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CENTRAL DISTRICT OF CALIFORNIA  
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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,

v.

ALLAN BOREN, ERIC CANO,  
PHILIP BORINI, CORRINE DAVIES,  
and TIMOTHY TUTTLE,  
Defendants.

Case No. 01-04377

DDP  
(EX)

COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint  
against defendants Allan Boren ("Boren"), Eric Cano ("Cano"), Philip Borini ("Borini"),  
Corrine Davies ("Davies") and Timothy Tuttle ("Tuttle") (collectively, the "Defendants"),  
alleges as follows:

MAY 15 2001  
[Signature]

Complaint

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**SUMMARY OF ALLEGATIONS**

1. This case involves financial reporting fraud perpetrated by the senior officers of I. & J. Bagel, Inc. ("I&J"), a California-based entity and wholly-owned subsidiary of Manhattan Bagel Inc. ("Manhattan Bagel" or the "Company"), which, during the relevant period, manufactured and distributed bagel dough and cream cheese products to a network of 220 franchised, licensed and Company-owned bagel bakery stores operating in 15 states and Canada.

2. In 1995 and 1996, I&J's Chairman of the Board, defendant Boren, and its president, defendant Cano, orchestrated a scheme to inflate the Company's net income by recording fictitious sales, overstating franchise fee and other revenues and understating certain expenses on I&J's books. The overall effect was to overstate Manhattan Bagel's consolidated net income before taxes by \$433,000 in the year ended December 31, 1995 and \$247,000 in the first quarter of 1996, constituting 15 and 23 percent, respectively, of the actual net income before taxes in those periods. Boren's brother, defendant Borini, implemented the fraud by, among other things, (i) procuring false confirmations for the Company's auditors with respect to the fictitious sales, and (ii) making payments against the fictitious bagel sales using money provided by Boren. Defendants Davies and Tuttle assisted Borini's efforts by signing the false audit confirmations and otherwise facilitating the cover-up.

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**VIOLATIONS**

3. By virtue of the foregoing conduct:

- a. Boren, directly or indirectly, singly or in concert, has engaged in acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b), 78m(b)(5), and Rules 10b-5 and 13b2-1, 17 C.F.R. §§ 240.10b-5, 240.13b2-1; and Boren is also liable, pursuant to Section 20(f) of the Exchange Act, 15 U.S.C. § 78t(f), as an aider and abettor of Manhattan Bagel's violations of Sections 13(a) and 13(b)(2) of the Exchange Act, 15 U.S.C. §§ 78m(a), 78m(b)(2), and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13;
- b. Cano, directly or indirectly, singly or in concert, has engaged in acts, practices and courses of business that constitute violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1; and Cano is also liable, pursuant to Section 20(f) of the Exchange Act, as an aider and abettor of Manhattan Bagel's violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13;
- c. Borini, directly or indirectly, singly or in concert, has engaged in acts, practices and courses of business that constitute violations of Section 10(b)

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of the Exchange Act and Rule 10b-5; and Borini is also liable, pursuant to Section 20(f) of the Exchange Act, as an aider and abettor of (i) Boren's and Cano's violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1, and (ii) Manhattan Bagel's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13;

d. Davies, directly or indirectly, singly or in concert, has engaged in acts, practices and courses of business that render her liable, pursuant to Section 20(f) of the Exchange Act, as an aider and abettor of (i) Boren's and Cano's violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1, and (ii) Manhattan Bagel's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13;

e. Tuttle, directly or indirectly, singly or in concert, has engaged in acts, practices and courses of business that render him liable, pursuant to Section 20(f) of the Exchange Act, as an aider and abettor of (i) Boren's and Cano's violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1, and (ii) Manhattan Bagel's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13.

4. Unless the Defendants are permanently restrained and enjoined, they will again engage in the acts, practices, and courses of business set forth in this Complaint and in acts, practices, and courses of business of similar type and object.

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3 **JURISDICTION AND VENUE**

4 5. The Commission brings this action pursuant to the authority conferred upon it  
5 by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d)(1) of the  
6 Exchange Act, 15 U.S.C. § 78u(d)(1), seeking to restrain and enjoin permanently the  
7 Defendants from engaging in the acts, practices and courses of business alleged herein.  
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9 The Commission also seeks an order:

- 10 a. requiring Boren and Cano to disgorge the ill-gotten gains they received as a  
11 result of the financial fraud, plus prejudgment interest thereon;  
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13 b. requiring Boren to pay civil money penalties pursuant to Section 20(d) of the  
14 Securities Act, 15 U.S.C. § 77t(d), and all Defendants to pay civil money  
15 penalties pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. §  
16 78u(d)(3); and  
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18 c. barring Boren, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. §  
19 77t(e), and Boren and Cano, pursuant to Section 21(d)(2) of the Exchange  
20 Act, 15 U.S.C. § 78u(d)(2), from serving as an officer or director of a  
21 publicly held company.

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

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26 7. Defendants, directly and indirectly, have made use of the means and  
27 instrumentalities of, or the means or instruments of transportation or communication in,  
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3 interstate commerce, or of the mails in connection with the transactions, acts, practices and  
4 courses of business alleged herein. Certain of these transactions, acts, practices and  
5 courses of business occurred in the Central District of California, including, among other  
6 things, the recording of fictitious sales on the books of I&J and the execution of fraudulent  
7 audit confirmations.  
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9 **THE DEFENDANTS**

10 8. Boren, age 36, was employed by Manhattan Bagel as the Chairman of the Board  
11 of I&J from June 1995 to December 1995, when he resigned. Boren and his wife were the  
12 largest shareholders of Manhattan Bagel from June 1995 to March 1996. Boren has  
13 residences in Boca Raton, Florida and Chatsworth, California.  
14

15 9. Cano was employed by Manhattan Bagel as the President of I&J from June 1995  
16 to April 1996, when he resigned. He was a consultant to the Company from April 1996 to  
17 June 1996. Boren and Cano have been friends since high school. Cano has a residence in  
18 Westlake Village, California.

19 10. Borini, age 46, is Boren's brother. He is not an attorney, but was, at all relevant  
20 times, the executive director of Veatch Carlson, Grogan & Nelson ("Veatch Carlson"), a law  
21 firm that purportedly was a large customer of I&J. Borini resides in Los Angeles, California.  
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23 11. Davies is, and was at all relevant times, employed at Veatch Carlson as Borini's  
24 assistant. Davies resides in Los Angeles, California.

25 12. Tuttle, age 42, is Borini's and Boren's brother-in-law. He is, and was at all  
26 relevant times, the owner of Peerless Building Maintenance Company ("Peerless"), a firm  
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3 providing office cleaning services. Peerless purportedly was a large customer of I&J. Tuttle  
4 resides in North Ridge, California.

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6 **OTHER RELEVANT ENTITIES**

7 13. Manhattan Bagel was incorporated in the State of New Jersey with its principal  
8 executive offices in Eatontown, New Jersey. On November 19, 1997, Manhattan Bagel filed  
9 a voluntary petition for reorganization under Chapter 11 of the federal Bankruptcy Act. On  
10 July 28, 1998, New World Coffee & Bagels, Inc. ("NWC") entered into an acquisition  
11 agreement with Manhattan Bagel whereby NWC would acquire 100% of Manhattan Bagel.  
12 NWC's acquisition of Manhattan Bagel was closed and approved by the United States  
13 Bankruptcy Court for the District of New Jersey in November 1998. Prior to becoming a  
14 wholly-owned subsidiary of NWC, Manhattan Bagel's common stock was registered with  
15 the Commission pursuant to Section 12(g) of the Exchange Act and quoted on the National  
16 Association of Securities Dealers Automated Quotations System ("NASDAQ") under the  
17 symbol BGLS.  
18

19 14. I&J was acquired by Manhattan Bagel on June 29, 1995 as a wholly-owned  
20 subsidiary of the Company. At the time of the acquisition, I&J owned and licensed  
21 approximately 17 bagel bakery stores in the Los Angeles area. Pursuant to the terms of the  
22 acquisition, a newly-created, wholly owned subsidiary of Manhattan Bagel was merged with  
23 and into DAB Industries, Inc. ("DAB"), an entity whose sole asset was all of the stock of  
24 I&J, in exchange for 1.5 million shares of Manhattan Bagel common stock. DAB was  
25 owned primarily by Boren and his wife, and they received 1.32 million of the Manhattan  
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3 Bagel shares exchanged, giving them a 25.2% interest in the Company and making them  
4 Manhattan Bagel's largest shareholders. Upon the closing of the acquisition, Boren agreed  
5 to continue to serve as Chairman of I&J, and Cano likewise agreed to continue to serve as  
6 I&J's president. Boren resigned his position on December 18, 1995. Cano resigned as  
7 I&J's president in early April 1996. Cano continued as a consultant to Manhattan Bagel  
8 through June 1996, when the Company terminated his consulting arrangement upon  
9 uncovering a number of the accounting improprieties discussed below.  
10

### 11 BACKGROUND

#### 12 Overview

13 15. Beginning in the second quarter of 1995, just prior to the acquisition, Boren and  
14 Cano implemented a scheme to inflate I&J's operating results, initially by creating fictitious  
15 bagel sales for two purported wholesale customers: Veatch Carlson, a law firm of 24  
16 lawyers, and Peerless, a small private firm that provides office cleaning services. In the last  
17 three quarters of 1995, I&J booked \$206,000 in bagel product sales to these two purported  
18 customers, representing tens of thousands of bagels and related products in a nine-month  
19 period. As 1995 progressed, and through the first quarter of 1996, Boren and Cano  
20 expanded their fraudulent scheme to include improper over-booking of franchise fee  
21 revenues, improper recording of other revenue and under booking of certain expenses.  
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23 16. After the markets closed on June 20, 1996, Manhattan Bagel announced that  
24 following the installation of new management at I&J, Manhattan Bagel "ha[d] uncovered  
25 certain improper bookkeeping entries and accounting practices" concerning "franchise fees,  
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payments made for purported public relations work, real estate finders fees, bonus and vacation pay, and inflated receivables and inventory" (the "June 20 Announcement"). The June 20 Announcement further stated that Manhattan Bagel's independent auditors had advised that, based on the findings to date, Manhattan Bagel would be required to restate its first quarter 1996 financial results, reducing revenues for the quarter by approximately \$90,000 and increasing expenses by about \$260,000. According to the announcement, first quarter net income per share was expected to decrease from \$.12 to \$.09.

17. On June 21, 1996, the price of Manhattan Bagel common stock fell approximately 35%, declining from \$21.25 to \$13.75 on record volume.

18. Manhattan Bagel's June 20 Announcement addressed only some of the misrepresentations then contained on its books as a result of the fraudulent scheme. Manhattan Bagel had not, at the time of the announcement, uncovered a number of other significant misrepresentations, including the fictitious sales, because Defendants were then actively engaged in efforts to conceal the true facts from the Company's auditors – an effort that continued through August 1996.

19. The effect of Defendants' misrepresentations on Manhattan Bagel's financial statements is shown in the chart below:

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Nature of Irregularity	Six Months Ended 6/30/95	Nine Months Ended 9/30/95	Year Ended 12/31/95	Three Months Ended 3/31/96
Fictitious Sales	\$61,000	\$136,000	\$206,000	\$-0-
Improper Recording of Income on the Conversion of an Account Payable to a Note Payable	-0-	107,000	98,000	(5,000)
Improper or Premature Recognition of Franchise Fee Revenue	-0-	-0-	100,000	183,000
Failure to Record Rent Expense	16,000	29,000	29,000	-0-
Failure to Amortize Prepaid Expenses	-0-	-0-	-0-	69,000
<b>Dollar Amount of Misstatement</b>	<b>\$77,000</b>	<b>\$272,000</b>	<b>\$433,000</b>	<b>\$247,000</b>
<b>% Misstatement as a Percent of Net Income Before Tax</b>	<b>9%</b>	<b>14%</b>	<b>15%</b>	<b>23%</b>
Net Income Before Tax As Previously Reported	\$967,000	\$2,207,000	\$3,332,000	\$1,312,000
Net Income Before Tax As Adjusted	\$890,000	\$1,935,000	\$2,899,000	\$1,065,000

20. As a result of Defendants' fraudulent conduct, Manhattan Bagel's financial statements contained material misrepresentations for the six month period ended June 30,

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3 1995, the nine month period ended September 30, 1995, the year ended the December 31,  
4 1995, and the three month period ended March 31, 1996. These materially inaccurate  
5 financial statements were included in periodic reports filed with the Commission, including  
6 the Form 10-QSB filed on August 15, 1995, Form 10-QSB filed on November 15, 1995,  
7 Form 10-KSB filed on March 19, 1996, the Form 10-QSB filed on May 15, 1996 and the  
8 Form 10-QSB filed on August 19, 1996.  
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10 21. Certain of these materially inaccurate financial statements were also included in  
11 registration statements. Specifically, the financial statements for the nine months ended  
12 September 30, 1995 were included in a Form SB-2 filed on November 9, 1995 (in  
13 connection with a secondary offering that included shares owned by Boren), and the  
14 financial statements for the year ended December 31, 1995 were included in a SB-2 filed on  
15 March 5, 1996 (in connection with a second secondary offering that included shares owned  
16 by Boren) and incorporated by reference in a Form S-3 filed on February 13, 1997.  
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#### 18 Fictitious Sales

19 22. Beginning in the spring of 1995, Boren devised a scheme to record phony bagel  
20 sales to two phantom accounts: Veatch Carlson, whose executive director was Boren's  
21 brother Borini, and Peerless, whose owner, Tuttle, was Boren's brother-in-law. Cano carried  
22 out Boren's plan by directing I&J's accounting personnel to record fictitious sales to Veatch  
23 Carlson and Peerless on a weekly basis, which I&J did every week through December 1995.  
24 Each week, I&J fraudulently recorded: (1) \$2,935 from the sale of 300 dozen bagels and  
25 related products to Veatch Carlson; and (2) \$2,436 from the sale of 200-225 dozen bagels  
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3 and related products to Peerless. By this scheme, Boren intended to inflate I&J's revenues,  
4 which, in turn, resulted in a material overstatement of Manhattan Bagel's revenues and net  
5 income. The overall effect was to falsely inflate the value of Boren's substantial holdings of  
6 Manhattan Bagel common stock.

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8 23. To implement Boren's plan, Cano told I&J's CFO that Veatch Carlson and  
9 Peerless each had a standing order for delivery of the same set quantity of product each and  
10 every day. Cano directed the CFO simply to prepare the same invoice every week, without  
11 the need for the usual documentation showing delivery of product to the customer. Cano  
12 also directed that the CFO not mail the invoices to Veatch Carlson or Peerless. Rather, Cano  
13 told her to give the invoices to him; that Veatch Carlson and Peerless were important  
14 accounts requiring special treatment and that he personally hand delivered all invoices as a  
15 courtesy. The CFO complied with this directive.

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17 24. At the year ended December 31, 1995, I&J's books showed sales to Veatch  
18 Carlson totaling \$120,335, all in the last three quarters of the year. During that period, three  
19 payments totaling \$58,700 had been recorded on the account. These three payments were  
20 made by Veatch Carlson checks dated April 30, 1995, May 31, 1995 and December 28,  
21 1995. Boren's brother Borini signed all three checks in his capacity as the executive director  
22 of Veatch Carlson.

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24 25. For this same period, I&J's books show total sales to Peerless of \$85,356.50  
25 and a single payment in the amount of \$14,619.00 made by bank check dated November 14,  
26 1995. In 1996, Peerless purportedly made two additional payments, the first by bank check  
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3 dated January 29, 1996 in the amount of \$9,746.00 and the second by a Peerless check dated  
4 August 12, 1996, signed by Boren's brother-in-law, Tuttle, in the amount of \$50,000.00.

5       26. All of these sales were fictitious. Moreover, the payments recorded on these  
6 two accounts were a sham.

7       27. To convince the Company's auditors that these fictitious sales were legitimate,  
8 Boren directed his brother Borini to make payments to I&J against the Veatch Carlson and  
9 Peerless accounts using money that Borini owed to Boren. Borini owed Boren  
10 approximately \$1.3 million, against which he made regular monthly payments drawn on  
11 Veatch Carlson's checking account. The three payments Veatch Carlson purportedly made  
12 to I&J for bagel sales were, in fact, loan payments to Boren, which Boren directed Borini to  
13 make payable to I&J, as if they were remittances against fictitious bagel sales invoices. At  
14 Boren's direction, Borini included I&J invoice numbers on two checks to give the further  
15 appearance of bona fide payments against the fictitious Veatch Carlson bagel account.  
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18       28. Boren also instructed Borini to arrange the payments ostensibly made by  
19 Peerless in November 1995 and January 1996. Borini withdrew money from his personal  
20 bank account in November and January in the amounts of the Peerless payments in those two  
21 months. He then purchased two bank checks, payable to "I& Joy Manhattan Bagels." On  
22 each check, Borini included a set of invoice numbers furnished by Cano, and, in the January  
23 check, he also added the word "Peerless" in the memo section to make it appear that the  
24 check came from Peerless. Boren, Cano and Borini together orchestrated the \$50,000  
25 payment made by Peerless in August, which is addressed separately below.  
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3 29. To further conceal the fictitious nature of the sales from the Company's  
4 auditors, Boren and Cano instructed Borini, Davies and Tuttle to execute fraudulent audit  
5 confirmations of the Veatch Carlson and Peerless account balances.

6 30. In connection with the 1995 year-end audit of Manhattan Bagel's financial  
7 statements, the Company's auditors, Ernst & Young, prepared written requests to Veatch  
8 Carlson and Peerless, in October 1995 and again in February 1996, asking them to confirm  
9 the respective amounts owed to I&J at September 30, 1995 (the October requests) and  
10 December 31, 1995 (the February requests).

11 31. In mid-October 1995, Boren learned of the auditors' confirmation request to  
12 Veatch Carlson and he instructed Cano to get the confirmation signed, even though Boren  
13 knew that the Veatch Carlson account was fictitious and that the firm owed no money to I&J  
14 for bagel sales. Cano thereafter faxed the Veatch Carlson confirmation request to Borini's  
15 personal assistant at Veatch Carlson and told him to sign it. In doing so, Cano knew that the  
16 Veatch Carlson account was fictitious and that the firm owed no money to I&J for bagel  
17 sales. Borini's assistant signed the confirmation on October 11, 1995, falsely confirming to  
18 the auditors that Veatch Carlson owed I&J \$58,700 as of September 30, 1995.

19 32. At about the same time, Ernst & Young faxed a confirmation request to Tuttle,  
20 the owner of Peerless, who was Boren's and Borini's brother-in-law. The request sought  
21 confirmation that Peerless owed I&J \$53,597 as of September 30, 1995. Tuttle called Borini  
22 to learn what the confirmation concerned. Borini assured Tuttle that Borini would take care  
23 of it. Borini then called Boren, who openly acknowledged to Borini that he had established  
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3 fictitious accounts on I&J's books for Veatch Carlson and Peerless. Boren told Borini to  
4 obtain a signature on the Peerless confirmation, knowing the confirmation would be false.  
5 Thereafter, Borini arranged to have Tuttle's signature forged, and Cano delivered the forged  
6 confirmation to the auditors, knowing that Tuttle's signature had been forged and that the  
7 confirmation was false.

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9 33. On or about February 12, 1996, Veatch Carlson received a request that it  
10 confirm a receivable balance of \$61,635 as of December 31, 1995. Although Boren had  
11 already resigned, he still owned a substantial amount of Manhattan Bagel stock. In order to  
12 deceive the auditors, and keep the fraudulent scheme going, Boren personally called Davies,  
13 an office manager at Veatch Carlson, and told her to get the confirmation signed. Davies  
14 signed it. Boren knew that the confirmation was false.

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16 34. Around this time, the auditors also requested that Peerless confirm a balance  
17 due I&J of \$70,737 at December 31, 1995. Tuttle again called Borini, who again told  
18 Tuttle that he would take care of the confirmation. Borini then spoke with Boren, who told  
19 Borini to get the confirmation signed. Both Boren and Borini knew that Peerless had never  
20 purchased bagels from I&J.

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22 35. On February 12, following Boren's instruction, Borini, Cano and Borini's  
23 assistant convened at Borini's home where they forged the signature of a purported Peerless  
24 representative upon the confirmation. Borini's assistant then helped Borini and Cano  
25 prepare a fax cover sheet with Peerless's logo and faxed the phony confirmation from  
26 Borini's home to Ernst & Young as if it had come from Peerless. At Borini's direction, his  
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3 assistant also reprogrammed the fax machine so that the recipient would not be able to  
4 determine from the fax header that the document had, in fact, come from Borini's home.

5 36. Defendants continued to mislead Ernst & Young even after the June 20  
6 Announcement.

7 37. On July 23, 1996, the Ernst & Young engagement partner contacted Davies by  
8 telephone, and she confirmed orally to the engagement partner that Veatch Carlson owed I&J  
9 \$61,635 as of June 30, 1996. This was a false statement and Davies knew it was false. The  
10 engagement partner specifically asked Davies to confirm that the balance was owed for  
11 goods and services that Veatch Carlson received from I&J, and she agreed to sign an account  
12 receivable confirmation to that effect, knowing the confirmation would be false. The  
13 engagement partner sent Davies a confirmation request that same day, which she signed at  
14 the August 8, 1996 meeting discussed below.  
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16 38. On August 8, 1996, an Ernst & Young attorney visited Borini and Davies at the  
17 offices of Veatch Carlson to ask about the sales to Veatch Carlson during 1995. The Ernst &  
18 Young engagement partner attended by conference call. During that meeting, Borini falsely  
19 stated that Veatch Carlson had purchased bagels and related products from I&J during 1995  
20 and had owed the amounts previously confirmed. Then, in the presence of the Ernst &  
21 Young attorney, Davies signed the account receivable confirmation that the engagement  
22 partner had sent her in July. The confirmation confirmed the balance that purportedly  
23 remained outstanding as of June 30, 1996. Borini and Davies knew that the confirmation  
24 was false and that Veatch Carlson, in fact, owed nothing to I&J for bagels.  
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3 39. At Boren's instruction, Cano arranged a meeting that occurred on August 12,  
4 1996 between Tuttle and another Ernst & Young partner. The meeting was held at the  
5 offices of Cano's attorney. The Ernst & Young engagement partner attended by conference  
6 call. Unbeknownst to the auditors, Boren was in a room adjoining the meeting room. Even  
7 though Boren knew that Peerless had never purchased bagels from I&J, he wanted to ensure  
8 that Tuttle would toe the party line and falsely tell the auditors that Peerless had purchased  
9 the bagels.  
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11 40. In advance of the meeting with the auditors, Boren met with Tuttle in this  
12 adjoining room and told Tuttle to confirm orally for the auditors that Peerless owed I&J  
13 money for bagel purchases. Tuttle knew that Peerless had never purchased bagels from I&J.  
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15 41. In the meeting with the auditors, Tuttle carried out Boren's instruction, falsely  
16 telling the auditors that Peerless had purchased bagels and related products from I&J during  
17 1995 and had owed the amounts previously confirmed. Tuttle knew that these statements  
18 were false. When the auditors asked what Peerless did with all of the bagels, Tuttle falsely  
19 replied that Peerless gave bagels to customers. Tuttle knew that this statement was false.  
20 The auditors then asked Tuttle to sign a confirmation. Tuttle excused himself from the  
21 meeting and went to the adjoining room where Boren and now Cano were waiting. Tuttle  
22 expressed concern to them about signing a false confirmation. Boren told him to sign it,  
23 knowing the confirmation would be false. Tuttle then called Borini, who likewise told Tuttle  
24 to sign the false confirmation. Borini also knew that the confirmation would be false. Tuttle  
25 returned to the meeting room and, in the auditor's presence, signed the false account  
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3 receivable confirmation for the balance that purportedly remained outstanding as of June 30,  
4 1996. Tuttle knew that the confirmation was false.

5 42. During the same meeting, Tuttle handed the auditors a check for \$50,000,  
6 which represented most of the balance purportedly due on Peerless' account. Tuttle told the  
7 auditors that these funds belonged to Peerless. This representation was also false, and Tuttle  
8 knew it was false. Shortly before the meeting, Borini conveyed to Tuttle Boren's instruction  
9 that Tuttle write a check to Manhattan Bagel for \$50,000. Borini also assured Tuttle that  
10 \$50,000 would be deposited to Peerless' bank account the next day. The next day, August  
11 13, 1996, Cano delivered a paper bag to Borini's home containing \$50,000 in cash. Cano  
12 and Borini's assistant counted the cash in Borini's dining room. Borini's assistant then  
13 delivered the cash to Borini's attorney, who drew a \$50,000 check against his attorney trust  
14 account payable to Peerless. The attorney gave the check to Borini's assistant. The check  
15 was then deposited to Peerless' account.  
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18 **Improper Recording of Income on the Conversion**  
19 **of an Account Payable to a Note Payable**

20 43. Boren and Cano engaged in conduct that resulted in Manhattan Bagel's  
21 fraudulent recognition of income instead of a liability, in a transaction that essentially  
22 involved the conversion of an account payable to a note payable. As a result, Manhattan  
23 Bagel overstated revenue and net income for the nine months ended September 30, 1995 and  
24 the year ended December 31, 1995.

25 44. For several years, I&J purchased flour for the production of bagels from  
26 Honeyville Grain, Inc. ("Honeyville"). In October 1994, I&J stopped making payments on  
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3 previously purchased flour because, Boren and Cano claimed, Honeyville had damaged  
4 I&J's production facility when delivering flour. The account payable balance at the time  
5 was approximately \$138,000.

6 45. In June 1995, Boren and Cano met with the CFO of Honeyville. During the  
7 meeting, Boren demanded that the balance owed be reduced and that I&J receive extended  
8 payment terms. Honeyville's CFO eventually agreed to reduce the balance owed by I&J to  
9 \$120,000, after a one-time payment of \$7,000. Interest on the \$120,000 would bring the  
10 total amount due to approximately \$140,000, payable by I&J in 36 monthly installments of  
11 \$3,900. In July 1995, Boren and Cano signed a Stipulation to this effect on behalf of I&J  
12 (the "Stipulation").  
13

14 46. The effect of the transaction essentially was to reduce I&J's indebtedness to  
15 Honeyville by \$11,000, from \$138,000 to \$127,000 (taking into account the up-front  
16 payment of \$7,000). Therefore, Boren and Cano should have directed I&J's accounting  
17 personnel to recognize revenue of \$11,000 and otherwise simply transform the existing  
18 account payable to a note payable for \$120,000 principal amount plus about \$20,000 in  
19 deferred interest.  
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21 47. Instead of directing that the proper entry be made, Boren falsely told Manhattan  
22 Bagel's chairman that Honeyville had forgiven the payable in return for I&J's promise to  
23 make additional flour purchases going forward. On the basis of this false information, the  
24 chairman told Boren to obtain a credit memo from Honeyville in the full amount of the  
25 payable, which Boren did. Boren and Cano then used the credit memo to support the  
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3 improper accounting entries, which they instructed I&J's accounting personnel to make.  
4 Specifically, Boren and Cano falsely told I&J's CFO that the indebtedness to Honeyville had  
5 been forgiven, and they directed I&J's outside bookkeeper to record the entire \$138,000  
6 account payable balance as income. Upon seeing the credit memo, the bookkeeper made the  
7 entries. Boren and Cano knew that these accounting entries were improper.  
8

9       48. In late June or early July 1996, well after Boren had resigned, Manhattan  
10 Bagel's CFO came across the Stipulation in the course of preparing the second quarter Form  
11 10-Q. He contacted Boren about it, and Boren falsely stated in reply that the credit memo  
12 was issued after the Stipulation was signed and relieved I&J of its obligation under the  
13 Stipulation. Boren knew this explanation was false.

14       49. As a result of Boren's and Cano's fraudulent conduct, Manhattan Bagel  
15 overstated revenue in the third quarter of 1995 and for the year ended December 31, 1995.  
16

17                   **Improper or Premature Recognition of Franchise Fee Revenue**

18       50. In 1995, I&J began selling franchises as a new line of business. In the fourth  
19 quarter of 1995 and the first quarter of 1996, Cano directed I&J's bookkeeper to record  
20 \$283,000 in franchise fee revenue that improperly included refundable deposits of ten  
21 prospective franchisees that should have been booked as liabilities.

22       51. Beginning in January 1996, Cano hired a full time franchise manager whose job  
23 it was to develop the franchise department and sign-up franchisees under Manhattan Bagel's  
24 Uniform Franchise Offering Circular (the "UFOC") and related franchise agreement. The  
25 franchise manager reported to Cano. Prior to January 1996, Cano ran I&J's franchise  
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function.

52. Under the UFOC and franchise agreement, the prospective franchisee made an initial deposit of \$15,000 upon signing (against a total franchise fee of \$30,000), which was fully refundable within 120 days (less a \$2,500 administrative fee) if various events did not occur by that time. The UFOC and franchise agreement specified, among other things, that I&J was obligated to return the prospective franchisee's deposit (and no additional payments were required) if, after 120 days, a site had not been located and a sublease signed. Upon site selection and the signing of a sublease for the franchise location, the franchisee became obligated for the remaining \$15,000, which I&J would record as a receivable at that time. The UFOC and franchise agreement also obligated I&J to provide training to the prospective franchisee prior to the commencement of franchise operations.

53. Under the system Cano put in place, I&J's CFO maintained all deposits pertaining to franchises in a separate checking account. At the end of each quarter, Cano would tell I&J's outside bookkeeper which deposits to book as revenue. In addition, in some instances, Cano would instruct the bookkeeper to book as revenue the additional receivable balance due from the prospective franchisee under the agreement.

54. Under generally accepted accounting principles ("GAAP"), franchise fee revenue may not be recorded until the franchisor has substantially performed of all of its obligations. Substantial performance for the franchisor means (1) that the franchisor has no remaining obligation or intent to refund any cash received or forgive any receivables; (2) substantially all of the initial services of the franchisor required by the franchise agreement

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3 have been performed; and (3) no other material conditions or obligations related to the  
4 determination of substantial performance exist. The material obligations under the UFOC  
5 and franchise agreement were (i) site selection, (ii) signing of a sublease for the site and (iii)  
6 training. Moreover, until the site was selected and the sublease signed, the deposit was  
7 refundable.

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9 55. In six instances in 1995, Cano improperly directed I&J's bookkeeper to book,  
10 as revenue, refundable deposits totaling about \$70,000. In two of those instances, Cano also  
11 improperly instructed the bookkeeper to (i) record a receivable for the second \$15,000  
12 payment before the franchisee's obligation to pay the additional money had ripened, and (ii)  
13 book the improper receivable balance as revenue, which amounted to another \$30,400. In all  
14 but one of the six instances, no sublease had been signed at the time Cano directed these  
15 entries. In the one instance in which the sublease had been signed, there were substantial  
16 construction delays that ultimately led to a refund of the deposit.

17  
18 56. Likewise, in the first quarter of 1996, Cano instructed the bookkeeper  
19 improperly to record \$140,000 in receivables that should not have been booked as  
20 receivables and to book \$42,500 of deposits and the \$140,000 receivable balance as revenue,  
21 when these amounts should not have been so recorded. These entries pertained to four  
22 prospective franchisees. In none of these four instances had a sublease been signed.

23  
24 57. Cano knew it was improper to record receivables and recognize revenue in the  
25 foregoing instances. Indeed, in one case involving a prospective franchisee, Cano  
26 recognized \$30,000 in revenue in the first quarter of 1996 (consisting of the deposit and  
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3 premature receivable) after the prospective franchisee had demanded a refund (which was  
4 eventually paid). In March 1996, I&J's franchise manager told Cano that I&J was going to  
5 have to refund the deposit. In response, Cano told the franchise manager that he was going  
6 to "book the whole deal," meaning that Cano was going to have I&J record the revenue even  
7 though he knew that revenue should not be booked in the transaction. When the franchise  
8 manager questioned the propriety of recognizing the revenue, Cano replied that "it was just  
9 going to be temporary."  
10

11 58. Cano was aware of the appropriate accounting for franchise fees because  
12 Manhattan Bagel's chairman told Cano that franchise fee revenue could not be recognized  
13 until a site had been located and training had taken place. I&J's outside bookkeeper also  
14 specifically told Cano that it was not appropriate to record franchise fee revenue until the  
15 prospective franchisee had received training.  
16

17 **Failure to Record Rent Expense**

18 59. Boren and Cano fraudulently prevented I&J's bookkeeper from recording rent  
19 expense with respect to rent they were withholding on one store location while negotiations  
20 for a new lease were ongoing with the landlord. As a result, I&J understated rent expense  
21 for the six months ended June 30, 1995 by \$16,000, and for the year ended December 31,  
22 1995 by \$29,000.  
23

24 60. In 1982, I&J entered into a long-term lease on a property in Canoga Park,  
25 California (the "Canoga Park property"). The Canoga Park property was used for both the  
26 manufacturing of bagels and as a retail outlet. The lease expired at the end of November  
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3 1994. I&J continued to occupy the Canoga Park property without a lease from December  
4 1994 through at least September 1995.

5 61. I&J stopped paying rent on the Canoga Park property in February 1995. On  
6 March 14, 1995, the Landlord filed a complaint against I&J for unpaid rent.

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8 62. On June 7, 1996, the Landlord was awarded a judgment by default of  
9 approximately \$111,000, which included not only unpaid rent but also an award for damages  
10 to the Canoga Park property.

11 63. Boren and Cano knew that I&J continued to occupy the premises until at least  
12 September 1995 and, therefore, that I&J owed rent for those additional several months.  
13 Accordingly, Boren and Cano knew that rent expense and the accompanying liability should  
14 have been recorded for those several months. Nevertheless, they failed to report rent  
15 expense after January 1995 or the accompanying liability. As a result of their fraudulent  
16 conduct, I&J under recorded rent expense in the second and third quarters of 1995 and for  
17 the year ended December 31, 1995.  
18

19 **Failure to Write-Down Prepaid Expenses**

20 64. Cano knowingly directed I&J's CFO to not record certain current period  
21 expenses that should have been charged against previously booked prepaid expenses. Cano  
22 knew that these expenses had been incurred and should have been recorded. As a result of  
23 Cano's fraudulent conduct, I&J understated expenses for the three months ended March 31,  
24 1996.  
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26 65. In January 1996, I&J entered into a contract with a site locator for site location  
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services. The contract specified that the site locator would provide monthly billings to I&J to be charged against a retainer of \$45,000. I&J paid the retainer to the site locator in January 1996 and initially recorded the payment as a prepaid expense, which was appropriate at the time.

66. The site locator performed site location services in January, February and March 1996 and prepared monthly invoices with respect to those services, which she delivered to I&J. The invoices totaled approximately \$29,000. By the end of the first quarter of 1996, I&J should have reduced the previously recorded prepaid expenses by \$29,000 and recorded a current period expense in the same amount. Cano knew that the site locator had performed and billed for these services. Nonetheless, he directed I&J's CFO not to record a current period expense or reduce the asset balance in the prepaid expenses account.

67. At the end of the first quarter 1996, I&J's CFO specifically asked Cano whether the \$45,000 should remain as a prepaid expense. Cano falsely told her that it should, knowing that the result would be to understate expenses and overstate assets on I&J's books.

68. In January 1996, Boren and Cano met with representatives of a public relations firm (the "PR Firm") to discuss potentially damaging press reports concerning an indictment pending against Boren in California. At that meeting, the parties entered into an oral agreement for the PR Firm to provide crisis management public relations services to I&J. I&J paid the PR Firm a \$40,000 retainer and recorded the payment, appropriately, as a prepaid expense.

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69. The PR Firm provided the agreed upon services in January and February 1996. By the end of February 1996, the entire \$40,000 retainer had been expended. At that point, I&J should have reduced the previously recorded prepaid expenses by \$40,000 and recorded a current period expense in the same amount. Cano knew that a current period expense should be recorded and that the prepaid expense account should be reduced. Nonetheless, when I&J's CFO specifically asked Cano at the end of the first quarter whether the \$40,000 should remain as a prepaid expense, he responded that it should, knowing that the effect would be to understate expenses and overstate assets on I&J's books. The expense was not recorded.

**Boren and Cano Cash In on the Fraudulent Scheme.**

70. Boren and Cano personally profited from the fraudulent scheme by selling Manhattan Bagel common stock while the scheme was ongoing and while Manhattan Bagel's stock price was artificially inflated due to the fraudulent misstatements in its publicly disseminated financial statements. On November 20, 1995 and March 22, 1996, Boren and his wife sold more than 1.3 million shares of jointly owned Manhattan Bagel common stock in two secondary offerings that the Company conducted at Boren's insistence.

71. Likewise, Cano sold 30,000 shares outright and another 210,800 shares short in a series of transactions from April through June 1996. Cano purchased 2,000 shares in the market on June 20, 1996 and 208,800 shares on June 21, 1996, the day of and the day after the June 20 Announcement, to cover his short position.

72. By selling Manhattan Bagel shares at a price inflated by the fraudulent

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3 misrepresentations contained in the Company's financial statements, Boren and Cano  
4 directly benefited from their fraudulent scheme.

5 73. Boren derived ill-gotten gains of approximately \$9,942,188 and Cano derived  
6 ill-gotten gains of approximately \$247,625, which in each case represents the amount by  
7 which the stock price was inflated because of the fraudulent scheme, as measured by the  
8 difference between the value of their respective stock holdings prior to the June 20  
9 Announcement and the price of Manhattan Bagel common stock after the announcement. In  
10 addition, Cano derived short sale profits of \$2,679,925, which likewise reflect ill-gotten  
11 gains directly attributable to the fraudulent scheme.  
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14 **FIRST CLAIM FOR RELIEF**

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16 **Violations of Section 10(b)  
of the Exchange Act and Rule 10b-5**

17 (Financial Fraud Scheme -- Fictitious Sales -- All Defendants)

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19 74. The Commission realleges and incorporates by reference herein each and  
20 every allegation contained in paragraphs 1 - 73.

21 75. Defendants, directly or indirectly, singly or in concert, by use of the means  
22 or instrumentalities of interstate commerce, or of the mails, in connection with the  
23 purchase or sale of Manhattan Bagel securities, knowingly or recklessly, have: (a)  
24 employed devices, schemes and artifices to defraud; (b) made untrue statements of material  
25 fact, or have omitted to state material facts necessary in order to make statements made, in  
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3 light of the circumstances under which they were made, not misleading; and/or (c) engaged  
4 in acts, practices and courses of business which operated or would have operated as a fraud  
5 or deceit upon purchasers of Manhattan Bagel securities and upon other persons.

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7 76. As part and in furtherance of the violative conduct, Defendants, directly or  
8 indirectly, singly or in concert, knowingly or recklessly, engaged in a fraudulent scheme to  
9 inflate Manhattan Bagel's reported financial results by overstating bagel sales revenue,  
10 concealing the true facts from the auditors and by other improper practices. As described  
11 above: (i) Boren and Cano directed I&J personnel to record fictitious bagel sales on the  
12 books of I&J knowing that those false revenues would be reflected in the financial  
13 statements of Manhattan Bagel; (ii) Boren and Cano directed Borini, Tuttle and Davies to  
14 conceal the fictitious nature of the sales from Manhattan Bagel's auditors; (iii) in  
15 furtherance of the fraudulent scheme, Borini lied to the Company's auditors about the  
16 fictitious sales, arranged false payments to be made on the Veatch Carlson and Peerless  
17 accounts and coordinated the actions of Davies and Tuttle, who further aided efforts to  
18 conceal the fraud; (iv) Davies and Tuttle carried out Boren's, Cano's and Borini's  
19 instructions to conceal the fraud by lying to Manhattan Bagel's auditors about the fictitious  
20 sales, both in conversations with the auditors and by signing false confirmations, and, in  
21 Tuttle's case, by making a false payment on the Peerless account.

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24 77. As part and in furtherance of the violative conduct, Manhattan Bagel filed  
25 with the Commission the June 1995 Form 10-QSB and the September 1995 Form 10-QSB  
26 (collectively, the "FY 1995 10-Qs"), the 1995 Form 10-KSB (the "FY 1995 10-K") and  
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3 the March 1996 Form 10-QSB and June 1996 Form 10-QSB (collectively, the "FY 1996  
4 10Qs"). Due to the substantial overstatement of revenues and other improper practices,  
5 the FY 1995 10-Qs, the FY 1995 10-K and the FY 1996 10-Qs each contained financial  
6 statements that materially overstated Manhattan Bagel's net income for the subject  
7 reporting period and other material misstatements concerning Manhattan Bagel's financial  
8 performance. As a result, the FY 1995 10-Qs, the FY 1995 10-K and the FY 1996 10-Qs  
9 were materially false and misleading.  
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11           78. Boren, Cano and Borini each knew or was reckless in not knowing that,  
12 because of their fraudulent conduct, the FY 1995 10-Qs, the FY 1995 10-K and the FY  
13 1996 10-Qs were materially false and misleading. By knowingly providing false  
14 confirmations to Manhattan Bagel's auditors concerning the purported bagel sales, Davies  
15 and Tuttle knowingly gave substantial assistance to this fraudulent scheme. By providing  
16 the auditors with a sham \$50,000 payment on the Peerless account, Tuttle knowingly gave  
17 further substantial assistance to this fraudulent scheme.  
18

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20           79. By reason of the foregoing, Boren and Cano, singly or in concert, directly or  
21 indirectly, have violated, and unless enjoined will again violate, Section 10(b) of the  
22 Exchange Act and Rule 10b-5.

23           80. By reason of the foregoing, Borini, singly or in concert, directly or indirectly,  
24 has violated Section 10(b) of the Exchange Act and Rule 10b-5, or, in the alternative,  
25 aided and abetted violations of these Sections pursuant to Section 20(f) of the Exchange  
26 Act and unless enjoined will again violate, or aid and abet violations of, Section 10(b) of  
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3 the Exchange Act and Rule 10b-5.

4 81. By reason of the foregoing, Davies and Tuttle, singly or in concert, directly  
5 or indirectly, aided and abetted violations of, and unless enjoined will again aid and abet  
6 violations of, Section 10(b) of the Exchange Act and Rule 10b-5 pursuant to Section 20(e)  
7 of the Exchange Act.  
8

9 **SECOND CLAIM FOR RELIEF**

10 **Violations of Section 10(b)**  
11 **of the Exchange Act and Rule 10b-5**

12 (Financial Fraud Scheme - Other Fraudulent Accounting Practices -- Boren and Cano)

13 82. The Commission realleges and incorporates by reference herein each and  
14 every allegation contained in paragraphs 1 - 81.

15 83. Boren and Cano, directly or indirectly, singly or in concert, by use of the  
16 means or instrumentalities of interstate commerce, or of the mails, in connection with the  
17 purchase or sale of Manhattan Bagel securities, knowingly or recklessly, have: (a)  
18 employed devices, schemes and artifices to defraud; (b) made untrue statements of material  
19 fact, or have omitted to state material facts necessary in order to make statements made, in  
20 light of the circumstances under which they were made, not misleading; and/or (c) engaged  
21 in acts, practices and courses of business which operated or would have operated as a fraud  
22 or deceit upon purchasers of Manhattan Bagel securities and upon other persons.  
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24 84. As part and in furtherance of the violative conduct, Boren and Cano, directly  
25 or indirectly, singly or in concert, knowingly or recklessly, engaged in a fraudulent  
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3 scheme to inflate Manhattan Bagel's reported financial results by overstating franchise fee  
4 and other revenue, understating expenses and other improper practices. As described  
5 above: (i) Boren and Cano improperly directed I&J personnel to record the Honeyville  
6 liability as revenue and to not record appropriate rent expenses in connection with the  
7 Canoga Park property; and (ii) Cano directed I&J personnel improperly to record franchise  
8 fee revenue that should not have been booked and to underbook current period expenses by  
9 not properly writing down prepaid expenses.  
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11           85. As a result of this fraudulent conduct, Manhattan Bagel filed with the  
12 Commission the September 1995 Form 10-QSB, the FY 1995 10-K, and the FY 1996 10-  
13 Qs. Due to the substantial overstated revenue, unreported expense and other improper  
14 practices, the September 1995 Form 10-QSB, the FY 1995 10-K and the FY 1996 10-Qs  
15 each contained financial statements that materially overstated Manhattan Bagel's net  
16 income for the subject reporting period and other material misstatements concerning  
17 Manhattan Bagel's financial performance. As a result, the September 1995 Form 10-QSB,  
18 the FY 1995 10-K and the FY 1996 10-Qs were materially false and misleading.  
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21           86. Boren and Cano each knew, or was reckless in not knowing that, because of  
22 their fraudulent conduct the September 1995 Form 10-QSB, the FY 1995 10-K and the FY  
23 1996 10-Qs were materially false and misleading.  
24

25           87. By reason of the foregoing, Boren and Cano, singly or in concert, directly or  
26 indirectly, have violated, and unless enjoined will again violate, Section 10(b) of the  
27 Exchange Act and Rule 10b-5.  
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3 **THIRD CLAIM FOR RELIEF**

4 **Violations of Section 17(a) of the Securities Act,**  
5 **and Section 10(b) of the Exchange Act and Rule 10b-5**

6 **(Fraudulent Offers and Sales – Boren)**

7 88. The Commission realleges and incorporates by reference herein each and  
8 every allegation contained in paragraphs 1 – 87.

9 89. Boren, directly or indirectly, singly or in concert, by use of the means or  
10 instruments of transportation or communication in, or the means or instrumentalities of,  
11 interstate commerce, or by the use of the mails, in the offer or sale and in connection with  
12 the purchase or sale of Manhattan Bagel securities, knowingly or recklessly, has: (a)  
13 employed devices, schemes and artifices to defraud; (b) obtained money or property by  
14 means of, or otherwise made, untrue statements of material fact, or has omitted to state  
15 material facts necessary in order to make statements made, in light of the circumstances  
16 under which they were made, not misleading; and (c) engaged in acts, transactions,  
17 practices and courses of business which operated or would have operated as a fraud or  
18 deceit upon purchasers of Manhattan Bagel securities and upon other persons.

19 90. As part of and in furtherance of the violative conduct, Boren, directly or  
20 indirectly, singly or in concert, knowingly or recklessly engaged in a fraudulent scheme to  
21 inflate Manhattan Bagel's reported financial results through phony bagel sales and other  
22 improper practices.

23 91. As a result of Boren's fraudulent conduct, the June 1995 Form 10-QSB and  
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3 the FY 1995 10-K contained materially false and misleading financial statements, which  
4 Boren knew, or was reckless in not knowing, were materially false and misleading.

5         92. The June 1995 Form 10-QSB and the FY 1995 10-K, respectively, were  
6 incorporated by reference in registration statements, dated November 9, 1995 and March  
7 5, 1996, that were filed with the Commission ("Registration Statements"). The  
8 Registration Statements were filed in connection with two secondary offerings by  
9 Manhattan Bagel. They were prepared and filed at the request of, and pursuant to an  
10 agreement by the Company with, Boren and enabled Boren to sell his Manhattan Bagel  
11 common stock into the market. As a result, the Registration Statements were also  
12 materially false and misleading.  
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15         93. In connection with each secondary offering, Manhattan Bagel also prepared a  
16 prospectus, dated November 14, 1995 and March 5, 1996, respectively, both of which  
17 were filed with the Commission and publicly disseminated (the "Prospectuses"). The  
18 November 14, 1995 prospectus contained Manhattan Bagel's financial statements for the  
19 nine months ended September 30, 1995. The March 5, 1996 prospectus contained  
20 Manhattan Bagel's financial statements for the year-ended December 31, 1995.  
21

22         94. As a result of Boren's fraudulent conduct, the financial statements contained  
23 in the Prospectuses were materially false and misleading because they were inflated by  
24 phony bagel sales and other misrepresentations. Boren knew, or was reckless in not  
25 knowing, that said financial statements were materially false and misleading. As a result,  
26 the Prospectuses were also materially false and misleading.  
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3 95. Boren knew, or was reckless in not knowing, that the Registration Statements  
4 and Prospectuses were materially false and misleading.

5 96. By reason of the foregoing, Boren, singly or in concert, directly or indirectly,  
6 violated, and unless permanently enjoined will again violate, Section 17(a) of the Securities  
7 Act and Section 10(b) of the Exchange Act and Rule 10b-5.  
8

9 **FOURTH CLAIM FOR RELIEF**

10 **Violations of Section 13(a) of the**  
11 **Exchange Act and Rules 12b-20 and 13a-13**

12 (Periodic Corporate Reporting Violations – All Defendants)

13 97. The Commission realleges and incorporates by reference herein each and  
14 every allegation contained in paragraphs 1 - 96.

15 98. Manhattan Bagel failed to file with the Commission, in accordance with the  
16 rules and regulations prescribed by the Commission, such quarterly reports as the  
17 Commission has prescribed and Manhattan Bagel failed to include, in addition to the  
18 information expressly required to be stated in such reports, such further material  
19 information as was necessary to make the statements made therein, in light of the  
20 circumstances in which they are made, not misleading, in violation of Section 13(a) of the  
21 Exchange Act and Rules 12b-20 and 13a-13. As described above, the FY 1995 10-Qs and  
22 the FY 1996 10-Qs were false and misleading because they included financial statements  
23 that were substantially inflated due to the overstatement of revenue and understatement of  
24 expenses.  
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3 99. By their conduct, previously alleged, Boren, Cano, Borini, Davies and Tuttle  
4 each, knowingly or recklessly, directly or indirectly, singly or in concert, engaged in  
5 fraudulent practices resulting in: (i) material overstatements of Manhattan Bagel's net  
6 income on its books and records and in financial statements included in the FY 1995 10-Qs  
7 and the FY 1996 10-Qs; and (ii) other material misstatements in the FY 1995 10-Qs and  
8 the FY 1996 10-Qs.  
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10 100. By reason of the foregoing, Boren, Cano, Borini, Davies and Tuttle are each  
11 liable, pursuant to Section 20(f) of the Exchange Act, as an aider and abettor of Manhattan  
12 Bagel's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13; and  
13 unless they are enjoined, Boren, Cano, Borini, Davies and Tuttle will again engage in  
14 conduct that would render them liable, pursuant to Section 20(f) of the Exchange Act, for  
15 violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13.  
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17 **FIFTH CLAIM FOR RELIEF**

18 **Violations of Section 13(a) of the**  
19 **Exchange Act and Rules 12b-20 and 13a-1**

20 (Annual Reporting Violations - All Defendants)

21 101. The Commission realleges and incorporates by reference herein each and  
22 every allegation contained in paragraphs 1 - 100.  
23

24 102. Manhattan Bagel failed to file with the Commission, in accordance with the  
25 rules and regulations prescribed by the Commission, such annual reports as the  
26 Commission has prescribed and Manhattan Bagel failed to include, in addition to the  
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3 information expressly required to be stated in such reports, such further material  
4 information as was necessary to make the statements made therein, in light of the  
5 circumstances in which they are made, not misleading, in violation of Section 13(a) of the  
6 Exchange Act and Rules 12b-20 and 13a-1. As described above, Manhattan Bagel's  
7 annual report contained in the FY 1995 10-K was false and misleading because it  
8 overstated revenues and understated expenses.  
9

10 103. By their conduct, previously alleged, Boren, Cano, Borini, Davies and  
11 Tuttle each, knowingly or recklessly, directly or indirectly, singly or in concert, engaged  
12 in fraudulent practices resulting in: (i) material overstatements of Manhattan Bagel's net  
13 income on its books and records and in financial statements included in the FY 1995 10-K;  
14 and (ii) other material misstatements in the financial statements included in the FY 1995  
15 10-K.  
16

17 104. By reason of the foregoing, Boren, Cano, Borini, Davies and Tuttle are each  
18 liable, pursuant to Section 20(f) of the Exchange Act, as an aider and abettor of Manhattan  
19 Bagel's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1; and  
20 unless they are enjoined, Boren, Cano, Borini, Davies and Tuttle will again engage in  
21 conduct that would render them liable, pursuant to Section 20(f) of the Exchange Act, for  
22 violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1.  
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**SIXTH CLAIM FOR RELIEF**

**Violations of Section 13(b)(2)(A) of the Exchange Act**

**(Corporate Recordkeeping and Internal Control  
Violations - All Defendants)**

105. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 - 104.

106. Manhattan Bagel failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets in violation of Section 13(b)(2)(A) of the Exchange Act. As described above, for Fiscal Year ("FY") 1995, Manhattan Bagel overstated revenues from bagel sales by \$206,000, and its internal accounting controls were insufficient to cause Manhattan Bagel to prepare its 1995 quarterly financial statements, 1995 annual report and 1996 quarterly financial statements in accordance with generally accepted accounting principles.

107. Boren, Cano, Borini, Davies and Tuttle each, knowingly or recklessly, directly or indirectly, singly or in concert, engaged in fraudulent practices resulting in material overstatements of Manhattan Bagel's net income on its books and records.

108. By reason of the foregoing, Boren, Cano, Borini, Davies and Tuttle are each liable, pursuant to Section 20(f) of the Exchange Act, for Manhattan Bagel's violations of Section 13(b)(2)(A) of the Exchange Act; and unless they are enjoined, Boren, Cano, Borini, Davies and Tuttle will again engage in conduct that would render them liable, pursuant to Section 20(f) of the Exchange Act, for violations of Section 13(b)(2)(A) of the

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Exchange Act.

**SEVENTH CLAIM FOR RELIEF**

**Violations of Section 13(b)(2)(B) of the Exchange Act**

**(Corporate Recordkeeping and Internal Control  
Violations - Boren and Cano)**

109. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 - 108.

110. Manhattan Bagel failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

i. transactions were executed in accordance with management's general or specific authorization,

ii. 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,

iii. access to assets was permitted only in accordance with management's general or specific authorization, and

iv. the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences,

in violation of Section 13(b)(2)(B) of the Exchange Act. As described above, for FY 1995 and the first quarter of FY 1996, Manhattan Bagel overstated revenues and understated

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3 expenses by \$680,000, and its internal accounting controls were insufficient to cause  
4 Manhattan Bagel to prepare its 1995 quarterly financial statements, the 1995 annual report  
5 and 1996 quarterly financial statements in accordance with generally accepted accounting  
6 principles.  
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8 111. Boren and Cano each, knowingly or recklessly, directly or indirectly, singly  
9 or in concert, engaged in fraudulent practices resulting in material overstatements of  
10 Manhattan Bagel's net income on its books and records and in financial statements included  
11 in the FY 1995 10-Qs, FY 1995 10-K and FY 1996 10-Qs.  
12

13 112. By reason of the foregoing, Boren and Cano are each liable, pursuant to  
14 Section 20(f) of the Exchange Act, for Manhattan Bagel's violations of Section 13(b)(2)(B)  
15 of the Exchange Act; and unless they are enjoined, Boren and Cano will again engage in  
16 conduct that would render them liable, pursuant to Section 20(f) of the Exchange Act, for  
17 violations of Section 13(b)(2)(B) of the Exchange Act.  
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19 **EIGHTH CLAIM FOR RELIEF**

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

22 **(Falsification of Corporate Books and Records and  
23 Circumvention of Internal Controls -- All Defendants)**

24 113. The Commission realleges and incorporates by reference herein each and  
25 every allegation contained in paragraphs 1 - 112.

26 114. Boren and Cano each knowingly circumvented or knowingly failed to  
27 implement a system of internal accounting controls and knowingly falsified, directly or  
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indirectly, or caused to be falsified books, records and accounts of Manhattan Bagel that were subject to Section 13(b)(2)(A) of the Exchange Act; and Borini, Davies and Tuttle gave substantial assistance to Boren and Cano in connection with said violations.

115. By reason of the foregoing, Boren and Cano have violated, and unless enjoined will again violate, Section 13(b)(5) of the Exchange Act and Rule 13b2-1.

116. By reason of the foregoing, Borini, Davies and Tuttle are each liable, pursuant to Section 20(f) of the Exchange Act, as an aider and abettor of Boren's and Cano's violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1, and unless enjoined they will again engage in conduct that would render them liable, pursuant to Section 20(f) of the Exchange Act, for violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1.



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**PRAYER FOR RELIEF**

**WHEREFORE, the Commission respectfully requests a Final Judgment:**

**I.**

Permanently enjoining Boren, Cano and Borini, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act and Rule 10b-5.

**II.**

Permanently enjoining Boren, his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act.

**III.**

Permanently enjoining Boren and Cano, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from (i) future violations of Sections 13(b)(5) of the Exchange Act and Rule 13b2-1, and (ii) engaging in conduct that would render them liable, pursuant to Section 20(f) of the Exchange Act, for violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13.

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**IV.**

Permanently enjoining Borini, Davies and Tuttle, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from engaging in conduct that would render them liable, pursuant to Section 20(f) of the Exchange Act, for violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13 and 13b2-1.

**V.**

Ordering Boren and Cano to disgorge the ill-gotten gains they received as a result of their violations of the federal securities laws and to pay prejudgment interest thereon.

**VI.**

Ordering Boren to pay civil money penalties pursuant to Section 20(d) of the Securities Act.

**VII.**

Ordering all Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act.

**VIII.**

Permanently barring Boren from serving as an officer or director of a publicly held company pursuant to Section 20(e) of the Exchange Act.

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**IX.**

Permanently barring Boren and Cano from serving as an officer or director of a publicly held company pursuant Section 21(d)(2) of the Exchange Act.

**X.**

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
May 14, 2001

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Regional Director

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