’s outside auditors did not detect PurchasePro’s improper recognition of revenue from this transaction in Q1 2001, and allowed the \$3.5 million to be included in the company’s quarterly report on Form 10-Q, for the first quarter of 2001. This transaction alone inflated PurchasePro’s publicly announced revenues by over 10% and its reported revenues by over 20%.

**C. The AOL Bulk Subscription Sales Agreement:
Johnson Improperly Included a \$9 Million Contract
Executed in Q2 2001 as Revenue in Q1 2001**

45. On April 5, 2001, AOL executed an amendment to a Bulk Subscriptions Sale Agreement it had previously entered into with PurchasePro in December 2000. This amendment, valued at \$9 million, purportedly obligated PurchasePro to supply AOL with pre-paid subscriptions to its on-line marketplace throughout Q1 2001. AOL delivered this amendment to Johnson, by hand, along with a letter, also dated April 5, 2001, explaining that the

amendment was signed that day. Johnson presented this amendment to PurchasePro's accountants for inclusion in the company's Q1 2001 earnings, but Johnson excluded any evidence (such as the April 5, 2001 letter) that indicated that the amendment was executed in the second quarter of 2001. Johnson thus knowingly or recklessly took steps to conceal the true timing of the transaction from PurchasePro's internal accountants and outside auditors.

46. PurchasePro included \$9 million in revenue from this contract in its April 26th earnings announcement, but because the auditors subsequently became aware of information concerning the true timing of the contract, this \$9 million was not included in the revenue figure reported in the Form 10-Q that PurchasePro filed with the Commission on May 29, 2001. This contract alone accounted for 30% of PurchasePro's Q1 2001 publicly announced revenues.

D. The AOL Statement of Work: Johnson, Wakeford, Tuli, Benyo and Kennedy Created a Sham Transaction to Close PurchasePro's Q1 2001 Revenue Gap

47. At the end of March 2001, Wakeford and Johnson, among others, discussed ways to generate additional Q1 2001 revenue for PurchasePro. Wakeford suggested that AOL would pay PurchasePro to improve AOL's internet technology for business-to-business transactions if PurchasePro created a document showing that the work had been completed. As detailed below, Johnson directed Layne, among others, to draft a contract. Tuli and Wakeford forwarded documents to Layne for use as templates in drafting a Statement of Work contract. By the close of the quarter, the final version of the contract, entitled PurchasePro AOL/Netbusiness Auction Integration Statement of Work (the "Statement of Work"), had not been created, agreed to, or signed and no substantive work had been performed.

i. Johnson Falsified the Execution of the \$3.65 Million Agreement

48. In early April 2001, Johnson directed Layne and Sholeff to falsify certain documents—including the Statement of Work—in an effort to bridge the gap between PurchasePro’s actual quarterly revenues and its publicly announced quarterly revenue expectations. Pursuant to Johnson’s direction, Layne obtained the latest draft of the Statement of Work, which had not yet been executed, and cut-and-pasted the signature of an AOL employee from an earlier piece of correspondence onto the signature page of the document. Sholeff added the letters “SVP” under the pasted signature, to signify Senior Vice President. At Johnson’s direction, Sholeff made a copy of the newly forged document, and then repeatedly re-copied the document, in order to prevent detection of the forgery. Johnson reviewed the newly “executed” Statement of Work, approved of its appearance, and provided a copy of it to PurchasePro management in mid-April for inclusion in PurchasePro’s Q1 2001 revenues.

ii. Benyo and Kennedy Fraudulently Made It Appear That Tasks Under the Statement of Work Had Been Completed

49. Over the final weekend in March and into early April 2001, Benyo and Kennedy worked on drafting or caused others to draft the Statement of Work but quickly realized that the tasks required under the Statement of Work could not be completed. Accordingly, Benyo proposed the creation of an illusory “link” — a secret transfer to a different website — specifically designed to create the false appearance, for PurchasePro’s auditors, that the services described in the Statement of Work had actually been performed. To complete the revenue-generating façade otherwise known as the Statement of Work, Kennedy signed the document in early April 2001, even though it misleadingly was dated February 5, 2001.

50. At all relevant times, Benyo and Kennedy knew or were reckless in not knowing that revenue from the Statement of Work could not be recognized in Q1 2001 unless the contract had been signed and performance completed before the end of that quarter, that those requirements had not been met, and that PurchasePro nonetheless was going to include revenues from that contract in its Q1 2001 results.

iii. Tuli Falsely Confirmed the Statement of Work with PurchasePro's Auditors

51. In April 2001, Tuli knew, or was reckless in not knowing, that PurchasePro did not perform the services described in the Statement of Work by the close of Q1 2001. Nonetheless, on three separate occasions in that month, Tuli provided or caused others to provide PurchasePro's outside auditors with false confirmations that PurchasePro had performed those services, as described below.

52. First, Tuli directed a subordinate to draft and sign a letter addressed to PurchasePro, improperly confirming that all work under the Statement of Work was completed and accepted by March 30, 2001. Second, Tuli signed a similar letter, improperly confirming that the services described in the Statement of Work had been completed and accepted by the close of Q1 2001. Finally, Tuli participated in a conference call with PurchasePro's auditors and Layne in which—following the scripted questions and answers previously supplied to him by Layne—he confirmed that the services described in the Statement of Work had been performed by the close of Q1 2001.

53. As a result, PurchasePro included \$3.65 million in “revenue” from this contract in its April 26th earnings announcement, but because the auditors subsequently became aware of information concerning the authenticity of the contract, this \$3.65 million was not included in the

revenue figure reported in the Form 10-Q that PurchasePro filed with the Commission on May 29, 2001. This contract alone accounted for 12% of PurchasePro's Q1 2001 publicly announced revenues.

III. Other Falsifications of Books and Records, and Efforts to Mislead Auditors

54. In addition to the foregoing fraudulent activities, Johnson and Wakeford engaged in other fraudulent falsifications of PurchasePro's books and records and other acts to deceive PurchasePro's auditors, as part of Johnson's and Wakeford's efforts to further boost PurchasePro's Q1 2001 revenues. The two particular activities described below, however, were unsuccessful in altering PurchasePro's announced and reported revenues.

A. Johnson Falsified a Check Stub

55. At or around the end of Q1 2001, Johnson caused PurchasePro to pay AOL \$12.2 million for commissions AOL purportedly earned in Q1 2001. In fact, AOL "earned" only \$6.7 million in Q1 2001 commissions. Nonetheless, Johnson provided AOL with this inflated commission payment in exchange for AOL's promise to deliver additional revenue for the quarter. Johnson hand-delivered this check to Wakeford in his New York office.

56. In early April, Johnson altered the text of the payment's check stub to reflect a lower commission payment as part of an effort to conceal from PurchasePro's internal accountants and outside auditors the true amount of commission paid to AOL. Johnson added handwritten notes that identified previously undisclosed payment categories in addition to commissions that were purportedly covered by the \$12.2 million payment. By adding these amounts and categories, Johnson reduced the purported commission paid to AOL to \$3.7 million, approximately 20% of each marketplace license sale.

57. At Johnson's direction, in April 2001, Sholeff made a copy of this altered check stub, and then numerous and redundant copies of copies, in order to prevent detection of the forgery. Johnson provided one of the copies of the altered stub to PurchasePro's internal accountants. PurchasePro, in turn, provided this false record to its outside auditors.

B. Johnson and Wakeford Induced Monster.com to Buy a \$3 Million Marketplace License in Exchange for a Reciprocal Promise from PurchasePro and Backdated the Contract for Inclusion in Q1 2001

58. On April 6, 2001, an online recruitment and career management company called Monster.com bought a \$3 million marketplace license from PurchasePro, in exchange for Johnson's commitment that PurchasePro would effectively reimburse Monster. But for this reciprocal commitment, and other promises by Wakeford and AOL and its employees (all of which Johnson concealed from PurchasePro's outside auditors), Monster would not have bought this marketplace license. On April 6, 2001, Wakeford faxed Monster a written confirmation of this arrangement, and Monster subsequently signed the \$3 million sales agreement. Despite being executed in April, the contract bore a handwritten signature date of March 31, 2001.

59. Johnson knew or was reckless in not knowing that this contract was (i) executed after the close of the quarter, (ii) improperly backdated, and (iii) subject to an undisclosed promise that effectively reimbursed Monster for its purchase, yet Johnson failed to disclose these facts from PurchasePro's outside auditors. For reasons unrelated to the timing or dating of this transaction, PurchasePro ultimately deferred this revenue to Q2 2001 and PurchasePro did not include the revenue from this transaction in its April 26, 2001 earnings announcement or in the Form 10-Q that PurchasePro filed with the Commission on May 29, 2001.

IV. Johnson Improperly Confirmed Inflated Numbers to PurchasePro's Board: Johnson, Benyo and Kennedy Received Substantial Bonuses

60. Johnson had a loan or line of credit from a financial institution (the "Lender"), secured by Johnson's stock in PurchasePro. Under the terms of that loan agreement, the Lender was permitted to sell Johnson's stock if the market price of the stock fell below a certain level in relation to the outstanding loan amount. In March and April of 2001 – a period in which Johnson knowingly or recklessly orchestrated and participated in significant ongoing financial fraud in connection with PurchasePro – the Lender sold large quantities of Johnson's PurchasePro stock on Johnson's behalf, as the Lender was permitted to do under the terms of the loan agreement.

61. In an effort to obtain loans or other financial assistance from PurchasePro, in order to pay down his loan from Lender and thus prevent Lender-directed sales of his PurchasePro shares, Johnson improperly assured PurchasePro's Board of Directors, prior to its April 10, 2001 meeting, that PurchasePro would post revenues totaling \$42 million, and would thereby meet its first quarter public guidance about earnings. Johnson knew or was reckless in not knowing that this revenue figure was artificially and materially inflated, in that it included: (i) backdated agreements, (ii) marketplace sales subject to undisclosed side agreements or contingencies, and (iii) at least one fraudulent contract, as described above. Misled to believe that the company was on solid financial ground, the Board granted Johnson a \$2 million retention bonus and an additional \$1 million for reimbursement of travel related expenses. PurchasePro also authorized retention bonuses for its senior officers. Accordingly, Benyo and Kennedy each received bonus payments totaling \$100,000.

V. Johnson Destroyed Documents to Hide Wrongdoing

62. In or about April 2001, Johnson directed one of his subordinates, James Sholeff, to destroy all documents pertaining to PurchasePro's dealings with AOL. In one instance, Johnson brought documents to Sholeff's home in Las Vegas and directed Sholeff to shred the documents and then burn the shreds. Sholeff did as Johnson directed, and then Sholeff raked the ashes of the destroyed documents into his backyard. Sholeff, again acting under Johnson's instructions to destroy documents, also shredded his own documents pertaining to PurchasePro's dealings with AOL and destroyed the hard-drive from his computer, and raked the remains into his backyard.

63. In or about April 2001, Johnson destroyed or caused others at PurchasePro to destroy emails in PurchasePro's system that contained information about PurchasePro's dealings with AOL during the relevant timeframe.

**FIRST CLAIM
[Securities Fraud]**

**Violations of Exchange Act Section 10(b) and Rule 10b-5
[Against Johnson]**

64. Paragraphs 1 through 63 are realleged and incorporated by reference.

65. As described above, defendant Johnson, acting knowingly or recklessly, directly or indirectly, in connection with the purchase or sale of a security, by use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange:

- a. employed devices, schemes or artifices to defraud;
- b. made untrue statements of material fact or omitted to state a material fact

necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

66. By engaging in the foregoing conduct, defendant Johnson violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**SECOND CLAIM
[Securities Fraud]**

**Violations of Securities Act Section 17(a)
[Against Johnson]**

67. Paragraphs 1 through 66 are realleged and incorporated by reference.

68. As described above, defendant Johnson, acting knowingly or recklessly, in the offer or sale of PurchasePro securities, by use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes or artifices to defraud; obtained money or property by means of untrue statements of a material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon the purchaser.

69. By engaging in the foregoing conduct, defendant Johnson violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM
[Securities Fraud]

**Aiding and Abetting PurchasePro's Violations of
Exchange Act Section 10(b) and Rule 10b-5
[Against Benyo, Kennedy, Tuli and Wakeford]**

70. Paragraphs 1 through 69 are realleged and incorporated by reference.

71. As described above, PurchasePro, acting knowingly or recklessly, directly or indirectly, in connection with the purchase or sale of a security, by use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange:

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

72. By engaging in the foregoing conduct, PurchasePro violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

73. By engaging in the foregoing conduct, defendants Benyo, Kennedy, Tuli, and Wakeford knowingly provided substantial assistance to PurchasePro's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], thereby aided and abetted those violations.

FOURTH CLAIM
[Falsification of Books and Records and Circumvention of Internal Controls]

Violations of Exchange Act Section 13(b)(5) and Rule 13b2-1
[Against Johnson and Benyo]

74. Paragraphs 1 through 73 are realleged and incorporated by reference.

75. As described above, defendants Johnson and Benyo knowingly circumvented or knowingly failed to implement a system of internal accounting controls, knowingly falsified books, records, or accounts and directly or indirectly falsified or caused to be falsified books, records, or accounts described in section 13(b)(2) of the Exchange Act.

76. By engaging in the foregoing conduct, defendants Johnson and Benyo violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

FIFTH CLAIM
[Falsification of Books and Records and Circumvention of Internal Controls]

Aiding and Abetting Violations of
Exchange Act Sections 13(b)(5) and Rule 13b2-1
[Against Kennedy, Tuli and Wakeford]

77. Paragraphs 1 through 76 are realleged and incorporated by reference.

78. As described above, PurchasePro personnel including Johnson and Benyo knowingly circumvented or knowingly failed to implement a system of internal accounting controls, knowingly falsified books, records, or accounts and directly or indirectly falsified or caused to be falsified books, records, or accounts described in section 13(b)(2) of the Exchange Act.

79. By engaging in the foregoing conduct, PurchasePro personnel including Johnson and Benyo violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule

13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

80. By engaging in the foregoing conduct, defendants Kennedy, Tuli, and Wakeford knowingly provided substantial assistance to the aforesaid violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] and, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], thereby aided and abetted those violations.

SIXTH CLAIM
[Misleading an Accountant or Auditor]
Violations of Exchange Act Rule 13b2-2
[Against Johnson and Benyo]

81. Paragraphs 1 through 80 are realleged and incorporated by reference.

82. As described above, defendants Johnson and Benyo, directly or indirectly, and in connection with audits or examinations of the financial statements of PurchasePro and the preparation and filing of statements and reports required to be filed with the Commission, made or caused to be made materially false or misleading statements to accountants and omitted to state, or caused another person to omit to state to accountants, material facts necessary in order to make statements made to the accountants, in light of the circumstances under which such statements were made, not misleading.

83. By engaging in the conduct described above, defendants Johnson and Benyo violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

SEVENTH CLAIM
[Misleading an Accountant or Auditor]

Aiding and Abetting Violations of
Exchange Act Rule 13b2-2
[Against Kennedy, Tuli and Wakeford]

84. Paragraphs 1 through 83 are realleged and incorporated by reference.

85. By engaging in the conduct described above, and in connection with audits or examinations of the financial statements of PurchasePro and the preparation and filing of statements and reports required to be filed with the Commission, certain PurchasePro officers, directly or indirectly, made or caused to be made materially false or misleading statements to accountants and omitted to state, or caused another person to omit to state to accountants, material facts necessary in order to make statements made to the accountants, in light of the circumstances under which such statements were made, not misleading.

86. By engaging in the conduct described above, PurchasePro officers including Johnson and Benyo violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

87. By engaging in the foregoing conduct, defendants Kennedy, Tuli, and Wakeford knowingly provided substantial assistance to the aforesaid violations of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2], and, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], thereby aided and abetted those violations.

EIGHTH CLAIM
[False and Misleading Annual and Quarterly Reports]

Aiding and Abetting PurchasePro's Violations of
Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13
[Against Johnson and Wakeford]

88. Paragraphs 1 through 87 are realleged and incorporated by reference.

89. PurchasePro violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, by filing with the Commission a materially false and misleading annual report on Form 10-K for its 2000 fiscal year and a materially false and misleading quarterly report on Form 10-Q for its first quarter of 2001.

90. By engaging in the foregoing conduct, defendant Johnson and Wakeford knowingly provided substantial assistance to PurchasePro'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 thereunder [17 C.F.R. §§ 240.12b-20, 17 C.F.R. §§ 240.13a-1, and 240.13a-13], and, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], thereby aided and abetted those violations.

NINTH CLAIM
[Falsification of Books and Records]

Aiding and Abetting PurchasePro's Violations of
Exchange Act Sections 13(b)(2)(A) and (B)
[Against Johnson, Benyo, Kennedy, Tuli and Wakeford]

91. Paragraphs 1 through 90 are realleged and incorporated by reference.

92. As described above, PurchasePro violated Section 13(b)(2)(A) of the Exchange Act by failing to make or keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of its assets.

93. As described above, PurchasePro violated Section 13(b)(2)(B) of the Exchange

Act by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that PurchasePro's corporate transactions were executed in accordance with management's authorization and in a manner to permit the preparation of financial statements in conformity with GAAP.

94. By engaging in the foregoing conduct, PurchasePro, directly or indirectly, falsified and caused to be falsified PurchasePro's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act.

95. By engaging in the foregoing conduct, defendants Johnson, Benyo, Kennedy, Tuli, and Wakeford knowingly provided substantial assistance to PurchasePro's violations of Exchange Act Section 13(b)(2)(A) and (B) [15 U.S.C. § 78m(b)(2)(A) and (B)] and, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], thereby aided and abetted those violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Commission respectfully requests that this Court enter a judgment that:

(i) permanently enjoins Johnson, Benyo, Kennedy, Tuli, and Wakeford from violating Exchange Act Section 10(b) [15 U.S.C. §§ 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];

(ii) permanently enjoins Johnson from violating Securities Act Section 17(a) [15 U.S.C. § 77q(a)];

(iii) permanently enjoins Johnson, Benyo, Kennedy, Tuli, and Wakeford from violating Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Exchange Act Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2];

(iv) permanently enjoins Johnson and Wakeford from aiding and abetting violations of Exchange Act Section 13(a) [15 U.S.C. §§ 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13];

(v) permanently enjoins Johnson, Benyo, Kennedy, Tuli, and Wakeford from aiding and abetting violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and (B)];

(vi) bars Johnson, Benyo, Kennedy, and Wakeford from acting as an officer or director of any public company pursuant to Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)];

(vii) orders Johnson, Benyo, Kennedy, Tuli, and Wakeford to pay civil penalties pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)];

(viii) orders Johnson, Benyo, and Kennedy to disgorge, with prejudgment interest, any and all ill-gotten gains each received as a result of the conduct described herein; and

(ix) grants such other relief as the Court deems just or appropriate.

Respectfully submitted,

/s/

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