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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :
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 Plaintiff, :
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 -against- :
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 ERIC ASHMAN, :
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 Defendant. :
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COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”), for its Complaint against defendant Eric Ashman (“Ashman” or “Defendant”), alleges:

SUMMARY

1. This case arises from an accounting fraud at a former subsidiary (“Subsidiary A”) of TheStreet, Inc. (formerly known as TheStreet.com, Inc.) (“TheStreet,” or the “Company”), and the role that TheStreet’s Chief Financial Officer (“CFO”) at the time, Eric Ashman, played in connection with the fraud.

2. TheStreet, a financial media company, acquired Subsidiary A, which specialized in online promotions such as sweepstakes, in August 2007. Shortly after the acquisition,

TheStreet, and Ashman himself expressed confidence in Subsidiary A's prospects. However, it soon became clear that Subsidiary A was struggling to generate the anticipated level of revenue. Rather than acknowledge this, Ashman substantially assisted TheStreet in artificially inflating Subsidiary A's revenue, which in turn improperly inflated TheStreet's reported results.

3. In several instances, in violation of Generally Accepted Accounting Principles in the United States ("U.S. GAAP"), Ashman knowingly or recklessly recorded, or directed his staff to record, revenue that did not meet applicable revenue recognition criteria in connection with transactions that were, on their face, suspicious. Indeed, Ashman told his staff to book revenue when he either knew or recklessly disregarded that Subsidiary A had not completed work required to actually earn that revenue, or had an insufficient basis to believe that such work had been completed. Further, four purported revenue-generating transactions into which Subsidiary A entered, as alleged herein, shared two or more of the following suspicious characteristics – the transactions were significantly larger in size than Subsidiary A's other transactions; occurred at quarter-end; involved an agreement with a friendly counter-party; and/or invoices that Subsidiary A issued to the customer were never paid, and in some cases such invoices were never issued at all. In short, Ashman focused on the transactions alleged herein, directed that revenue be recorded in connection with these transactions, and knew or recklessly disregarded what work Subsidiary A had, and had not, done in connection with such transactions.

4. During the relevant period, Subsidiary A's financial results were consolidated with TheStreet's for financial reporting purposes. Thus, the improper revenue that was reflected on Subsidiary A's books resulted in material misstatements to TheStreet's operating income or loss as reported in TheStreet's financial statements. Therefore, due, in part, to Ashman's

misconduct, TheStreet filed with the Commission and distributed to the investing public materially misstated financial statements in the Company's Forms 10-Q for the first, second and third quarters of 2008, and in its Form 10-K for the full fiscal year of 2008. On February 8, 2010, TheStreet restated its 2008 Form 10-K and disclosed a number of improprieties related to revenue recognition at Subsidiary A, including transactions that lacked economic substance, internal control deficiencies and improper accounting for certain contracts.

5. In addition to the specific accounting improprieties alleged herein, Ashman, as TheStreet's CFO, failed to devise and/or maintain a system of internal controls to reasonably assure the accuracy and integrity of the Company's financial statements, as required by the federal securities laws.

6. Ashman also (a) knowingly or recklessly made a false statement about Subsidiary A's results on a conference call related to TheStreet's financial performance for the second quarter of 2008; and (b) has not reimbursed TheStreet for the incentive and equity-based compensation that he received during the statutory time periods established by Section 304(a) of the Sarbanes-Oxley Act of 2002 ("Sarbanes Oxley Act") [15 U.S.C. § 7243(a)].

VIOLATIONS

7. As a result of the misconduct alleged in this Complaint, Ashman violated Section 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78m(b)(5)] and Rules 13a-14 and 13b2-1 thereunder [17 C.F.R. §§ 240.13a-14 and 240.13b2-1], and Section 304(a) of the Sarbanes Oxley Act [15 U.S.C. § 7243(a)]; and aided and abetted violations by TheStreet.com of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 10b-5(b), 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12.b-20, 240.13a-1 and 240.13a-13].

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to the authority conferred by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking a permanent injunction, an officer-and-director bar, civil penalties and, pursuant to Section 304(a) of the Sarbanes Oxley Act [15 U.S.C. § 7243(a)], reimbursement of incentive and equity-based compensation, and/or profits from sales of TheStreet stock, against and/or from the Defendant.

9. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 77u(e) and 78aa] and Section 3(b) of the Sarbanes Oxley Act [15 U.S.C. § 7202(b)].

10. The Defendant, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein.

11. Venue lies in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the alleged transactions, acts, practices, and courses of business in which Defendant played a role occurred in the Southern District of New York. Additionally, during the relevant period, shares of TheStreet were traded on the NASDAQ Stock Market, which is located in the Southern District of New York.

THE DEFENDANT

12. **Eric Ashman**, age 45, resides in Brooklyn, New York. Ashman served as TheStreet's CFO from July 2006 and through May 2009.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

13. **TheStreet, Inc.**, formerly known as TheStreet.com, Inc., is incorporated in Delaware and maintains its principal place of business in New York, New York. TheStreet has been an SEC-reporting company since 1999, and its stock is quoted on the NASDAQ stock exchange. As a result of the misstatements alleged herein, TheStreet restated its Form 10-K for the fiscal year 2008 and its Form 10-Q for the first quarter of 2009.

14. **“Executive 1,”** age 40, resides in Boynton Beach, Florida. In 2008, Executive 1 was the co-president of TheStreet’s wholly-owned subsidiary, Subsidiary A.

15. **“Executive 2,”** age 41, resides in Florham Park, New Jersey. In 2008, Executive 2 was the co-president of TheStreet’s wholly-owned subsidiary, Subsidiary A.

FACTS

I. Subsidiary A: Revenue Expectations and Reality

16. TheStreet acquired Subsidiary A in August 2007 with the expectation that the acquisition would, according to its press release, “propel TheStreet.com forward in its strategy to become a premier one-stop shop for advertisers, advertising agencies and corporations in search of a broad spectrum of innovative, interactive advertising solutions, while further expanding the Company’s current advertising offerings.”

17. During conference calls with securities analysts regarding TheStreet’s financial performance for the year ended December 31, 2007 and the first quarter of 2008, TheStreet expressed confidence in Subsidiary A’s long-term prospects. Ashman himself predicted on the 2007 year-end conference call that Subsidiary A could generate approximately \$3 million per quarter in revenue and serve as a “springboard” for TheStreet’s advertising business.

18. As it turned out, Subsidiary A did not produce the revenue that TheStreet or Ashman had hoped that it would. Indeed, during the first quarter of 2008, Subsidiary A fell well short of its \$3 million revenue target, reporting only \$2.2 million. To make matters worse, actual revenues were even lower, because over \$300,000 of this \$2.2 million was improperly recorded. In the second quarter of 2008, Ashman stated to executives of Subsidiary A that Subsidiary A's low revenues were cause for concern, that internal revenue estimates for May would be "far off the mark for the month," and that \$2.2 million in revenue for the second quarter of 2008 "would not be good at all for us ... that would be flat to Q1. 2.5 [million dollars] is a minimum that would define some level of success." Nevertheless, Subsidiary A's struggle to meet expectations continued and, if properly accounted for, its revenues in subsequent quarters were as far off target as they were in the first quarter of 2008 – its actual second quarter revenue was less than \$2.1 million, third quarter revenue was less than \$750,000, and fourth quarter revenue was less than \$1.1 million.

19. To artificially improve this disappointing reality, Ashman substantially assisted TheStreet in committing accounting improprieties that overstated the Company's revenue and operating income. Based on Subsidiary A's artificially inflated results, TheStreet overstated its operating income or understated its operating loss for the first, second, third and fourth quarters of 2008 by approximately 31% (\$305,000), 118% (\$930,000), 31% (\$289,000) and 10.5% (\$210,000), respectively, and for the full fiscal year by approximately 152% (\$1.7 million).

II. U.S. Generally Accepted Accounting Principles

20. The financial reporting of public companies in the United States must conform with U.S. GAAP. U.S. GAAP, and in particular, *Staff Accounting Bulletin No. 104* ("SAB 104"), issued by the Commission's staff, and *AICPA Statement of Position 97-2, Software*

Revenue Recognition (“SOP 97-2”), issued by the American Institute of Public Accountants, prohibited TheStreet from recognizing revenue based on its provision of services to customers unless each of the following four criteria was met: (a) there was persuasive evidence of an arrangement; (b) delivery had occurred; (c) the fee was fixed or determinable; and (d) collectability was probable.

21. Through at least 2008, Subsidiary A often recognized revenue based on work it performed before the relevant project was completed in its entirety. Under U.S. GAAP, this was permissible only if Subsidiary A fulfilled the requirements of *AICPA Statement of Position 81-1, Accounting for Performance of Construction-Type and Certain Production-Type Contracts* (“SOP 81-1”). Under SOP 81-1, revenue could be recognized to the extent work was performed and progress was made toward the completion of a project, but only when management reliably estimated and documented the extent of such progress.

22. TheStreet should not have recognized revenue when and how it did in relation to the four transactions alleged herein. This is because: (a) each of these transactions failed to meet one or more of the threshold criteria under SAB 104 and SOP 97-2, and (b) neither Subsidiary A nor TheStreet complied with SOP 81-1 – revenue was recognized irrespective of the fact that Subsidiary A had made little or no actual progress toward completion of the relevant projects, and management was unable to, and did not, reliably estimate and document the extent of such progress.

**III. Ashman Inappropriately Booked Revenue in Connection with
Four Suspicious Transactions in 2008.**

a. Inappropriate Revenue Based on Agreement with Counter-party A

23. As alleged above, Subsidiary A's actual financial results in 2008 fell short of expectations. To address the gap between expectations and reality, Ashman substantially assisted TheStreet in improperly accounting for several 2008 transactions.

24. In one of these transactions, Subsidiary A entered an agreement with a web-based personal finance company ("Counter-party A") to provide various promotional services to Counter-party A in late April 2008. Under U.S. GAAP, Subsidiary A could not recognize revenue based on the transaction with Counter-party A in the first quarter of 2008 unless, among other things, Counter-party A signed the contract before March 31, 2008, Subsidiary A performed work toward the completion of the project, and such progress was reliably estimated and documented.

25. Ashman attended meetings with Counter-party A, and knew or recklessly disregarded that Subsidiary A had performed only preliminary work before Counter-party A signed the relevant contract in late-April 2008. Even so, Ashman caused TheStreet to recognize \$305,000 in revenue based on this agreement in the first quarter of 2008.

26. Recognizing first quarter revenue for this transaction, which amounted to nearly 14% of Subsidiary A's quarterly revenue, was inappropriate because: (a) Counter-party A did not sign the contract to procure Subsidiary A's services until April 28, 2008, almost a month after the end of the fiscal quarter during which the associated revenue was recognized; (b) Subsidiary A did not perform any significant services for Counter-party A during the first quarter of 2008 beyond attending a "kick-off" meeting; and (c) Subsidiary A could not, and did not, reliably estimate and document its progress toward completion of its work for Counter-party A.

b. Inappropriate Revenue Based on Agreement with Counter-party B

27. Ashman also substantially assisted TheStreet in artificially inflating Subsidiary A's revenue through two second quarter transactions. In one of these transactions, Ashman and Executive 1 discussed a memorandum that Executive 1 would attempt to obtain from a key client, "Counter-party B," regarding significant promotional work that Subsidiary A might perform for Counter-party B in the future.

28. Approximately a month after their discussion, Executive 1 sent to Ashman a memorandum that was consistent with their discussion and appeared to be signed by a representative of Counter-party B. Unbeknownst to Ashman, however, Executive 1 forged the counter-party signature on this memorandum. The memorandum set forth "opportunities to offer [Counter-party B] significant savings on upcoming promotions," proposed to "pre-build 20 promotions on our Promotion Platform during May and June of 2008 for a total cost of \$580,000," and requested that Counter-party B, "by signing below, reaffirm your intent to take advantage of this offer on any promotions that [Counter-party B] selects [Subsidiary A] to execute." Thus, Counter-party B was under an obligation to pay Subsidiary A only if, and to the extent that, Subsidiary A completed promotions that Counter-party B engaged Subsidiary A to build. This, of course, was an event entirely contingent on Counter-party B's discretion.

29. Based on this memorandum, Ashman caused TheStreet to recognize \$580,000 in revenue in the second quarter of 2008, which was the full amount referenced in the memorandum. Recognizing this revenue in the second quarter was inappropriate, and violated U.S. GAAP, for several reasons, as Ashman knew or recklessly disregarded. In particular: (a) Ashman knew or recklessly disregarded that the memorandum on its face did not obligate Counter-party B to pay for any work performed by Subsidiary A, but rather merely offered a

discount on future services in the event that Counter-party B decided to procure such services; (b) Ashman knew or recklessly disregarded that Subsidiary A had performed little or no work for Counter-party B pursuant to this memorandum; and (c) Ashman knew or recklessly disregarded that Subsidiary A could not, and did not, reliably estimate and document its progress toward completion of its work for Counter-party B.

30. Thus, Ashman knew or recklessly disregarded that the revenue recognition criteria under SAB 104 and SOP 97-2 were not met in relation to the transaction with Counter-party B because, among other things, there was no persuasive evidence of a binding arrangement with Counter-party B; the fees that Subsidiary A would actually earn, if any, pursuant to the arrangement were not fixed and determinable as of the end of the second quarter; and management could not, and did not, reasonably estimate or document progress toward completion of its work for Counter-party B.

31. During the third quarter of 2008, Ashman became aware of additional facts indicating that revenue from Counter-party B was improperly recognized. Rather than reverse all of the revenue and notify TheStreet's outside auditors of this, as he should have done, Ashman instructed his staff to make entries in Subsidiary A's financial and accounting books and records to "burn off" the previously-recognized \$580,000 in revenue over time. These burn-off entries also violated U.S. GAAP and created further inaccuracies in the Company's books and records.

c. Inappropriate Revenue Based on Agreement with Counter-party C

32. TheStreet artificially inflated revenue in the second and third quarters of 2008 based on a purported transaction between Subsidiary A and a counter-party in which Executives

1 and 2 held an interest (“Counter-party C”). In this transaction, Counter-party C agreed to pay \$375,000 to Subsidiary A for promotional services.

33. Based on this agreement, Ashman caused TheStreet to recognize \$275,000 and \$100,000 of revenue in the second and third quarters of 2008, respectively. TheStreet should not have recognized this revenue when it did, and/or should not have recognized this revenue at all, because, as Ashman knew or recklessly disregarded, Subsidiary A did not perform any significant services for Counter-party C in the second or third quarters of 2008, or thereafter. Thus, any revenue recognition violated GAAP.

34. Further, although the relevant documentation was dated June 15, 2008, Ashman knew or recklessly disregarded that Executive 2’s signature was backdated. Indeed, on July 2, 2008, Executive 1 emailed Ashman that “this is really our last day to sign the [Counter-party C] doc and then get their final sig on their docs to us, etc.” In addition, the footer of the signed version of the relevant documentation indicates that it was printed on July 8, 2008.

d. Inappropriate Revenue Based on Agreement with Counter-party E

35. In the third quarter of 2008, Ashman caused TheStreet to inappropriately recognize additional revenue related to a transaction with a large media company (“Counter-party E”).

36. Subsidiary A had historically provided services to Counter-party E. However, in 2007, Counter-party E decided to phase out its relationship with Subsidiary A. In connection with this decision, Counter-party E entered into a transition services agreement. As part of this agreement, Counter-party E agreed to engage Subsidiary A to provide \$250,000 worth of services between October 2007 and April 2009. In the event no services were needed, Counter-party E would pay the \$250,000 to Subsidiary A in April 2009.

37. Under U.S. GAAP, Subsidiary A should have recognized revenue based on this agreement as it was earned up until April 2009. In other words, if Subsidiary A performed services under the agreement, it could recognize the value of those services as revenue during the period that the services were performed, assuming all relevant revenue recognition criteria were satisfied. In April 2009, Subsidiary A could have recognized the difference, if any, between the \$250,000 amount referenced in the agreement and the revenue that had been previously recognized for services performed.

38. Pursuant to the transition services agreement, Subsidiary A performed services for Counter-party E reasonably valued at approximately \$15,000 during 2008. Thus, Subsidiary A should have recognized, at most, approximately \$15,000 in revenue in 2008, and should have recognized the \$235,000 balance in the second quarter of 2009. Instead, in violation of U.S. GAAP, Ashman directed his staff to recognize revenue of \$154,500 in the third quarter of 2008 knowing or recklessly disregarding that only minimal services had been performed and thus that only nominal revenue should have been recognized during that period.

* * *

39. As a result of the revenue Ashman substantially assisted TheStreet in recognizing in relation to the transactions with Counter-parties A, B, C, and E, alleged herein, TheStreet materially overstated its operating income or materially understated its operating loss in financial statements included in the Forms 10-Q for the first, second, and third quarters of 2008, and the Form 10-K for the full year of 2008, that the Company filed with the Commission and distributed to the investing public.

IV. Ashman Knowingly or Recklessly Made False Statements Regarding Subsidiary A's Revenue on a Conference Call with Securities Analysts.

40. During a conference call with securities analysts concerning TheStreet's financial results for the second quarter of 2008, TheStreet expressed confidence in Subsidiary A's growth and reported that the subsidiary had, in fact, generated \$3 million of quarterly revenue. In discussing Subsidiary A's revenue, Ashman also stated that this \$3 million amount represented a 36% sequential increase in Subsidiary A's revenue over the prior quarter.

41. Because TheStreet had significantly inflated Subsidiary A's second quarter revenue through inappropriate accounting for two of the four transactions alleged herein (the other two transactions were improperly recognized in the first and third quarters of 2008), Ashman knew or recklessly disregarded that Subsidiary A had not, in fact, generated \$3 million in revenue and had failed to generate sequentially increasing revenue when he made this statement on the conference call. Indeed, without revenue from the transactions alleged herein, Subsidiary A's revenue would have been nearly flat compared to the previous quarter.

V. TheStreet Failed to Implement and Maintain Appropriate Internal Controls Over Subsidiary A's Revenue.

42. As CFO, Ashman was responsible for supervising TheStreet's accounting and finance operations, and represented in Commission filings that he had assessed the effectiveness of TheStreet's internal controls over financial reporting and concluded that such internal controls were effective.

43. In fact, however, TheStreet's internal controls over financial reporting, and specifically over revenue recognition at Subsidiary A, were not effective throughout 2008. More specifically, Ashman failed to implement appropriate internal controls over Subsidiary A's revenue. In connection with the transactions alleged herein, TheStreet's lack of such controls

contributed to TheStreet recording improper revenue on its books and records, and to the misstatement of revenue and operating income in the Forms 10-Q for the first three fiscal quarters of 2008 and the Form 10-K for the full year of 2008 that the Company filed with the Commission.

VI. Ashman's Compensation

44. During the 12-month periods following TheStreet's filing with the Commission of inaccurate financial statements in the Forms 10-Q for the first three fiscal quarters of 2008 and the Form 10-K for the full year of 2008, Ashman received incentive and equity based compensation. Ashman has not reimbursed any portion of this compensation and/or profits to TheStreet.

FIRST CLAIM FOR RELIEF

**Aiding and Abetting Violations of
Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

45. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 44.

46. By reason of the activities alleged herein, TheStreet violated Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5(b) [17 C.F.R. §240.10b-5] promulgated thereunder by making untrue statements of material fact, and omitting to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.

47. Ashman knowingly or recklessly provided substantial assistance to TheStreet in committing such violations.

48. By reason of the foregoing, Ashman has aided and abetted violations, and unless enjoined will again aid and abet violations, of Section 10(b) of the Exchange Act [15 U.S.C. §

78j(b)] and Rule 10b-5(b) [17 C.F.R. §240.10b-5(b)].

SECOND CLAIM FOR RELIEF

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

49. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 44.

50. Ashman violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by, directly or indirectly, knowingly circumventing or knowingly failing to implement a system of internal accounting controls at TheStreet or knowingly falsifying a book, record, or account described in Exchange Act Section 13(b)(2) [15 U.S.C. § 78m(b)(2)]. In addition, Ashman violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified, the books, records or accounts of TheStreet subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

51. By reason of the foregoing, Ashman violated, and unless enjoined will again violate, these provisions.

THIRD CLAIM FOR RELIEF

**Aiding and Abetting TheStreet's Violations of
Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 Thereunder**

52. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 44.

53. TheStreet failed to make required reports and to include in the Company's financial reports accurate information or, in addition to the information expressly required to be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

54. By reason of the foregoing, TheStreet, singly or in concert, directly or indirectly violated 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].

55. Ashman knowingly or recklessly provided substantial assistance to TheStreet in committing such violations.

56. By reason of the foregoing, Ashman aided and abetted TheStreet's violations, and unless enjoined will again aid and abet 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].

FOURTH CLAIM FOR RELIEF

Aiding and Abetting TheStreet's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

57. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 44.

58. TheStreet failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- a. transactions were executed in accordance with management's general or specific authorization;
- b. transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or any other criteria applicable to such statements, and to maintain accountability for assets;

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

59. By reason of the foregoing, TheStreet, singly or in concert, directly or indirectly violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

60. Ashman knowingly or recklessly provided substantial assistance to TheStreet in committing such violations.

61. By reason of the foregoing, Ashman aided and abetted TheStreet'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) and 78m(b)(2)(B)].

FIFTH CLAIM FOR RELIEF

Violation of Certification Provisions of Rule 13a-14 of the Exchange Act

62. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 44.

63. Ashman certified TheStreet's reports filed on Forms 10-Q for the first three quarters of 2008 and Form 10-K for the full year of 2008 pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7241] and Exchange Act Rule 13a-14 promulgated thereunder [17 C.F.R. § 240.13a-14] that: 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 the statements were made, not misleading; falsely represented that

the financial statements and information contained in each report fairly presented in all material respects the financial condition, results of operations and cash flows TheStreet; and falsely stated that they had disclosed to TheStreet's auditors and its audit committee any fraud, whether or not material, that involved management or other employees who have a significant role in TheStreet's internal controls.

64. By reason of the foregoing, Ashman violated Rule 13a-14 [17 C.F.R. § 240.13a-14], adopted under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], by falsely certifying TheStreet's referenced quarterly and annual reports.

SIXTH CLAIM FOR RELIEF

Failure to Reimburse Pursuant to Section 304 of the Sarbanes-Oxley Act

65. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 44.

66. The Defendant has not reimbursed TheStreet for the incentive 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)].

67. The Commission has not exempted the Defendant, 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)].

68. By reason of the foregoing, Defendant has not complied with Section 304(a) of the Sarbanes-Oxley Act [15 U.S.C. § 7243(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment against the Defendant granting the following relief:

I.

Finding that the Defendant violated the securities laws and rules promulgated thereunder as alleged herein.

II.

Permanently enjoining the Defendant from future violations of the federal securities laws as alleged in this complaint.

III.

Directing the Defendant to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Prohibiting Defendant under Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)] from acting as an officer or a 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. § 78o(d)].

V.

Ordering the Defendant to reimburse TheStreet for incentive-based and equity-based compensation he received during the relevant statutory time periods pursuant to and established by Section 304 of the Sarbanes-Oxley Act [15 U.S.C. § 7243].

VI.

Granting such other and further relief as this Court seems just and proper, including such equitable relief as may be appropriate or necessary for the benefit of investors.

Dated: December 17, 2012
New York, New York



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