

NICHOLAS HEINKE  
heinken@sec.gov  
STEPHEN C. MCKENNA  
mckennas@sec.gov  
SECURITIES AND EXCHANGE COMMISSION  
1961 Stout Street, 17th Floor  
Denver, Colorado 80294  
(303) 844-1000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

- against -

EDWARD DIMARIA and MATTHEW GAMSEY,

Defendants.

**15-cv-07035**

**COMPLAINT AND JURY  
DEMAND**

**ECF CASE**

Plaintiff, United States Securities and Exchange Commission (the “Commission”), for its Complaint against defendants Edward DiMaria (“DiMaria”) and Matthew Gamsey (“Gamsey”) (collectively, “Defendants”), alleges as follows:

**SUMMARY**

1. This case involves a scheme to artificially inflate revenues and understate expenses in order to meet Bankrate, Inc.’s (“Bankrate”) financial targets – a scheme orchestrated and executed by Bankrate’s senior-most financial officials, including DiMaria, the company’s chief financial officer, and Gamsey, the company’s vice president and director of accounting. DiMaria and Gamsey intentionally manipulated Bankrate’s financial results for the second

quarter of 2012 in order to meet or exceed analyst consensus estimates for Bankrate's key financial metrics. As a result of this fraudulent scheme, Bankrate materially overstated its financial results for the second quarter of 2012.

2. Even prior to the second quarter of 2012, as Bankrate's chief financial officer, DiMaria established a corporate culture that condoned using improper accounting techniques to hit the company's financial targets. For example, Bankrate maintained spreadsheets noting various "cushion accounts" – dubbed "Ed's Cushion" (in a reference to DiMaria) by Bankrate's vice president of finance – and indicating whether the accounts were known to Bankrate's auditor. DiMaria used these cushion accounts to "tune" Bankrate's financial numbers. DiMaria also directed that certain unsupported accounting entries be kept "under the radar."

3. This culture continued into the second quarter of 2012. After learning that Bankrate's preliminary financial results for the second quarter of 2012 fell short of analyst estimates, DiMaria, through Bankrate's vice president of finance, improperly directed two Bankrate divisions, the Insurance and Credit Cards divisions, to book additional revenue of \$300,000 and \$500,000, respectively, without support or analysis. Upon learning of DiMaria's dictate, Gamsey immediately reacted with expletives, acknowledging that these entries would have to be reversed in the next quarter and encouraging the vice president of finance to explain the entries in a way that would "avoid questions." Specifically, in a series of emails to Bankrate's vice president of finance, Gamsey stated:

F[\*\*\*] me – seriously – oyyyyyyyyyyyyyyyyyy

You better make sure that the revenue/margin analytics are thoroughly explained so that we avoid questions on this sh[\*\*].

Doesn't [DiMaria] realize that all this does is put us in a hole to start [the third quarter of 2012] since it will have to be reversed when the "estimate" is trued up? So in Q3 are we going to record even more when the numbers suck? I know you get it but I'm not sure [DiMaria] is thinking ahead for what it means.

However, rather than resisting the fraudulent scheme, Gamsey affirmatively assisted it, including by misleading Bankrate's auditor.

4. The Insurance division immediately complied with DiMaria's demand and booked the \$300,000 of revenue to a dormant customer account, with no intention of justifying the revenue until the company's outside auditor asked for additional information about it five days later. While Bankrate then devised shifting, after-the-fact justifications for the revenue, those purported justifications were not provided to Bankrate's auditor. Instead, Bankrate sent a misleading, generic explanation to the auditor – an explanation that was reviewed and approved by DiMaria and Gamsey.

5. After the Credit Cards division resisted recording the full \$500,000 of additional revenue that was directed by DiMaria, DiMaria directed that the approximate difference be recorded as revenue on the books of Bankrate's mortgage business, Bankrate Core. As a result, Bankrate booked an additional \$305,000 of unsupported revenue to two arbitrary Bankrate Core customers. After learning of the Commission's investigation in this matter, DiMaria further attempted to conceal this fraud by retroactively attributing this revenue to a purported contractual dispute. In fact, this dispute had been resolved several months earlier.

6. In addition to being booked without any support or analysis, none of the after-the-fact justifications devised for the additional approximately \$800,000 in revenue supported the recognition of that revenue under Generally Accepted Accounting Principles ("GAAP"). Indeed,

in June 2015, each of these improper accounting entries was reversed as part of a broader restatement of Bankrate's second quarter 2012 financial results.

7. Further manipulating Bankrate's financial results for the second quarter, DiMaria, without support or analysis, improperly directed a Bankrate Core accountant to reduce the accrual for certain marketing expenses by \$400,000. Bankrate, through DiMaria, had been allowing this marketing accrual account to accrue as a "cushion" account for more than a year. In the second quarter 2012, DiMaria improperly reversed \$400,000 of the accrual amount, thereby reducing second quarter expenses, to help Bankrate meet analyst estimates. Finally, as part of its effort to artificially inflate its financial results to meet or exceed analyst estimates for the second quarter 2012, Bankrate intentionally failed to book approximately \$99,000 in known accounting expenses that had been incurred in the second quarter. As with the other improper accounting entries detailed above, these entries were also reversed as part of Bankrate's restatement of its second quarter 2012 financial results.

8. As a result of these improper accounting entries, Bankrate's second quarter 2012 earnings release and associated Form 8-K, filed on July 31, 2012, reported adjusted earnings before interest, taxes, depreciation, and amortization ("Adjusted EBITDA") of \$37.5 million, exceeding analyst consensus estimates by approximately \$300,000, and adjusted earnings per share ("Adjusted EPS") of \$0.18, meeting analyst consensus estimates. Further, due to these improper accounting entries, Bankrate materially overstated its second quarter 2012 net income reported in its Form 10-Q filed on August 13, 2012.

9. During the two week period following the issuance of Bankrate's second quarter 2012 earnings release, DiMaria sold Bankrate stock, profiting from a stock price that had been artificially inflated by the company's materially overstated financial results.

10. As a result of their misconduct, which was done knowingly, recklessly, and negligently, DiMaria and Gamsey violated, or aided and abetted violations of, numerous provisions of the federal securities laws.

**NATURE OF THE PROCEEDINGS AND REQUESTED RELIEF**

11. The Commission brings this action pursuant to the authority conferred upon it by Section 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)-(e) and 78aa]. The Commission seeks permanent injunctions against each of the Defendants enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, officer and director bars pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], disgorgement of all ill-gotten gains from the unlawful activity set forth in this Complaint, together with prejudgment interest, and civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 20(d) of the Exchange Act [15 U.S.C. § 78u(d)] against both defendants, and pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] against DiMaria. The Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

**JURISDICTION AND VENUE**

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

13. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York and were affected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. Bankrate's principal executive office is in New York, New York, DiMaria and Gamsey worked at Bankrate's New York office, Gamsey resides in New York, New York, and Bankrate's stock is traded on the New York Stock Exchange, which is located in the Southern District of New York.

**DEFENDANTS**

14. **Edward DiMaria:** DiMaria is a resident of Monroe, Connecticut. During the relevant period, DiMaria was Bankrate's chief financial officer ("CFO") and a senior vice president, and signed and certified Bankrate's periodic filings with the Commission. As CFO of Bankrate, DiMaria exercised control over the management, general operations, and policies of Bankrate, as well as the specific activities upon which Bankrate's violations are based. DiMaria became a certified public accountant in 1993, but his license is currently lapsed.

15. **Matthew Gamsey:** Gamsey is a resident of New York, New York. During the relevant period, Gamsey was Bankrate's director of accounting and a vice president. Gamsey

was Bankrate's primary liaison with Bankrate's auditor. Gamsey became a certified public accountant in 2001.

## **FACTS**

### **Bankrate's Business and Structure**

16. Bankrate is engaged in the business of providing consumers with personal finance information on various topics including mortgages, insurance, credit cards, retirement, automobile loans, and taxes. Bankrate also aggregates rate information from over 4,800 institutions on more than 300 financial products. Its principal platform is its Bankrate.com Internet website.

17. During the relevant period, Bankrate had three primary divisions: (1) Bankrate Core, the original mortgage information business; (2) Bankrate Insurance, comprised of numerous insurance information companies acquired by Bankrate; and (3) Bankrate Credit Cards, comprised of a number of credit card information companies acquired by Bankrate.

18. Bankrate generates revenue by selling consumer information, or "leads," gleaned from users of its websites in the insurance and credit cards categories. Its other sources of revenue include display advertising, performance-based advertising, distribution arrangements, and traditional media avenues, such as syndication of editorial content and subscriptions. Some of its customers pay Bankrate each time that a consumer clicks through a link on Bankrate's website to the customer's website.

**Bankrate's Corporate Culture of Improper Accounting Practices**

19. DiMaria, as Bankrate's CFO, fostered a corporate culture within Bankrate's accounting department that condoned using improper accounting techniques to achieve financial targets.

20. For example, from at least the second quarter of 2011, Bankrate carried over-accrued expense accounts on its books, which DiMaria would use at times to adjust Bankrate's numbers to meet financial goals. Bankrate maintained "cushion" account spreadsheets that identified these accounts – dubbed "Ed's Cushion" by Bankrate's vice president of finance – and indicated whether the accounts had been identified by Bankrate's auditor.

21. In July 2011, DiMaria and Bankrate's vice president of finance corresponded about one such cushion account in a manner that indicated the true purpose of the account. In an email, DiMaria asked the vice president to "review the final Balance sheet and the cushion anal[ysis] ... *I may want to tune our numbers ....*" (emphasis supplied). DiMaria did, in fact, use the cushion accounts to "tune" Bankrate's numbers to meet financial targets.

22. Similarly reflecting DiMaria's improper directives and Bankrate's corporate culture, in the first quarter of 2012, DiMaria directed the booking of Bankrate's audit fees to an improper account, which had the effect of increasing Adjusted EBITDA. DiMaria instructed Bankrate's vice president of finance to "Charge ALL [the auditor's] BILLS TO ACCRUED DEAL COST – I DON'T CARE IF THEY COMPLAIN, WE CAN SAY IT WAS A MISTAKE." Bankrate's vice president of finance forwarded this email to Gamsey noting it was "[a]nother Ed special."



23. After learning of the Commission's investigation, Bankrate in September 2012 corrected the accounting fees that had been improperly booked to deal costs. After Bankrate's auditor questioned this adjustment to deal costs, Gamsey falsely advised Bankrate's auditor that the accounting fees had mistakenly been booked as deal costs, when in fact he knew that the booking was intentional and had been directed by DiMaria.

24. In June 2012, DiMaria and Bankrate's senior finance executives again used improper accounting entries to meet financial targets. After reviewing Bankrate's May 2012 financial results, DiMaria emailed Bankrate's vice president of finance and others questioning how revenue and EBITDA could "drop by so much?????" and instructing that "I want [the results] to be \$40.5 and \$12.5." Just a few days later, DiMaria again emailed Bankrate's vice president of finance and others directing them to "book like \$150 in rev[enue] to EBITDA in May ... [p]lus reverse \$75k in accruals." DiMaria did not offer any proper basis for these adjustments. Rather, according to DiMaria's email, these adjustments were necessary because he had told the Chairman of the Board of Bankrate that the company would achieve certain financial targets, and Bankrate's then-current financial results were below those target figures. DiMaria instructed the recipients of his email to "keep it under the radar."

**Bankrate's Manipulation of Second Quarter 2012 Revenues and Expenses**

25. On July 6, 2012, after being provided with preliminary second quarter financial results for Bankrate Core and Credit Cards, DiMaria informed Bankrate's vice president of finance that Adjusted EBITDA needed to be \$37 million for the quarter, and that the preliminary results were "going in the wrong direction."

26. On July 7, 2012, the first version of Bankrate's consolidated financial results was circulated to DiMaria and Gamsey, as well as others on the accounting team, reflecting current Adjusted EBITDA for the second quarter of \$36,144,000, which DiMaria knew was below analyst consensus estimates. Three days later, after realizing it had double-counted \$286,000 of revenue, the Credit Cards division submitted revised financials for consolidation. The next day, on July 11, 2012, DiMaria was informed that Bankrate's second quarter revenue had decreased by \$286,000 due to the correction for the Credit Cards division's double-counting of revenue, further jeopardizing the company's prospects of meeting analyst estimates.

27. Shortly thereafter, DiMaria took action to remedy the situation by directing the recording of improper revenues. Specifically, at DiMaria's direction, Bankrate's vice president of finance emailed the Insurance and Credit Cards divisions directing them to book additional revenue of \$300,000 and \$500,000, respectively. These July 11, 2012 email instructions to both Credit Cards and Insurance, which were copied to DiMaria, did not specify a legitimate justification for the revenue, but rather contained an ambiguous description of what the revenue purportedly related to, and did not identify any specific customers with which it was associated.

28. Within a few minutes of sending these email instructions, Bankrate's vice president of finance forwarded the emails (and subsequent related emails) to Gamsey. In emails between themselves using strong expletives, Bankrate's vice president of finance and Gamsey expressed serious concerns about the validity of the revenue the divisions had just been directed to book. For example, Gamsey emailed the vice president of finance: "F[\*\*\*] me – seriously – ooooooooooooooooooooo ... You better make sure that the revenue/margin analytics are thoroughly

explained so that we avoid questions on this sh[\*\*].” After the vice president of finance responded “[y]eh .. you see why our lives get more difficult?”, Gamsey stated:

... Doesn’t [DiMaria] realize that all this does is put us in a hole to start Q3 since it will have to be reversed when the “estimate” is trued up? So in Q3 are we going to record even more when the numbers suck? I know you get it but I’m not sure [DiMaria] is thinking ahead for what it means.

**Bankrate Insurance Records \$300,000 in Baseless Revenue**

29. On July 11, 2012, and without any support or analysis, the Insurance division immediately recorded the \$300,000 of additional revenue directed by DiMaria, booking the revenue to a dormant customer account. On July 16, 2012, five days after the revenue was booked, Bankrate’s auditor asked Gamsey for an explanation for the \$300,000 as part of its review of certain accounts receivable. Gamsey immediately emailed the vice president of finance: “Better start figuring out an explanation for these.” Indeed, this is precisely what occurred. Over the next few weeks, Bankrate and its Insurance division struggled to devise after-the-fact justifications to support the \$300,000 in additional revenue DiMaria ordered booked, ultimately settling on faulty justifications that were not supportable under GAAP.

30. After the auditor questioned the \$300,000 entry, and nearly a week after the \$300,000 had been booked, the Insurance division for the first time prepared and circulated to DiMaria and Gamsey a draft chart purportedly supporting the \$300,000 in revenue. This first chart had three components: (1) \$143,000 in lost revenue from two days in June in which Bankrate had lost the ability to track clicks to customers and therefore quantify, or bill customers for, the associated revenue (the “clickrate outage”); (2) \$30,000 for the reversal of credits that had previously been given to a customer for leads that did not meet the customer’s quality

criteria; and (3) \$132,000 in revenue from a “clawback” or reversal of credits granted to two large Insurance customers due to alleged quality improvements in Bankrate’s leads.

31. At approximately the same time the initial chart attempting to justify the \$300,000 entry was being circulated internally, Bankrate’s vice president of finance sent a misleading, generic explanation that had been reviewed and approved by DiMaria and Gamsey to the company’s auditor. The explanation implicitly affirmed that the revenue was associated with the single customer account to which it was initially booked rather than the numerous customer accounts to which the revenue was purportedly related based on the draft chart described above. The explanation also generically referenced lost revenue from the clickrate outage and unbilled revenue for improvements in lead quality (*i.e.*, the credit clawback item). This explanation was offered despite Bankrate’s vice president of finance learning shortly before sending the explanation that the credit clawback item did not make sense to the Insurance division. Bankrate’s auditor did not question the \$300,000 entry further during its second quarter 2012 review.

32. Shortly after this explanation was sent to Bankrate’s auditor, the Insurance division circulated to DiMaria and Gamsey a second chart attempting to justify the \$300,000 of additional revenue recognized by the Insurance division. The new chart replaced the \$132,000 credit clawback explanation with \$179,000 in estimated revenue from a new bonus provision with a different customer, notwithstanding that the Insurance division had not yet received any data indicating it had earned a bonus. The estimated revenue for the purported new bonus provision was approximately \$47,000 more than the previous amount attributed to credit clawbacks. However, the Insurance division reduced the expected revenue from the clickrate

outage by approximately the same amount – to approximately \$100,000 – ensuring that the items on the chart continued to total to approximately \$300,000.

33. Although the second chart represented the Insurance division's final attempted explanation for the \$300,000 entry, Bankrate never forwarded this chart to its auditor nor updated the explanation that had been provided to the auditor just hours earlier. As a result, Bankrate's auditor continued to believe the \$300,000 related to a clickrate outage and unbilled revenue for improvements in lead quality associated with a single customer.

**The \$300,000 in Revenue Did Not Comply with GAAP**

34. Not only was the \$300,000 in additional revenue booked without support or analysis, but even the after-the-fact attempts to justify the revenue did not support recognition of the revenue under GAAP. The collectability of each component of the \$300,000 in purported revenue was not reasonably assured, and thus the revenue was not properly recognized under GAAP. Indeed, each of the components of the \$300,000 in revenue purportedly related to the Insurance division was reversed as part of Bankrate's June 2015 restatement of second quarter 2012 financial results.

35. First, with respect to the approximately \$100,000 for alleged lost revenue from the clickrate outage Bankrate experienced in June 2012, none of this revenue was properly recognized under GAAP, for several reasons. Bankrate determined the \$100,000 figure by estimating that \$143,000 in revenue had been lost during the clickrate outage, and then applying a 70% collectability rate. However, Bankrate never prepared a legitimate analysis quantifying this lost revenue or attributing the lost revenue to particular customers. Further, contrary to its historical revenue recognition practices, the Insurance division generally did not obtain

confirmations from the affected customers as to the dollar amount of lost revenue or their willingness to pay for the lost clicks before recognizing revenue. In addition, information provided by the Insurance division to Bankrate's vice president of finance indicated that certain of the "lost" revenue during the clickrate outage had already been booked in June 2012, that they could only potentially identify approximately \$43,000 in unbooked revenue from the clickrate outage, and that much of that unbooked revenue was associated with a customer that had been advised by Insurance that they would not be required to pay.

36. After Bankrate's vice president of finance informed DiMaria that there was "at least 50k" of outstanding revenue from the clickrate outage that could be included in the explanation for the \$300,000 being prepared for Bankrate's auditor, DiMaria responded: "I would show and (sic) analysis of a much larger recapture and may assume we will collect say 40 or 50% (the \$300)[.]" Shortly thereafter, DiMaria told the vice president of finance that the Insurance division should use \$170,000 for the clickrate lost revenue estimate.

37. Second, with respect to the \$30,000 attributed to the reversal of a credit that had been given to a Bankrate customer for leads that did not meet the customer's quality requirements, again, this revenue did not meet the requirements of revenue recognition under GAAP. Even though Bankrate's vice president of finance knew that the credit should be issued to the customer, he confirmed that the Insurance division should not yet credit the customer because "we will need the revenue in June '12." Thus, the revenue was authorized for known nonconforming leads for which a credit would be issued in the future.

38. Third, with respect to the \$179,000 of additional revenue booked after quarter end to a new bonus provision, this revenue also did not meet the requirements of revenue recognition

under GAAP. At the time it recognized revenue for a potential bonus in June 2012, the first month in which the new bonus provision was effective, the Insurance division did not have any actual data from the customer indicating that a bonus had been earned, a fact known to DiMaria and Gamsey.

39. In addition, the Insurance division did not have any reliable historical data from this customer reflecting the extent to which leads sent to this customer in the past had converted into actual insurance policies (which was the basis for a potential bonus). In fact, to the extent Insurance had historical information, Gamsey knew this information reflected that Insurance was not performing at a level that would have triggered a bonus in the months leading to June 2012. Similarly, DiMaria knew, or was reckless in not knowing, that just a few weeks prior to recognizing \$179,000 in revenue for an estimated bonus under the new contract, the Insurance division had estimated a medium probability of a \$30,000 bonus by August 2012.

40. Finally, the Insurance division did not prepare a legitimate or reliable analysis justifying the estimated bonus for which revenue was recognized in the second quarter. In fact, the Insurance division employee who prepared the high level, conclusory “support” for the bonus revenue advised Bankrate’s vice president of finance at the time that she was not comfortable with the Insurance division recognizing revenue on the basis of this type of analysis in the future.

41. Indeed, when the actual conversion data on which a potential bonus was based were reported to the Insurance division in late September 2012, the Insurance division’s performance did not qualify for a bonus. In fact, the Insurance division’s rate of converting leads into insurance policies missed a bonus under the two applicable bonus formulas by approximately 50% and 200%, respectively.

42. In light of all of the facts above concerning the \$300,000 in additional revenue purportedly related to the Insurance division, as well as their background, education, and job responsibilities, DiMaria and Gamsey knew, were reckless in not knowing, and were negligent in not knowing that the additional revenue was improper and did not comply with GAAP.

**Credit Cards Does Not Fully Comply with the Directive to Book Baseless Revenue, Causing Bankrate to Immediately and Arbitrarily Record Revenue to a Different Business Unit**

43. As alleged above, at the same time DiMaria directed the Insurance division to book \$300,000 in additional revenue, he also directed the Credit Cards division to book \$500,000 in additional revenue. Reacting to this directive, Gamsey sent an email to the vice president of finance noting that Gamsey had spoken to DiMaria and “he said there may be some additional good guy adjustments coming and I f[\*\*\*]ing knew that he was going to do something like this.” Gamsey continued: “We need to be very careful how this gets reflected or be able to have some basis for the estimate to show [the auditor] if they happen to figure it out.”

44. Unlike Insurance, however, the Credit Cards accountants initially refused to book the \$500,000 of unsupported revenue directed by DiMaria. In response, DiMaria told other Bankrate personnel that he was “going to rip [the Credit Cards CEO’s] f[\*\*\*]ing head off” and fire the Credit Cards accountants if they “f[\*\*\*] up the accounting.”

45. After learning of the resistance from the Credit Cards accountants, DiMaria emailed Bankrate’s vice president of finance and attempted to justify the \$500,000 in revenue as a “true up for reporting issues.” Upon learning of this purported justification, Gamsey emailed the vice president of finance: “Haha – what reporting issues? All the issuers have reported and



I'm sure if we did an analysis there has never been a 'reporting issue' of 500k – maybe 50k. [DiMaria] is treading on very thin ice here[.]”

46. Ultimately, Credit Cards personnel concluded that “it could possibl[y] expect to get in June” an additional \$176,000 in revenue, and recorded this amount to the second quarter 2012. As detailed below, this \$176,000 in additional revenue was not properly recognized under GAAP, and was reversed as part of Bankrate’s June 2015 restatement of second quarter 2012 financial results.

47. On July 12, 2012, upon learning that Credit Cards had only booked \$176,000 of the \$500,000 in additional revenue he had directed, DiMaria informed Bankrate’s vice president of finance that the difference should be booked to Bankrate Core, again directing an improper and unjustified accounting entry to achieve financial targets. Approximately thirty-five minutes later, Bankrate’s vice president of finance instructed the Bankrate Core accounting personnel to book \$305,000 in additional revenue. Using two of the Core customers on a revenue spreadsheet that had legitimate revenue listed as \$234,000 and \$71,000, Bankrate Core simply doubled the revenue attributable to these customers without any basis to arrive at the \$305,000 of additional revenue, a fact that became known to DiMaria and Gamsey.

48. By adding this improper revenue directly to the revenue spreadsheet rather than through a manual journal entry, Bankrate avoided the questions that its auditor typically directed toward post-quarter manual journal entries. This manner of booking the \$305,000 also circumvented Bankrate’s accounting controls, as the revenue spreadsheet had already been approved for entry into the general ledger and did not require additional approvals.

49. In approximately September 2012, after learning of the Commission's investigation in this matter, DiMaria *for the first time* attributed the \$305,000 revenue item to an alleged contractual dispute with an Insurance division customer. This was a different customer than either of the two customers to whom the revenue was initially attributed. After DiMaria offered this justification, the \$305,000 of previously unexplained revenue was transferred from Bankrate Core's books to the Insurance division's books, and DiMaria sent an invoice to the Insurance division customer claiming additional amounts were owed.

50. However, notwithstanding DiMaria's after-the-fact justification of the \$305,000, the alleged contractual dispute with the Insurance division customer had been resolved by June 2012. In fact, in August 2012, Bankrate confirmed with the customer that the only outstanding money owed by the customer was for June and July 2012 invoices.

**The Additional Revenue Associated with Credit Cards and Bankrate Core  
Did Not Comply with GAAP**

51. None of the approximately \$500,000 in additional revenue booked at DiMaria's direction complied with GAAP. Specifically, neither the \$305,000 in revenue booked without basis to Bankrate Core and later attributed to an Insurance division customer dispute, nor the \$176,000 in revenue booked with the Credit Cards division, was properly recognized under GAAP. In addition, both the \$305,000 in revenue purportedly related to Bankrate Core and the \$176,000 in revenue purportedly related to the Credit Cards division were reversed as part of Bankrate's June 2015 restatement of second quarter 2012 financial results.

52. With respect to the \$176,000 in revenue booked with the Credit Cards division, in addition to the fact that the collectability of this revenue was not reasonably assured, the division's recognition of \$176,000 in revenue was contrary to its written revenue recognition

policy and historical practices. The Credit Cards division's written accounting policy and historical practice required customer confirmation of revenue before recognition of that revenue. The Credit Cards division departed from its policy by booking the \$176,000 in additional revenue without first receiving confirmations from several of the customers representing the \$176,000.

53. In light of all of the facts above concerning the \$176,000 in additional revenue purportedly related to the Credit Cards division, as well as their background, education, and job responsibilities, DiMaria and Gamsey knew, were reckless in not knowing, and were negligent in not knowing that the additional revenue was improper and did not comply with GAAP.

54. With respect to the \$305,000 in revenue DiMaria directed be booked with Bankrate Core to make up for the revenue the Credit Cards division refused to book, this revenue had no appropriate justification at the time it was recorded. Indeed, to the extent that the \$305,000 was in actuality meant to be additional Credit Cards revenue simply booked to a different division, it was contrary to GAAP for the same reasons outlined in paragraph 52, above, as well as the additional facts that it was beyond the amount that the Credit Cards personnel had calculated, was not linked to any specific customer, and there was simply no support for this amount. DiMaria's after the fact justification of an on-going dispute with an Insurance customer was also contrary to GAAP, as the hope of recovery of an unresolved contractual dispute at best represents a gain contingency, recognition of which is generally prohibited by GAAP.

55. In light of all of the facts above concerning the \$305,000 in additional revenue purportedly related to Bankrate Core, as well as their background, education, and job

responsibilities, DiMaria and Gamsey knew, were reckless in not knowing, and were negligent in not knowing that the additional revenue was improper and did not comply with GAAP.

**Bankrate Makes Additional Baseless Reductions in Marketing Expense Accrual**

56. On July 13, 2012, the day after Bankrate improperly recorded \$305,000 of additional revenue on Bankrate Core's books, a revised version of Bankrate's consolidated financial results for the second quarter 2012 was circulated to DiMaria and Gamsey that reflected Adjusted EBITDA of \$36,656,000.

57. Shortly after the circulation of the revised financial results, results that continued to fall short of the \$37 million in Adjusted EBITDA dictated by DiMaria one week earlier, DiMaria directed a Bankrate Core accountant to reduce a marketing accrual account for Search Engine Marketing (known as "SEM") by \$400,000. Reducing the SEM accrual (a balance sheet account) led to a corresponding reduction in the SEM expense (an income statement account), thereby artificially increasing Bankrate's quarterly earnings.

58. DiMaria's email instruction to the Bankrate Core accountant did not reference or contain any support for the accounting entry. Similarly, the manual journal entry executing DiMaria's instruction to reduce the SEM marketing accrual by \$400,000 did not have any support beyond DiMaria's email instruction.

59. Upon learning of this \$400,000 reduction in the SEM accrual, Gamsey questioned Bankrate's vice president of finance as to whether there was any basis for DiMaria's reduction in the SEM accrual, or whether DiMaria directed this entry instead of additional unsupported revenue entries.

60. In fact, Bankrate had been using the SEM accrual account as one of its “cushion” or “cookie jar reserve” accounts described in paragraph 20, above, since at least early 2011. It was inappropriate for Bankrate to use the SEM account as a “cushion” account. Among other reasons, GAAP requires over-accrued expenses to be written off in the period the over-accrual becomes known.

61. In addition, it was inappropriate to reduce the SEM accrual without a proper basis, in order to meet the Adjusted EBITDA number being dictated by DiMaria.

62. Following the booking of this \$400,000 reduction in the SEM accrual, a revised version of Bankrate’s second quarter 2012 financial results was circulated to DiMaria and Gamsey, reflecting Adjusted EBITDA of \$37,056,000.

63. The \$400,000 reduction of the SEM accrual was reversed as part of Bankrate’s June 2015 restatement of second quarter 2012 financial results.

64. In light of all of the facts above concerning the \$400,000 reduction in the SEM accrual, as well as their background, education, and job responsibilities, DiMaria and Gamsey knew, were reckless in not knowing, and were negligent in not knowing that the reduction was improper.

**Bankrate Fails to Book Additional Second Quarter Expenses**

65. The baseless accounting entries detailed above were not the only steps in Bankrate’s scheme to meet analyst estimates. On July 6, 2012 – indeed, within a few hours of being told by DiMaria that second quarter Adjusted EBITDA needed to be \$37 million – Bankrate’s vice president of finance instructed Bankrate Core to reverse certain second quarter

accounting fees associated with Bankrate's Sarbanes-Oxley ("SOX") compliance provider. This instruction was made without any basis.

66. After realizing that accounting fees incurred in the second quarter had not yet been recorded (and thus could not be reversed), Bankrate's vice president of finance decided not to record the proper amount of fees to the second quarter, but to instead record those fees to the third quarter. As a result, Bankrate improperly failed to book at least \$99,000 in known accounting fees that were incurred during the second quarter.

67. On July 9, 2012, Bankrate's vice president of finance advised Gamsey that Bankrate was under-accrued for SOX compliance accounting expenses in the second quarter and would need to "catch up" by booking those expenses in the third quarter.

68. As part of its June 2015 restatement of its second quarter 2012 financial results, Bankrate booked this \$99,000 to the second quarter.

69. In light of all of the facts above concerning the SOX compliance fees, as well as their background, education, and job responsibilities, DiMaria and Gamsey knew, were reckless in not knowing, and were negligent in not knowing that Bankrate was not properly accounting for those expenses.

**DiMaria and Gamsey Knew or Should Have Known that Accounting Entries Made to Achieve Bankrate's Financial Targets Were Improper and/or Contrary to GAAP**

70. In light of all of the above-alleged facts, including the circumstances leading to the accounting entries, as well as their background, education, and job responsibilities, DiMaria and Gamsey knew, were reckless in not knowing, and were negligent in not knowing that the entries described above were improper and, in many cases, did not comply with GAAP.

**Bankrate Made Material False and Misleading Statements Due to the Fraud**

71. As a result of its improper entries as described above, Bankrate's second quarter 2012 financial results were materially misstated.

72. On July 31, 2012, Bankrate released its artificially inflated financial results and just met certain analyst targets. Analyst consensus estimates for Bankrate's second quarter 2012 financial results were \$37.2 million for Adjusted EBITDA and \$0.18 for Adjusted EPS. Bankrate would not have met these estimates but for the improper accounting entries described above.

73. In its July 31, 2012 earnings release, which was incorporated in a Form 8-K filed by Bankrate on the same date, Bankrate reported second quarter 2012 Adjusted EBITDA of approximately \$37.5 million. This figure was false and misleading, as it was inflated by the improper accounting entries described above. But for the improper accounting entries, Bankrate's Adjusted EBITDA for the second quarter of 2012 would have been only approximately \$36.2 million, which was below analyst consensus estimates.

74. Bankrate's misstatement of its Adjusted EBITDA was material, as it allowed Bankrate to exceed analyst consensus estimates for this key financial metric.

75. In its July 31, 2012 earnings release, which was incorporated in a Form 8-K filed by Bankrate on the same date, Bankrate also reported second quarter 2012 Adjusted EPS of \$0.18. This figure was false and misleading, as it was inflated by the improper accounting entries described above. But for the improper accounting entries, Bankrate's Adjusted EPS for the second quarter of 2012 would have been only \$0.17, which was below analyst consensus estimates.

76. As with Bankrate's misstatement of its Adjusted EBITDA, Bankrate's misstatement of Adjusted EPS was material because it allowed Bankrate to meet analyst consensus estimates for this key financial metric.

77. Bankrate also materially misstated its reported net income due to the improper accounting entries described above. In its second quarter 2012 Form 10-Q, filed on August 13, 2012, Bankrate reported net income of approximately \$16.3 million. But for the improper accounting entries, Bankrate's net income would have been only approximately \$15.5 million. Bankrate thus materially misstated its net income by approximately 5%.

78. DiMaria made the statements concerning Bankrate's Adjusted EBITDA and Adjusted EPS in the July 31, 2012 earnings release, as well as the statements concerning Bankrate's net income in the second quarter 2012 Form 10-Q. As Bankrate's CFO, DiMaria reviewed, approved, and was ultimately responsible for the accuracy of Bankrate's reported financial results in the earnings release and Form 10-Q. In addition, DiMaria signed and certified Bankrate's Form 10-Q on August 13, 2012. DiMaria also announced Bankrate's false financial results during the second quarter 2012 earnings call.

**DiMaria and Gamsey Falsely Certified to Bankrate's Auditor that They Had No Knowledge of Fraud or Suspected Fraud**

79. DiMaria and Gamsey both signed the second quarter 2012 management representation letter to Bankrate's auditor. Although, as described above, they both knew about the improper accounting practices taking place at the company, they both falsely represented to Bankrate's auditor that: 1) the company's financial statements had been prepared and were fairly presented in conformity with GAAP; 2) there were no material transactions that had not been properly recorded in the company's accounting records; and 3) they had no knowledge of fraud



or suspected fraud affecting the company involving management, employees with significant internal control roles, or others where the fraud could materially affect the company's financial statements.

80. Further, in connection with Bankrate's auditor's second quarter interim review work, Gamsey orally misrepresented to Bankrate's auditor that he was not aware of any improper or fraudulent accounting practices at the company.

**DiMaria's Possession of, and Trading On, Material Nonpublic Information**

81. On August 1, 2012, the day after Bankrate's announcement of its financial results for the second quarter 2012, Bankrate's stock price rose from \$15.95 to \$17.57 per share. DiMaria sold Bankrate stock during the two-week period following the announcement of Bankrate's second quarter 2012 financial results, a period during which Bankrate's stock price was artificially inflated as a result of Bankrate's scheme to inflate its financial results to hit financial targets.

82. Specifically, DiMaria sold a total of 107,177 shares of Bankrate stock on August 9, August 10, and August 13, for approximately \$2 million. The price of this stock was inflated by hundreds of thousands of dollars as a result of the Defendants' improper accounting practices and false statements that DiMaria made concerning Bankrate's financial condition.

83. At the time DiMaria sold his Bankrate stock, as alleged above, he was in possession of material, nonpublic information about Bankrate's false financial statements, and specifically that Bankrate had used improper accounting entries to meet its financial targets. DiMaria knew, recklessly disregarded, or should have known that his trading was in breach of a

fiduciary duty, or obligation arising from a similar relationship of trust and confidence, owed to the shareholders of Bankrate.

**DiMaria and Gamsey Engaged In a Scheme to Defraud**

84. As detailed above, the Defendants engaged in a scheme to defraud Bankrate's investors from learning about Bankrate's true financial condition, to conceal Bankrate's improper accounting practices from its auditor, and to falsely meet analyst targets.

85. As detailed above, DiMaria committed numerous acts in furtherance of this scheme. Among other things, DiMaria:

- a. Instructed Bankrate accounting personnel that Bankrate's adjusted EBITDA for the second quarter of 2012 needed to be at least \$37 million;
- b. Directed Bankrate accounting personnel to make unsupported, round-dollar accounting entries in order to meet or exceed analyst consensus estimates;
- c. When Credit Cards refused to book the entire amount instructed, directed that the difference be booked to Bankrate Core;
- d. Used certain accrual accounts as "cushion" accounts or "cookie jar reserves," including determining when those accounts should be written off or used to impact Bankrate's financials and meet or exceed analyst consensus estimates;
- e. Generated an after-the-fact justification that the \$305,000 booked to Bankrate Core related to a dispute with an Insurance customer;
- f. Knew about all of the above-referenced improper and unsupported accounting entries and the manner in which they were booked, but failed to inform Bankrate's CEO or Bankrate's Audit Committee about the improper entries;

- g. Failed to disclose to investors Bankrate's true financial condition;
- h. Misrepresented to Bankrate's auditor the nature of the \$300,000 booked by the Insurance division;
- i. Failed to inform Bankrate's auditor that numerous entries for the second quarter of 2012 were unsupported and made only to meet or exceed analyst consensus estimates;
- j. Signed the second quarter 2012 management representation letter to Bankrate's auditor that contained false or misleading statements and omissions;
- k. Signed and certified Bankrate's Form 10-Q for the second quarter of 2012, containing material misstatements and omissions regarding Bankrate's financial condition; and
- l. Profited by selling his stock at inflated prices.

86. As detailed above, Gamsey committed numerous acts in furtherance of this scheme. Among other things, Gamsey:

- a. Knew about all of the above-referenced improper and unsupported accounting entries and the manner in which they were booked, but failed to inform Bankrate's CEO or Bankrate's Audit Committee about the improper entries;
- b. Counseled Bankrate's vice president of finance to record the improper entries in a manner that would not attract the attention of Bankrate's auditor;
- c. Failed to disclose to investors Bankrate's true financial condition;
- d. Misrepresented to Bankrate's auditor the nature of the \$300,000 booked by the Insurance division;
- e. Failed to inform Bankrate's auditor that numerous entries for the second quarter of 2012 were unsupported and made only to meet or exceed analyst consensus estimates;

f. In connection with Bankrate's auditor's second quarter interim review, orally misrepresented to Bankrate's auditor that he was not aware of any improper or fraudulent accounting practices at the company; and

g. Signed the second quarter 2012 management representation letter to Bankrate's auditor that contained false or misleading statements and omissions.

**DiMaria and Gamsey Obtained Money or Property from their Fraudulent Practices**

87. DiMaria obtained financial benefits as a result of his fraudulent conduct. As noted above, DiMaria sold Bankrate stock at artificially inflated prices, earning significant profits from his fraud.

88. In addition, both DiMaria and Gamsey, in their roles as Bankrate employees, obtained money or property for Bankrate. As a result of the fraudulent accounting practices alleged herein, Bankrate's stock price was artificially inflated. Bankrate issued stock at this artificially inflated price following its announcement of its second quarter 2012 financial results, thereby benefitting by several million dollars.

**DiMaria and Gamsey Misled Bankrate's Auditor**

89. As detailed above, DiMaria and Gamsey also misled Bankrate's auditor about Bankrate's financial statements in connection with the auditor's audit and review work during the time period relevant to this Complaint.

90. Among other things, DiMaria:

a. Misrepresented to Bankrate's auditor the nature of the \$300,000 booked by the Insurance division;

b. Failed to inform Bankrate's auditor that numerous entries for the second quarter of 2012 were unsupported and made only to meet or exceed analyst consensus estimates; and

c. Signed the second quarter 2012 management representation letter to Bankrate's auditor that contained false or misleading statements and omissions.

91. Among other things, Gamsey:

a. Misrepresented to Bankrate's auditor the nature of the \$300,000 booked by the Insurance division;

b. Failed to inform Bankrate's auditor that numerous entries for the second quarter of 2012 were unsupported and made only to meet or exceed analyst consensus estimates;

c. In connection with Bankrate's auditor's second quarter interim review, orally misrepresented to Bankrate's auditor that he was not aware of any improper or fraudulent accounting practices at the company;

d. Signed the second quarter 2012 management representation letter to Bankrate's auditor that contained false or misleading statements and omissions; and

e. When Bankrate's auditor questioned certain adjustments that were being made to the company's deal cost account, an account to which Gamsey knew the company had intentionally and improperly booked non-deal related accounting fees, Gamsey misrepresented to Bankrate's auditor that its accounting fees had been mistakenly booked to deal costs.

92. DiMaria and Gamsey's misstatements and omissions to the auditor were material because, among other things, they concealed Defendants' scheme to engage in improper accounting practices in order to meet key financial metrics.

**DiMaria Was a Control Person of Bankrate**

93. As detailed above, DiMaria had significant control over Bankrate during the time period relevant to this Complaint.

94. DiMaria was Bankrate's CFO and a senior vice president. He exercised control over Bankrate's general operations. Moreover, as detailed above, he exercised control over the specific, violative activity that is the subject of this Complaint, and had a substantial role in that conduct.

**Bankrate Violated Various Reporting Provisions of the Federal Securities Laws, and DiMaria and Gamsey Aided and Abetted those Violations**

95. Section 13(a) of the Exchange Act and Rules 13a-11 and 13a-13 thereunder require issuers like Bankrate to file reports with the Commission containing such information as the Commission's rules prescribe. Further, Rule 12b-20 requires that an issuer's statement or report contain such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

96. As detailed above, Bankrate violated these reporting provisions by filing false and misleading current and quarterly reports during the time period at issue in this Complaint. Specifically, as detailed above, Bankrate filed a false and misleading Form 8-K on July 31, 2012, and a false and misleading Form 10-Q on August 13, 2012.

97. As also detailed above, DiMaria and Gamsey aided and abetted these violations by knowingly or recklessly providing substantial assistance to those violations. Among other things, DiMaria and Gamsey provided false and misleading information for Bankrate's reports and omitted material information from Bankrate's reports, and DiMaria signed and certified Bankrate's reports.

**Bankrate Violated Various Books and Records and Internal Control Provisions of the Federal Securities Laws, and DiMaria and Gamsey Aided and Abetted those Violations**

98. Section 13(b)(2)(A) of the Exchange Act requires issuers like Bankrate to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the company's transactions and dispositions of the assets. Section 13(b)(2)(B) of the Exchange Act requires issuers like Bankrate to devise and maintain a system of sufficient internal accounting controls. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly circumventing or failing to implement a system of internal accounting controls or knowingly falsifying books, records, or accounts. Similarly, Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified books, records, or accounts.

99. As detailed above, Bankrate violated these provisions. Among other things, Bankrate booked revenue and expense entries without support, and booked revenue to defunct and unrelated and incorrect customers, accounts, and divisional books.

100. DiMaria and Gamsey aided and abetted Bankrate's violations of these provisions by knowingly or recklessly providing substantial assistance to those violations. Among other things, DiMaria and Gamsey were responsible for these books and records and directed the relevant conduct, yet failed to assure that Bankrate's accounts were accurate.

101. DiMaria and Gamsey also knowingly failed to implement an appropriate system of internal accounting controls. DiMaria and Gamsey were responsible for Bankrate's internal control structure, and were aware of the issues underlying Bankrate's internal control failures and misstated accounts.

**DiMaria Made False Certifications in Connection with Bankrate's Form 10-Q**

102. Rule 13a-14 of the Exchange Act requires an issuer's principal executive and financial officers to sign certifications which are included as exhibits to each periodic report containing financial statements. The certifications must state that the signing officer has reviewed the report and, based on the officer's knowledge: (1) the report does not contain any material misstatements or omissions; (2) the financial statements fairly present, in all material respects, the financial results of operations; and (3) the officer has designed or caused to be designed such internal controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

103. As detailed above, DiMaria certified Bankrate's Form 10-Q for the second quarter of 2012 despite knowingly or recklessly making false and misleading material misstatements and omissions, including false financial statements, in those reports.

**FIRST CLAIM FOR RELIEF**

**Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5(a) and (c) Thereunder  
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a) and (c)]  
(Against All Defendants)**

104. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

105. By virtue of the foregoing, DiMaria and Gamsey, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: employed devices, schemes or artifices to defraud; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.



106. By virtue of the foregoing, DiMaria and Gamsey, directly or indirectly, violated, and unless restrained and enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

**SECOND CLAIM FOR RELIEF**

**Fraud – Violation of Exchange Act Section 10(b) and Rule 10b-5(b) Thereunder  
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b)]  
(Against DiMaria)**

107. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

108. By virtue of the foregoing, DiMaria, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security, made untrue statements of material fact or 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.

109. By virtue of the foregoing, DiMaria, directly or indirectly, violated, and unless restrained and enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)].

**THIRD CLAIM FOR RELIEF**

**Fraud – Aiding and Abetting Bankrate’s Violations of Exchange Act Section 10(b)  
and Rule 10b-5(b) Thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b)]  
(Against Gamsey and, Alternatively, Against DiMaria)**

110. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

111. Bankrate, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security made untrue statements of material fact or 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.

112. By engaging in the conduct described above, DiMaria and Gamsey each aided and abetted the fraud violations of Bankrate, in that they knowingly or recklessly provided substantial assistance to Bankrate in committing these violations.

113. By reason of the foregoing, DiMaria and Gamsey have aided and abetted and, unless restrained and enjoined, will again aid and abet, Bankrate's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **FOURTH CLAIM FOR RELIEF**

**Fraud - Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Bankrate's Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5] (Alternatively, Against DiMaria)**

114. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

115. Bankrate, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or 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; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

116. DiMaria, as CFO of Bankrate, exercised control over the management, general operations and polices of Bankrate, as well as the specific activities upon which Bankrate's violations are based.

117. By reason of the foregoing, DiMaria is liable as a control person under Section 20(a) of the Exchange Act for Bankrate's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **FIFTH CLAIM FOR RELIEF**

##### **Fraud in the Offer or Sale of Securities - Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] (Against All Defendants)**

118. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

119. By engaging in the conduct described above, DiMaria and Gamsey have, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme or artifice to defraud with scienter; obtained money or property by means of an untrue statement of material fact or omission to state a material fact necessary in order to make the statements made, in 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 purchasers of such securities.

120. By reason of the foregoing, DiMaria and Gamsey violated and, unless restrained and enjoined, will again violate Section 17(a) of the Securities Act.

**SIXTH CLAIM FOR RELIEF**

**Falsified Books, Records, or Accounts – Violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 Thereunder [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1]  
(Against All Defendants)**

121. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

122. By engaging in the conduct described above, DiMaria and Gamsey knowingly circumvented or knowingly failed to implement a system of internal accounting controls to assure that Bankrate's financial statements were prepared in conformity with GAAP or knowingly falsified or caused to be falsified books, records or accounts of Bankrate.

123. By reason of the foregoing, DiMaria and Gamsey violated and, unless restrained and enjoined, will again violate Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder.

**SEVENTH CLAIM FOR RELIEF**

**False Certifications – Violations of Rule 13a-14 of the Exchange Act  
[17 C.F.R. § 240.13a-14]  
(Against DiMaria)**

124. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

125. DiMaria falsely certified in connection with Bankrate's second quarter 2012 Form 10-Q, that as a signing officer he had reviewed the report, and: (1) based on his knowledge the report does not contain any untrue statement of material fact; (2) based on his knowledge, the

financial statements fairly present, in all material respects, the financial results of operations; and (3) he was responsible for establishing and maintaining adequate internal controls over financial reporting, has designed and evaluated such controls, and has disclosed any changes or weaknesses to the registrant's auditor and audit committee.

126. By reason of the foregoing, DiMaria violated and, unless restrained and enjoined, will again violate Rule 13a-14 of the Exchange Act.

**EIGHTH CLAIM FOR RELIEF**

**Deceit of Auditors – Violations of Rule 13b2-2 of the Exchange Act  
[17 C.F.R. § 240.13b2-2]  
(Against All Defendants)**

127. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

128. By engaging in the conduct described above, DiMaria and Gamsey each made or caused to be made materially false or misleading statements to an accountant in connection with audits, reviews or examinations of Bankrate's financial statements or in the preparation or filing of Bankrate's documents or reports required to be filed with the Commission; or omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with audits, reviews or examinations of financial statements or in the preparation or filing of Bankrate's documents or reports required to be filed with the Commission.

129. By reason of the foregoing, DiMaria and Gamsey each violated and, unless restrained and enjoined, will again violate Rule 13b2-2 of the Exchange Act.

**NINTH CLAIM FOR RELIEF**

**False SEC Filings – Aiding and Abetting Bankrate’s Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-11, and 240.13a-13]  
(Against All Defendants)**

130. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

131. Bankrate, which was an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed a materially false and misleading current report and a materially false and misleading quarterly report with the SEC that made untrue statements of material fact or 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, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13.

132. By engaging in the conduct described above, DiMaria and Gamsey each aided and abetted the reporting violations of Bankrate, in that they knowingly or recklessly provided substantial assistance to Bankrate in committing these reporting violations.

133. By reason of the foregoing, DiMaria and Gamsey each aided and abetted and, unless restrained and enjoined, will again aid and abet, Bankrate’s violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

**TENTH CLAIM FOR RELIEF**

**False SEC Filings – Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Bankrate’s Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-11, and 240.13a-13]  
(Alternatively, Against DiMaria)**

134. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

135. Bankrate, which was an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed a materially false and misleading current report and a materially false and misleading quarterly report with the SEC that made untrue statements of material fact or 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, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13.

136. DiMaria, as CFO of Bankrate, exercised control over the management, general operations and policies of Bankrate, as well as the specific activities upon which Bankrate’s violations are based.

137. By reason of the foregoing, DiMaria is liable as a control person under Section 20(a) of the Exchange Act for Bankrate’s violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

**ELEVENTH CLAIM FOR RELIEF**

**False Books and Records – Aiding and Abetting of Bankrate’s Violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]  
(Against All Defendants)**

138. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.

139. By engaging in the conduct described above, Bankrate, in violation of Section 13(b)(2) of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected Bankrate’s transactions and dispositions of its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and any other criteria applicable to such statements.

140. By engaging in the conduct described above, DiMaria and Gamsey aided and abetted Bankrate, in that they knowingly or recklessly provided substantial assistance to Bankrate in committing these violations.

141. By reason of the foregoing, DiMaria and Gamsey aided and abetted and, unless restrained and enjoined, will again aid and abet, Bankrate’s violations of Section 13(b)(2).

**TWELFTH CLAIM FOR RELIEF**

**False Books and Records – Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Bankrate’s Violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]  
(Alternatively, Against DiMaria)**

142. The Commission realleges and incorporates by reference paragraphs 1 through 103, as though fully set forth herein.



143. By engaging in the conduct described above, Bankrate, in violation of Section 13(b)(2) of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected Bankrate's transactions and dispositions of its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and any other criteria applicable to such statements.

144. DiMaria, as CFO of Bankrate, exercised control over the management, general operations and policies of Bankrate, as well as the specific activities upon which Bankrate's violations are based.

145. By reason of the foregoing, DiMaria is liable as a control person under Section 20(a) of the Exchange Act for Bankrate's violations of Section 13(b)(2) of the Exchange Act.

**RELIEF SOUGHT**

**WHEREFORE**, the Commission respectfully requests that this Court:

**I.**

Find that each of the Defendants committed the violations alleged in this Complaint;

**II.**

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining each of the Defendants from violating, directly or indirectly, the laws and rules alleged in this Complaint;

**III.**

Order that each of the Defendants be permanently prohibited from acting as an officer or director of any public company;

**IV.**

Order that each of the Defendants disgorge any and all ill-gotten gains, together with pre-judgment interest, derived from the improper conduct set forth in this Complaint;

**V.**

Order that each of the Defendants pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 20(d) of the Exchange Act [15 U.S.C. § 78u(d)], and order DiMaria to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1], in an amount to be determined by the Court, plus post-judgment interest;

**VI.**

Grant such other relief as this Court may deem just or appropriate.

**JURY DEMAND**

The Commission demands a trial by jury on all claims so triable.

Respectfully submitted this 8<sup>th</sup> day of September, 2015.

/s/ Nicholas P. Heinke  
Nicholas Heinke (*pro hac* admission pending)  
Senior Trial Counsel  
Stephen C. McKenna (*pro hac* admission pending)  
Senior Trial Counsel  
Attorneys for Plaintiff  
UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION  
1961 Stout Street, 17th Floor  
Denver, Colorado 80294  
(303) 844-1000  
heinken@sec.gov  
mckennas@sec.gov