

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. -Civ

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CLERK OF U.S. DISTRICT CT.  
S.D. OF FLA. HIA

01-8437

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

ALBERT J. DUNLAP, RUSSELL A. KERSH,  
ROBERT J. GLUCK, DONALD R. UZZI,  
LEE B. GRIFFITH, AND PHILLIP E. HARLOW,

Defendants.

**CIV - DIMITROULEAS**

**MAGISTRATE JUDGE  
JOHNSON**

**COMPLAINT FOR CIVIL INJUNCTION AND CIVIL PENALTIES**

Plaintiff Securities and Exchange Commission alleges that:

**SUMMARY**

1. From the last quarter of 1996 until June of 1998, senior management of Sunbeam Corporation ("Sunbeam" or "the Company"), including Chief Executive Officer Albert J. Dunlap and Principal Financial Officer Russell A. Kersh, orchestrated a fraudulent scheme to create the illusion of a successful restructuring of Sunbeam and facilitate a sale of the Company at an inflated price. Dunlap and Kersh first promised investors that, as a result of the restructuring, Sunbeam would meet very aggressive revenue and earnings targets. Together with Sunbeam senior executives Robert J. Gluck, Donald R. Uzzi, and Lee B. Griffith, they then employed improper accounting and misleading disclosures to deceive investors into believing that they had

**SCANNED**

met those targets. Their actions boosted the price of Sunbeam shares to a high of \$52 per share in March 1998. If the Company had been sold at an artificially inflated price, Dunlap and Kersh could have reaped tens of millions of dollars from the sale of their Sunbeam securities. But Dunlap and Kersh ultimately failed in their efforts to find a buyer for Sunbeam before their fraudulent conduct was exposed.

2. The illegal conduct began at year-end 1996 with the creation of inappropriate accounting reserves. These reserves artificially and improperly lowered Sunbeam's reported 1996 performance, which would make the Company's 1997 results appear better by comparison. They also served as a "cookie-jar" into which management could and did dip its hand to artificially and improperly inflate income in 1997, further contributing to the picture of a rapid turnaround. In addition, to boost income in 1997, and also to create the impression that Sunbeam was experiencing significant revenue growth, Defendants Dunlap, Kersh, Gluck, Uzzi, and Griffith (collectively the "Sunbeam Defendants") caused Sunbeam to recognize revenue from sales that did not meet applicable accounting rules. As a result, for fiscal 1997, at least \$60 million of Sunbeam's reported (record-setting) \$189 million in earnings from continuing operations before income taxes ("income") came from accounting fraud.

3. Also in 1997, the Sunbeam Defendants were responsible for a critical disclosure failure: they reported Sunbeam's significant 1997 revenue growth without informing investors that this increase had been achieved not only by illegal accounting, but also at the expense of future results. The Company had inflated its revenues by "channel stuffing", *i.e.*, overloading channels of distribution by offering discounts and other inducements in order to sell product now that would otherwise be sold in the future. Sunbeam had so "stuffed" its customers with product that the Company's future results would suffer.

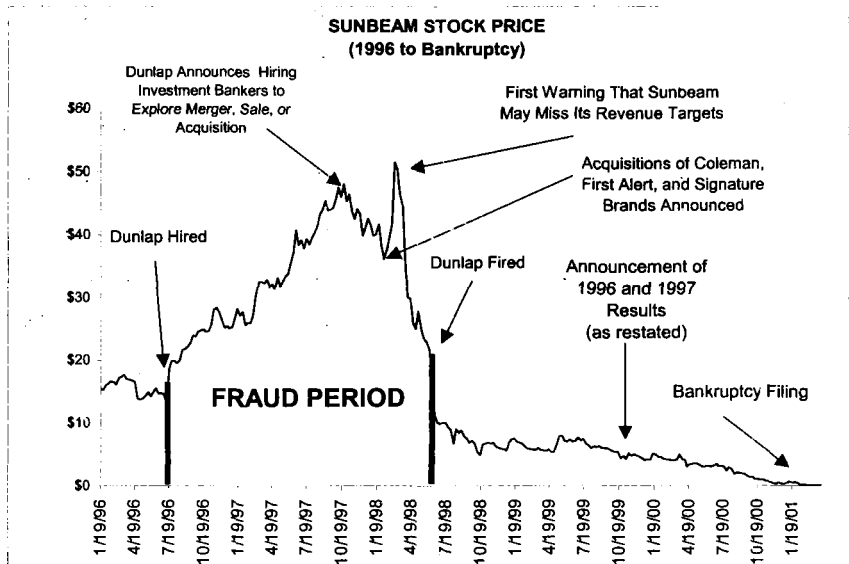
4. As a result of the above conduct, Sunbeam's financial statements and press releases reporting year-end 1996 results, and quarterly and year-end 1997 results were materially false and misleading.

5. Phillip E. Harlow, a partner at Arthur Andersen, LLP ("Andersen"), Sunbeam's outside auditing firm, caused Andersen to render unqualified audit opinions on Sunbeam's 1996 and 1997 financial statements although he was aware of many of the Company's accounting improprieties and disclosure failures. These opinions were false and misleading in that, among other things, they incorrectly stated that Andersen conducted an audit in accordance with the generally accepted accounting standards ("GAAS"), that the Company's financial statements were prepared in accordance with generally accepted accounting principles ("GAAP"), and that the Company's financial statements fairly presented Sunbeam's results of operations.

6. By the end of 1997, the fraudulent accounting and misleading disclosures had not achieved the desired result -- a sale of the Company. At the same time, the improper accounting and acceleration of sales revenues in 1997 created the prospect of poor 1998 results. In early 1998, the Sunbeam Defendants took increasingly desperate measures to conceal the Company's mounting financial problems, meanwhile attempting to finance the acquisition of three other companies, in part through a bond offering. The Sunbeam Defendants again engaged in, and recognized revenue for, sales that did not meet the applicable accounting rules; again caused Sunbeam to engage in acceleration of sales revenue from later periods; deleted certain corporate records to conceal pending returns of merchandise; and misrepresented the Company's performance and future prospects in its financial statements for the first quarter of 1998, its offering materials in connection with the bond offering, its press releases, and its communications with analysts.

7. In June 1998, negative statements in the press about the Company's sales practices prompted Sunbeam's Board of Directors to begin an internal investigation. This resulted in the termination of Dunlap, Kersh, and other members of Company management and, eventually, an extensive restatement of Sunbeam's financial statements from the fourth quarter of 1996 through the first quarter of 1998. Sunbeam is presently in a reorganization proceeding under Chapter 11 of the U. S. Bankruptcy Code.

8. As the following chart illustrates, public investors, ranging from individuals to investment funds, who bought and held Sunbeam's stock in anticipation of a true turnaround lost billions as a result of the scheme.



## JURISDICTION

9. The Securities and Exchange Commission ("Commission") brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 [15 U.S.C. § 77t(b)] ("Securities Act") and Section 21(d) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)] ("Exchange Act"), to enjoin all of the defendants permanently from future violations of the federal securities laws and granting other relief.

10. This Court has jurisdiction over this action, and venue is proper, pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d)(3), 21(e) and 27 of the Exchange Act, [15 U.S.C. §§ 78u(d)(3), 78u(e) and 78aa]. Sunbeam maintains its headquarters in this Judicial District. Many of the acts and practices alleged in this complaint, including fraudulent accounting and the preparation of false and misleading Securities and Exchange Commission filings and press releases took place in this District. The defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce or of the mails, or the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged herein.

## DEFENDANTS

11. Albert J. Dunlap (a/k/a "Chainsaw Al" Dunlap) was the Chief Executive Officer of Sunbeam from July 1996, until June 1998, when his employment was terminated. He was also Sunbeam's Chairman until August 5, 1998, when he resigned his board seat. At all relevant times, Dunlap signed Sunbeam's periodic reports on Form 10-K as the Principal Executive Officer. During the relevant period, Dunlap participated in the preparation of periodic filings

and results-related public statements, including press releases. Dunlap was the head of Sunbeam's four-person management Operating Committee.

12. Russell A. Kersh was Executive Vice President, Finance and Administration, at Sunbeam from July 22, 1996, until January 1998. Kersh became a director of Sunbeam on August 6, 1996, and Vice-Chairman and Chief Financial Officer of Sunbeam on February 1, 1998. His employment was terminated in June 1998 and he resigned his board seat effective August 5, 1998. At all relevant times, Kersh signed Sunbeam's periodic reports on Form 10-Q and Form 10-K as the Principal Financial Officer. During the relevant period, Kersh participated in the preparation of periodic filings and results-related public statements, including press releases. Kersh was a member of Sunbeam's four-person management Operating Committee

13. Robert J. Gluck was a Vice President of Sunbeam from December 1992 until his resignation on October 31, 1998. He became Controller of Sunbeam in February 1995, and was the Company's Principal Accounting Officer throughout the relevant period. Upon Kersh's termination, Gluck became acting Chief Financial Officer. At all relevant times, Gluck signed Sunbeam's periodic reports on Form 10-K as the Principal Accounting Officer and participated in the preparation of the Management's Discussion and Analysis of Financial Condition and Results of Operation included in each periodic filing.

14. Donald R. Uzzi joined Sunbeam in September 1996 as Vice President, Marketing and Product Development. In November 1996, he became Senior Vice President, Global Marketing. In January 1997, he assumed the title of Executive Vice President, Consumer Products Worldwide and held that position until April 1, 1998, when his employment was terminated. Uzzi was a member of Sunbeam's four-person management Operating Committee.

15. Lee B. Griffith was Vice President, Sales for Sunbeam from August 1996 until April 1998. When Uzzi was dismissed by Dunlap in April 1998, Griffith took over Uzzi's responsibilities in the newly created position of President of the Household Division. He resigned in July 1998. Griffith worked for Dunlap at another company, also a Dunlap turnaround project.

16. Phillip E. Harlow, a certified public accountant, has been a partner at Arthur Andersen from 1983 to the present. From 1993 until the summer of 1998, Harlow was the engagement partner on the Arthur Andersen audits of Sunbeam's financial statements.

#### FACTS

17. Sunbeam's board of directors hired Albert Dunlap in July of 1996 to restructure the financially ailing Company. Dunlap immediately hired his long time associate, Kersh, as Sunbeam's principal financial officer.

18. Dunlap and Kersh entered into lucrative three-year employment agreements that gave them strong financial incentives to raise the stock price and sell the Company. Under these agreements, the two men received restricted shares of Sunbeam's stock and options to purchase additional shares. These restricted shares were scheduled to become freely tradable and the options were scheduled to vest on the first, second and third anniversaries of the agreements. However, if the Company were sold during the term of these agreements, Dunlap and Kersh could immediately sell all of their restricted shares and exercise their options. A sale would also allow Dunlap and Kersh to collect immediately the entire sum of their contractual salaries for the remainder of the terms of their agreements. In short, Dunlap and Kersh stood to make tens of millions of dollars if they could sell the Company at an inflated share price.

19. Uzzi, whom Dunlap hired several months after he and Kersh arrived at Sunbeam, entered into a similar employment agreement with the Company. If the Company were sold, he too could have triggered the vesting of his options and could have received his full contractual salary for the remainder of the term of his three-year agreement. He, too, would have made millions if Sunbeam could be sold at an inflated share price.

20. After arriving at Sunbeam, Dunlap replaced almost all of top management with his own selections, who were also provided with strong financial incentives to improve the Company's stock price, and he replaced all but one of the Company's directors with his own nominees. Throughout his tenure, Dunlap exercised complete, unfettered authority over all aspects of Sunbeam's business and staffing. Dunlap set goals, directed business activity, and fired and hired executives. Dunlap monitored Sunbeam's affairs and executive performance through, among other things, participation in Operating Committee meetings, and other meetings held for the purpose of updating him on the conduct of the business, including restructuring efforts; frequent meetings with Kersh; and obtaining regular business reports prepared specifically for him.

21. After Dunlap, Kersh was the most powerful executive at the Company; only Dunlap controlled Kersh and could limit his authority. Kersh was Dunlap's eyes, ears, and enforcer. Dunlap involved Kersh in all management matters and Kersh kept Dunlap informed about all aspects of Sunbeam's business, results, and financial condition. Often, Kersh served as Dunlap's surrogate at meetings where all aspects of business, including aspects for which Kersh was not directly responsible, were addressed. In such meetings, Kersh effectively acted as the chief executive. Kersh too monitored Sunbeam's affairs and executive performance through, among other things, participation in Operating Committee meetings, and other meetings held for



the purpose of updating him and Dunlap on the conduct of the business, including restructuring efforts; frequent meetings with other top executives, including Gluck; and obtaining regular business reports.

22. While Dunlap and Kersh exercised overall control over Sunbeam and all of its executives, each of the Sunbeam Defendants undertook primary responsibility for executing different parts of the fraudulent scheme. They each knew or recklessly disregarded facts indicating that their activities, together with the activities of other Sunbeam Defendants, would cause Sunbeam's books and records and period filings to be materially false and misleading. Dunlap acted primarily as the spokesman, who used his reputation as a specialist in turning around troubled companies to support aggressive promises about future performance and lend credibility to false and misleading announcements of record performance results. Kersh and Gluck were primarily responsible for delivering promised earnings by, *inter alia*, fraudulently establishing and using reserves and accruals, and by violating accounting rules for recognizing sales. Uzzi's primary responsibility in the fraudulent scheme was to facilitate channel stuffing, by means of marketing programs designed to accelerate sales improperly. Griffith's primary role was to develop and implement the specific sales programs that were the vehicle for the Company's improper accounting and misleading disclosure.

23. Dunlap laid the foundation for the fraudulent scheme by publicly predicting that, as a result of the restructuring, the Company would attain operating margins of 20% of sales in 1997, and increase its sales by 20%, 30%, and 35% respectively in 1997, 1998, and 1999. This meant that the Company would have to double its sales to \$2 billion by 1999, and show earnings growth nearly twice that of its competitors over the 1997-1999 period. Based on market

optimism that Dunlap's management team would achieve these goals, the share price of Sunbeam stock increased by approximately 50% the day after the announcement of Dunlap's hiring.

SUNBEAM FRAUDULENTLY MOVES CERTAIN 1997 EXPENSES INTO 1996  
AND ENGAGES IN OTHER FRAUDULENT ACCOUNTING PRACTICES IN 1996

24. Sunbeam took total restructuring charges of \$337.6 million at year-end 1996. Kersh and Gluck, who oversaw the setting of Sunbeam's restructuring reserves, included in these charges certain reserves and accruals, excessive write-downs, and prematurely recognized expenses, as described below, which were improper under the applicable accounting rules (known as "Generally Accepted Accounting Principles" or "GAAP"). In total, over 10% of the Company's reported loss of \$302 million for fiscal 1996 were attributable to these "cookie-jar reserves," which management could draw down at will to bolster income in subsequent periods. Kersh and Gluck knew or recklessly disregarded facts indicating that these items were not in compliance with GAAP, and, further, would reverse into income in fiscal 1997, materially distorting the Company's trends and results of operations for that year. Sunbeam, moreover, made no public disclosure, in its annual filing on Form 10-K or otherwise, of the predictable future effect on the Company's results of operations from its booking of "cookie-jar reserves" at year-end 1996.

*At year-end 1996, Sunbeam sets up improper reserves to defray 1997 expenses unrelated to the restructuring.*

25. In the largest addition to the Sunbeam "cookie-jar," Kersh and Gluck inflated the Company's 1996 restructuring reserves with approximately \$19 million in items that benefited future activities, and hence were not properly part of the restructuring reserve. These items included costs of redesigning product packaging, costs of relocating employees and equipment,

bonuses to be paid to employees who were told that they were being laid off but were asked to stay temporarily, and certain consulting fees. In connection with Andersen's audit of Sunbeam's 1996 year-end financial statements, Harlow identified these components of Sunbeam's restructuring reserves to Kersh and Gluck as not in compliance with GAAP and proposed that the Company reverse the accounting entries on its books and records reflecting the establishment of these reserves. As Harlow told Kersh and Gluck, under GAAP, none of these were restructuring costs because they benefited Sunbeam's future operations. Kersh and Gluck refused to reverse these items. Harlow acquiesced in their refusal to reverse these non-GAAP reserves.

*At year-end 1996, Sunbeam establishes excessive litigation reserves.*

26. Also at year-end 1996, Kersh and Gluck created an excessive \$12 million reserve for a lawsuit alleging Sunbeam's potential obligation to cover a portion of the cleanup costs for a hazardous waste site. In order to establish a litigation reserve under GAAP, management must determine that the reserved amount reflects a probable and reasonably estimable loss. At 1996 year-end, Kersh, Gluck, and Harlow knew that the \$12 million figure was excessive under GAAP because that amount did not reflect a probable and reasonably estimable loss contingency. In advance of the filing of Sunbeam's 1996 year-end financial statements on Form 10-K, however, Kersh and Gluck failed to take sufficient steps to determine what reserve amount would have been appropriate under GAAP. Harlow failed to determine that the litigation reserve level was supported by GAAP. Had they attempted to determine the appropriate level of this litigation reserve, they would have learned that at year-end 1996, it was neither probable nor reasonably estimable that Sunbeam would incur liability of even half of the reserved amount.

*At year-end 1996, Sunbeam improperly reduces the cost basis of its household products inventory.*

27. In connection with its restructuring, Sunbeam planned to eliminate half of its product lines, and to liquidate its inventory of eliminated products lines at substantial discount. At year-end 1996, however, Gluck reduced the cost basis for Sunbeam's *entire* inventory of household products, without distinction between eliminated and continuing product lines. As a result, Sunbeam understated the balance sheet value of its inventory at year-end 1996 by approximately \$2 million and caused its 1996 loss to be overstated by the same amount. Kersh and Gluck knew or recklessly disregarded facts indicating that Sunbeam had understated the carrying value of its household products inventory, that this contributed to the material misstatement of Sunbeam's financial statements at year-end 1996 and would improperly increase Sunbeam's income during the first quarter of 1997, when household products were sold at inflated margins.

*At year-end 1996, Sunbeam uses false documents to recognize improperly 1997-related advertising agency fees as a 1996 expense.*

28. Sunbeam improperly recognized \$2.3 million in 1997 advertising fees and related costs as a 1996 expense. Kersh and Gluck committed this particular accounting abuse knowing or recklessly disregarding facts indicating that it would contribute to the material overstatement of Sunbeam's 1996 year-end loss and, by causing period expenses to be understated during each quarter of 1997, would contribute to the misstatements of Sunbeam's quarterly and annual financial statements in 1997.

29. Uzzi knowingly or recklessly participated in Sunbeam's fraudulent accounting by offering to pay Sunbeam's advertising agency its 1997 fees and bonus in 1996 and arranging for

the agency to provide invoices that falsely represented \$2.3 million in 1997 expenses to be 1996 expenses.

*At year-end 1996, Sunbeam establishes excessive accruals for cooperative advertising expenses.*

30. In addition to buying national advertising to create demand for its products, Sunbeam funded a portion of its retailers' costs of running local promotions. As required by GAAP, Sunbeam accrued for its estimated liabilities for such "cooperative advertising." At year-end 1996, Kersh and Gluck set Sunbeam's cooperative advertising accrual at \$21.8 million. *In setting it at that level, Kersh and Gluck knew or recklessly disregarded facts indicating that this accrual did not comply with GAAP because it was approximately 25% higher than the prior year's accrual amount, without a proportional increase in sales providing a basis for the increase.* Kersh and Gluck also knew or recklessly disregarded facts indicating that the excess would be released into income in early 1997, thus contributing to the material misstatement of Sunbeam's reported results of operations. In fact, \$5.8 million of this excessive accrual was used (without disclosure) to inflate Sunbeam's second-quarter 1997 income.

31. In connection with Andersen's audit of Sunbeam's year-end 1996 financial statements, Harlow recklessly accepted Kersh and Gluck's false representations that Sunbeam's accrual for cooperative advertising expenses was an appropriate amount, although he obtained no documentation supporting the amount of the accrual.

*Sunbeam misrepresents its 1996 year-end results in public statements and in its year-end periodic filing on Form 10-K.*

32. In furtherance of their fraudulent scheme, in connection with the issuance of the year-end financial report on Form 10-K, Dunlap, Kersh, and Gluck, knowingly or with reckless

disregard for the truth, signed a management representation letter to Andersen in which they represented, *inter alia*, that the "accounting records underlying [Sunbeam's] consolidated financial statements accurately and fairly reflect[ed] Sunbeam's transactions." For all of the reasons set forth in Paragraphs 24 through 30, Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that this representation was false and misleading.

33. Sunbeam's 1996 annual filing on Form 10-K and related press release, dated January 29, 1997, were materially false and misleading in that, as described above, they overstated Sunbeam's loss for the year by over 10%, and did not disclose the inappropriate reserves and accruals and their potential effect on Sunbeam's 1997 results of operations. Dunlap, Kersh, and Gluck signed Sunbeam's 1996 Form 10-K.

34. Defendants Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that the annual report on Form 10-K and the January 29, 1997, earnings press release were materially false and misleading, as described in Paragraphs 24 through 30.

35. Harlow caused Andersen to render an unqualified audit opinion on the 1996 financial statements included in Sunbeam's 1996 Form 10-K. This document represented:

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements ... present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1995 and December 29, 1996.

and the results of their operations and their cash flows for each of the three fiscal years in the period ended December 29, 1996 in conformity with generally accepted accounting principles...

ARTHUR ANDERSEN LLP

(Emphasis added.)

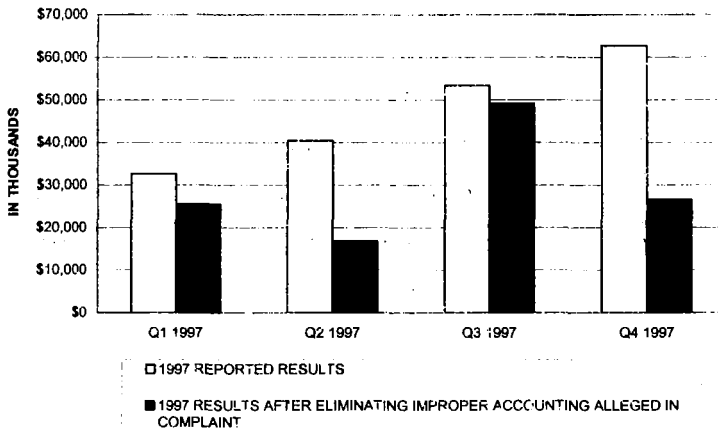
36. Harlow knew or recklessly disregarded facts indicating that this unqualified audit opinion was false and misleading. As discussed above, Harlow knew or recklessly disregarded facts indicating that Sunbeam's financial statements were materially false and misleading and not in compliance with GAAP because they included non-GAAP accounting. In addition, Harlow did not perform a GAAS audit because he failed to perform adequate procedures and caused Andersen to issue an unqualified audit opinion letter despite Sunbeam's GAAP and disclosure failures.

SUNBEAM MANIPULATES ITS RESULTS OF OPERATIONS IN ALL QUARTERS OF 1997.

37. Throughout 1997, Sunbeam reported year-to-year and quarter-by-quarter trend improvements in sales and profits, fueling a substantial increase in the price of its stock. The impression of a successful turnaround of Sunbeam's financial performance, however, rested on accounting fraud and other forms of improper "earnings management": the arbitrary, improper, and undisclosed use of cookie jar reserves, the failure to recognize period expenses, fraudulent sales, and the undisclosed acceleration of sales from later periods ("channel stuffing").

38. Without these activities, the Company's results in 1997 would have been worse and erratic. Indeed, as reflected in the following chart, by virtue of its improper accounting (separate and apart from the impact of channel stuffing), Sunbeam created an illusion of steadily increasing profits when reality was significantly different:

**SUNBEAM'S REPORTED 1997 PRE-TAX NET INCOME  
(BY QUARTER)  
vs.  
1997 RESULTS AFTER ELIMINATING IMPROPER ACCOUNTING ALLEGED IN  
COMPLAINT**



*IN THE FIRST QUARTER OF 1997, SUNBEAM INFLATES ITS EARNINGS  
BY OVER 20%.*

39. Of Sunbeam's reported first-quarter income of \$32.6 million, approximately \$7 million resulted from non-GAAP accounting practices. Also in the first quarter, Sunbeam began its campaign of channel stuffing, without disclosing that this practice had inflated current results and would reduce sales and earnings in future periods. As a result of this conduct, the Company reported earnings of 24¢ per share for the quarter, surpassing Wall Street's consensus estimate by 2¢. The day following the earnings announcement, Sunbeam's closing stock price increased approximately 6% over the previous day's close.



*In the first quarter of 1997, Sunbeam uses excessive restructuring reserves to reduce current expenses.*

40. In the first quarter of 1997, Kersh and Gluck knowingly or recklessly used approximately \$4 million of the non-GAAP, cookie-jar restructuring reserves created at 1996 year-end to improperly reduce current period expenses. This, in itself, improved Sunbeam's reported income for the quarter by over 10%. Even had these reserves been properly recorded on Sunbeam's books at year-end 1996, the use of the reserves to reduce first-quarter expenses constituted a material "infrequent item" and should have been so disclosed in the Company's quarterly filing. It was not.

*In the first quarter of 1997, the sale of household inventory with an improperly reduced cost basis inflated Sunbeam's earnings.*

41. As noted above, Kersh and Gluck improperly lowered the cost basis of certain inventory in connection with Sunbeam's 1996 restructuring, knowing or recklessly disregarding facts indicating that this would artificially increase income in 1997. In fact, the first quarter sale of inventory with an improperly reduced carrying value inflated quarterly income by approximately \$2 million. Gluck and Kersh knew or recklessly disregarded facts indicating that approximately 6% of Sunbeam's reported income for that quarter came from this non-GAAP source.

*In the first quarter of 1997, Sunbeam's advertising costs are artificially reduced.*

42. Sunbeam should have recognized first-quarter expenses of at least \$330,000 for advertising fees. Kersh, Gluck, and Uzzi knew or recklessly disregarded facts indicating that by moving these expenses into 1996, as described above, Sunbeam improperly understated its first-quarter 1997 expenses by that amount.

*In the first quarter of 1997, Sunbeam increases its revenue by means of an undisclosed one-time sale of excess and obsolete inventory.*

43. Dunlap, Kersh, Gluck, and Uzzi knew or recklessly disregarded facts indicating that Sunbeam increased its first-quarter revenues by selling approximately \$19 million of deeply discounted products, eliminated as part of its restructuring. Although this represented an infrequent event, which, absent adequate disclosure, distorted the Company's reported results of operations, these Defendants knowingly or recklessly failed to require Sunbeam to publicly disclose in its quarterly filing on Form 10-Q for the first quarter of 1997 that its quarterly sales were heavily dependent upon an infrequent sales event.

*In the first quarter of 1997, Sunbeam begins undisclosed channel stuffing.*

44. In the first quarter of 1997, Sunbeam began offering discounts to accelerate expected second-quarter sales into the first quarter. In addition, Dunlap, Kersh, and Uzzi applied intense pressure on the sales force to meet aggressive sales goals. As a result of this pressure, for example, the sales organization engaged in a "parking arrangement" whereby a wholesaler held Sunbeam merchandise over a quarter-end, without accepting any of the risks or rewards of ownership. Accordingly, this transaction, involving approximately \$1.5 million in merchandise and generating \$400,000 in reported income, was not in accordance with GAAP requirements for revenue recognition.

45. By engaging in channel stuffing, Sunbeam jeopardized future sales and placed downward pressure on its profit margins because it had to rely on additional financial incentives to drive sales; this process was to continue through the remainder of the tenure of the Dunlap management team. An internal memorandum, presented by Griffith to Dunlap, Kersh, Gluck, and Uzzi, stated that sales were poor "in April primarily due to mortgaging April to achieve Q1."

Sunbeam's acceleration of material amounts of sales revenue and its financial implications for future periods should have been disclosed and discussed as the Company's business practice. Dunlap, Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that Sunbeam failed to properly disclose, in its report on Form 10-Q for the first quarter of 1997, its acceleration of revenue from later periods, and the implications of this practice for its future results of operations

*Sunbeam misrepresents its first-quarter 1997 results in public statements and in its quarterly report on Form 10-Q.*

46. The press release announcing Sunbeam's 1997 first-quarter results, which Dunlap and Kersh participated in drafting, represented the Company's sales as a 10% improvement over the first quarter of 1996. Dunlap boasted in that April 23, 1997, release:

The impressive growth in both revenues and earnings is proof that the revitalization of Sunbeam is working. In fact, the sales growth in the first quarter is the highest level achieved without acquisitions since Sunbeam became public in 1992.... The substantially higher earnings in the quarter from ongoing operations were due to increased sales coupled with the successful implementation of our restructuring efforts.

47. In preparing these statements, Dunlap and Kersh knew or recklessly disregarded facts indicating that Sunbeam's reported improvements in sales and earnings reflected the Company's improper accounting and the various other forms of undisclosed earnings management described above.

48. Sunbeam's first-quarter 1997 report on Form 10-Q was also false and misleading because, like the earnings press release, it touted the Company's results without disclosing how the Company's improper accounting and other earnings management devices, as described above, contributed to those results.

49. Defendants Dunlap, Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that the first-quarter 1997 report on Form 10-Q and the April 23, 1997, earnings press release were materially false and misleading

*IN THE SECOND QUARTER OF 1997, SUNBEAM INFLATES ITS EARNINGS  
BY MORE THAN 50%.*

50. In the second quarter of 1997, the task of exceeding the previous quarter's results -- as was necessary to support the perception of a successful Dunlap turnaround -- was further complicated by the fact that the first-quarter results had been artificially inflated. Thus, the Sunbeam Defendants again resorted to improper accounting and other forms of earnings management to improve reported results. Among other things, these Defendants improperly applied reserves to reduce current expenses, used other undisclosed one-time items to improve results, and engaged in deceptive and improper sales practices. As a result of these practices, more than 50% of Sunbeam's reported second-quarter 1997 income of \$40.5 million did not comply with GAAP requirements.

51. The Company announced earnings for the second quarter of 1997 of 30¢ per share, one penny below consensus estimate of 31¢ per share. The following day its stock dropped approximately 3.5%.

*In the second quarter of 1997, Sunbeam inflates its  
revenue and income by engaging in improper bill  
and hold sales.*

52. To meet its second-quarter 1997 sales objectives, the Company again departed from its historical practice of selling product to customers as they needed it and instead offered financial incentives to various customers to make what would otherwise have been later period purchases in the second quarter. Since many customers could not burden their warehouses with

seasonal merchandise before the season began, Griffith proposed that the Company combine its discount offers with the option to have Sunbeam hold this merchandise until the normal time for delivery. Through this technique, Sunbeam accelerated recognition of approximately \$14 million in sales revenue and approximately \$6 million in income into the second quarter of 1997.

53. For revenue recognition purposes, these transactions were improperly treated as "bill and hold" sales. Before recording revenue for a bill and hold sale, managers responsible for preparation and filing of a company's financial statements must verify the underlying facts of any such sale to ensure that the sale has met certain stringent accounting criteria. The relevant criteria include: a requirement that the buyer, not the seller, requested a sale on a bill and hold basis; that the buyer had a substantial business purpose for ordering the goods on a bill and hold basis; and that risks and rewards of ownership passed to the buyer. Other relevant factors include whether the seller modified its normal billing and credit terms for this buyer and the seller's past experiences with and pattern of bill and hold transactions.

54. Sunbeam's second-quarter 1997 bill and hold sales did not meet the criteria for revenue recognition. These sales were not requested by Sunbeam's customers and served no business purpose other than to accelerate recognition by Sunbeam of approximately \$14 million in sales revenue and over \$6 million in income. This was not a "substantial business purpose" of the customers but rather a form of intentional earnings management by Sunbeam. In one case, for example, Sunbeam offered substantial discounts and extended terms to obtain that customer's purchase orders in June rather than in August, when they would otherwise have been written. Sunbeam absorbed all the costs of shipping and storing the product, and the customer had an unlimited right to cancel the order. Thus, the risks of ownership had not passed to the customer.

55. Defendants Kersh, Gluck, and Griffith knew or recklessly disregarded facts indicating that Sunbeam's purported second-quarter bill and hold sales did not meet applicable revenue recognition criteria and, therefore, should not have been recorded as second-quarter sales.

56. Apart from the issue of improper accounting, Dunlap, Kersh, Griffith, Gluck, and Uzzi knew or recklessly disregarded facts indicating that Sunbeam had accelerated what would normally have been later period sales into the second quarter, and yet had failed to disclose this practice in its quarterly filing. Specifically, Griffith discussed the largest of these transactions (\$9.9 million) with Kersh, Gluck, and Uzzi. In addition, this information was contained in an internal report that all of the Sunbeam Defendants, including Dunlap, received. In describing domestic sales results, that report referred to "accelerated sales into the period of \$13.5 million..."

*In the second quarter of 1997, Sunbeam uses excessive restructuring reserves to reduce current expenses.*

57. In the second quarter of 1997, approximately \$8 million of the non-GAAP restructuring reserves created in 1996 were used to reduce current period expenses, thus improving quarterly income by approximately 20%. Even had these reserves been properly recorded on Sunbeam's balance sheet at year-end 1996, their use to offset second-quarter expenses constituted a material infrequent item that was not disclosed in the Company's quarterly filing despite a requirement to do so.

58. Kersh and Gluck knew or recklessly disregarded facts indicating that restructuring reserves were released in the second quarter, materially affecting Sunbeam's reported results of operations, without appropriate disclosure by Sunbeam.

*In the second quarter of 1997, Sunbeam brings the excess in the cooperative advertising reserve into income.*

59. At the end of the second quarter of 1997, Gluck released into income approximately \$6 million of the inflated cooperative advertising reserves established in 1996. This improperly improved Sunbeam's income in the second quarter of 1997 by approximately 14%. There was no disclosure in Sunbeam's quarterly report of the effect of this infrequent item on its results of operations.

60. Dunlap, Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that Sunbeam had released approximately \$6 million in excess cooperative advertising reserves into income without any disclosure.

*In the second quarter of 1997, Sunbeam recognizes income from improper accounting for supplier rebates.*

61. Another device used by Sunbeam to inflate second-quarter earnings was to record as income approximately \$2.75 million in rebates procured from four of Sunbeam's suppliers. These rebates constituted over 6% of Sunbeam's income for the quarter.

62. Under GAAP, the second-quarter rebates should not have been treated as income transactions. Because Sunbeam's suppliers agreed to pay these rebates in order to obtain a future benefit from Sunbeam, *i.e.*, additional sales or better prices, the rebates should, instead, have been treated as price discounts on future deliveries of supplies and should have been used to reduce the cost of merchandise built using those supplies.

63. Kersh, Gluck, and Uzzi knew or recklessly disregarded facts indicating that Sunbeam had improperly accounted for its second-quarter rebates. Moreover, even had the

reported income from these rebates complied with GAAP requirements, Sunbeam should have disclosed that the income was due to a non-recurring item. Dunlap, Kersh, Gluck and Uzzi -- all of whom saw internal reports describing the impact of revenue from supplier rebates -- knew or recklessly disregarded facts indicating that Sunbeam improved its reported results from this infrequent item without appropriate disclosure in its quarterly report on Form 10-Q.

*In the second quarter of 1997, Sunbeam's advertising costs are artificially reduced*

64. Sunbeam should have recognized second-quarter expenses of at least \$660,000 for advertising fees. Kersh, Gluck, and Uzzi knew or recklessly disregarded facts indicating that by moving these expenses into 1996, as described in Paragraphs 29 and 29 above, Sunbeam improperly understated its first-quarter 1997 expenses by that amount.

*Sunbeam misrepresents its second-quarter 1997 results in public statements and in its quarterly report on Form 10-Q*

65. Sunbeam's report on Form 10-Q for the second quarter of 1997 and related press release, dated July 23, 1997, reported net sales of \$287.6 million, a purported 13.3% increase over the second quarter of the previous year. The quarterly filing and press release further stated that the Company's operating margin had increased by 7.3% (to 25.9%) over the second quarter of 1996. Sunbeam attributed these improvements to the success of the Dunlap restructuring. Dunlap, performing his role as spokesman and purported turnaround expert, also supplied this quote for the press release: "Contrary to views that this is a slow growing industry, if you introduce innovative products and get them to the market on time, this can be an outstanding business with great returns for shareholders."



66. As described above, however, Sunbeam's reported net sales and operating margins were materially increased by fraudulent accounting practices. Moreover, Sunbeam made no disclosure of the various forms of earnings management, described above, used to achieve these numbers.

67. Defendants Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that Sunbeam's quarterly report on Form 10-Q and the July 23, 1997, press release were materially false and misleading.

*IN THE THIRD QUARTER OF 1997, SUNBEAM INFLATES ITS EARNINGS BY OVER 8%.*

68. In the third quarter of 1997, Defendants faced mounting difficulties in meeting analysts' estimates and Sunbeam's own announced goals. The acceleration of sales revenue in the previous quarter impoverished sales in this period, and, as a result of all of the improper accounting and other earnings management tools used by the Sunbeam Defendants in the previous two quarters, the third-quarter revenue and earnings growth would be measured against an artificially high benchmark. In addition, the price discounts used to generate Sunbeam's artificial sales growth had eroded profit margins. Thus, the Defendants were required to pull ever-greater quantities of future period sales into present periods (or otherwise inflate earnings) to avoid admitting that the Dunlap restructuring was a failure. Defendant Uzzi has candidly referred to this situation as "the doom loop."

69. Compounding this looming crisis of expectation, Dunlap and Kersh continued to tout Sunbeam's reported income growth in public statements without disclosing the temporary expedients through which it had been achieved. Dunlap and Kersh falsely denied reports that Sunbeam relied on channel stuffing to hit its earnings targets. For example, in a July 22, 1997,

conference call with analysts, Dunlap attributed domestic sales growth to new product innovations and improved distribution to top customers, and specifically denied that Sunbeam engaged in channel stuffing. These statements were false and misleading because Sunbeam's new products had not proven successful and Sunbeam had, in fact, engaged in channel stuffing, including in its relations with its "top customers." Dunlap also told analysts, without a reasonable basis in fact, that Sunbeam expected sales growth of 20% for the full year and margin growth of 30% for the second half of the year. Through these and similar statements, Dunlap and Kersh knowingly or with reckless disregard for relevant facts materially misrepresented Sunbeam's business practices, results of operations, and future prospects.

*In the third quarter of 1997, Sunbeam makes another trip to the cookie-jar.*

70. Approximately \$3 million of Sunbeam's reported income for the third quarter of 1997 came from reduction of current expenses using non-GAAP restructuring reserves established at year-end 1996; approximately \$700,000 from supplier rebates that should not have been taken into income in that period; and approximately \$663,000 from the failure to recognize period advertising expenses stemming from the recording of those expenses in 1996. These items contributed almost 8% of Sunbeam's reported income for the quarter. Dunlap, Kersh, Gluck, and Uzzi knew or recklessly disregarded facts indicating that Sunbeam had improperly supplemented its income.

*In the third quarter of 1997, Sunbeam's channel stuffing increases substantially.*

71. In the third quarter of 1997, Sunbeam demonstrated an across-the-board willingness to make whatever concessions were necessary to obtain purchase orders. From information available to them, including internal reports that disclosed the accelerated sales of

electric blankets and other products through "early buy" discounts and other concessions. Dunlap, Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that Sunbeam's reported results of operations were materially inflated through undisclosed channel stuffing.

*Sunbeam misrepresents its third-quarter 1997 results in public statements and in its quarterly report on Form 10-Q*

72. In the third quarter of 1997, the Company reported income of \$53.4 million. Improperly recorded restructuring reserves, supplier rebates, and advertising expenses provided approximately \$4.3 million (or almost 8%) of that amount. Those items and the Company's third-quarter channel stuffing allowed the Company to beat analysts' earnings estimates of 38¢ per share by 1¢.

73. Sunbeam's quarterly report on Form 10-Q and the earnings announcement for the third quarter of 1997, dated October 22, 1997, reported net sales of \$289 million, another increase over the prior year. Gross margin was reported to have increased again to 30.7% due to cost savings and margin enhancement initiatives. As described above, however, Sunbeam's reported operating margins were materially increased by fraudulent accounting practices. Moreover, Sunbeam made no disclosure of the various forms of earnings management, described above, used to achieve its reported results.

74. Defendants Dunlap, Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that Sunbeam's quarterly report on Form 10-Q and the October 22, 1997, press release were materially false and misleading, as described above in Paragraphs 68 through 73.

*IN THE FOURTH QUARTER OF 1997, SUNBEAM INFLATES ITS EARNINGS BY OVER 50%.*

75. Dunlap and Kersh were informed by Sunbeam's investment bankers that no sale of Sunbeam could be accomplished until potential suitors saw results for fiscal 1997 that indicated a successful turnaround of the Company. However, Sunbeam internal reports provided to Dunlap, Kersh, Gluck, Uzzi, and Griffith revealed that Sunbeam's undisclosed channel stuffing in the third quarter of 1997 had caused sales in the fourth quarter to falter. The looming earnings shortfall threatened to scuttle any potential sale of the company.

76. In the fourth quarter of 1997, the Sunbeam Defendants exceeded their previous efforts at accelerating sales from later periods through price and other concessions. To conceal the margin erosion this caused, Kersh and Gluck went again to the Company's cookie-jar reserves to reduce expenses during the period. In addition, that quarter witnessed an increase in non-GAAP sales, arranged by Uzzi and Griffith, and other undisclosed one-time items designed to boost revenue and income.

77. Almost 20% of Sunbeam's reported revenue and more than 50% of Sunbeam's reported income for the fourth quarter of 1997 resulted from non-GAAP transactions or undisclosed one-time items. Despite these unlawful measures, for the full 1997 fiscal year, Sunbeam missed analysts' consensus estimate by 3¢. On that news, Sunbeam's stock fell approximately 9.5%.

*In the fourth quarter of 1997, Sunbeam cannot attain its sales goals through legitimate results of operations.*

78. The erosion of Sunbeam's profit margins caused by the third-quarter price concessions required that even greater amounts of product be pushed into its sales channels in

the fourth quarter to avoid disclosing a substantial earnings shortfall. Kersh and Uzzi therefore increased fourth-quarter sales goals from \$347 million to \$391 million and then to \$419 million. The Company's sales executives, however, insisted to Kersh and Uzzi that these goals were unreachable because customers were by now so inundated with Sunbeam product that they would not raise their inventory levels again.

79. In the middle of November, Dunlap, Kersh, Griffith, and Uzzi approved plans specifically intended to pull 1998 sales into 1997. These included plans to pull \$52 million in 1998 barbeque-grill sales into 1997 by offering discounts, extended terms and additional local advertising support for retailers willing to purchase grills in December.

80. As the quarter progressed, however, it grew increasingly apparent that Sunbeam's sales goals were unattainable. An internal report dated December 16 and distributed to Dunlap, Kersh, Uzzi, Gluck, and Griffith stated that the Company would have to obtain almost a third of its 1997 annual earnings target from the remainder of December sales. Instead of planned earnings of 11¢ per share for December, Sunbeam would have to earn 52¢ per share in December in order to meet its earnings targets for the year. Moreover, an internal sales report dated December 16, 1997, distributed to Dunlap, Kersh, Uzzi, and Griffith, revealed a gaping shortfall from planned sales as of the middle of December, despite intense efforts to achieve sales goals. It disclosed that as of December 16, Sunbeam had made only 21% of planned product shipments for the month.

*In the fourth quarter of 1997, Sunbeam obtains revenue through improper sales to distributors.*

81. In December 1997, Dunlap, Kersh, Uzzi, and Griffith concocted a "distributor program" as one means of improving the Company's 1997 sales. Up to this time, Sunbeam used

distributors mainly to fill the needs of smaller retailers. Under the "distributor program," however, Sunbeam accelerated recognition of sales revenue by placing merchandise, including merchandise specifically slated for some of its retail customers, with certain distributors in advance of actual retail demand. Distributors were induced to accept Sunbeam product by means of favorable payment terms, discounts, guaranteed mark-ups, and, consistently, the right to return unsold product. In total, Sunbeam recorded \$24.7 million in fourth-quarter 1997 revenue from sales to distributors that were subject to rights of return.

82. Under GAAP, sales revenue can be recognized only if the risks and rewards of ownership of purportedly sold merchandise (*i.e.*, risk of damage or physical loss, and of market value decline), pass to the buyer. Dunlap, Kersh, Uzzi, and Griffith knew or recklessly disregarded facts indicating that certain of these sales were mere parking arrangements or otherwise did not transfer sufficient risk of ownership to the customers to qualify for revenue recognition under GAAP.

83. Further, a sale with a right of return can be recognized as revenue under GAAP only if the seller takes a reserve against possible future returns. The size of this reserve must be based on past history with returns. If no such history exists, the sales revenue for product "sold" to a customer may not be recorded. In Sunbeam's case, the sales under the distributor program opened new distribution channels with which the Company had no prior experience. Hence, Sunbeam could not set an appropriate level of reserves for returns and, therefore, could not satisfy GAAP requirements for recognizing revenue on these sales. Kersh and Gluck knowingly or recklessly caused Sunbeam to improperly recognize revenue on these transactions. Moreover, Dunlap, Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that these sales were yet additional instances of undisclosed channel stuffing.

*In the fourth quarter of 1997, Sunbeam again recognizes revenue from improper bill and hold sales.*

84. As alleged in Paragraph 79 above, Sunbeam's fourth-quarter sales plan relied in part upon obtaining \$52 million from accelerated sales of grills. But "early buy" incentives proved inadequate to induce retailers to burden their warehouses with these bulky items. As it did in the second quarter, therefore, the Company offered to transact these sales on a bill-and-hold basis. This program resulted in \$24 million in sales of grills before year-end. Sunbeam also recognized almost \$8 million in revenue from bill and hold sales of household items that quarter. These transactions contributed a total of \$29 million in sales and approximately \$4.5 million in income to the fourth quarter.

85. Sunbeam's fourth-quarter bill and hold sales, promoted and facilitated by Kersh, Gluck, Uzzi, and Griffith failed to comply with GAAP requirements for revenue recognition for the same reasons as the second-quarter 1997 bill and hold sales, described in Paragraphs 52 through 56 above, failed to comply with such requirements. The result of a Sunbeam marketing program, these sales had not been requested by the customers. In addition, they served no "substantial business purpose" of the customers, but were merely a revenue-shifting device of Sunbeam. The "early buy" incentives offered by Sunbeam to induce customers to accept merchandise they did not presently need, moreover, included changes in Sunbeam's normal credit and billing practices. Finally, these transactions were structured so that the customers accepted no economic risk from accepting early delivery of product.

86. Kersh and Gluck knowingly or recklessly caused Sunbeam to record and report \$29 million in fourth-quarter non-GAAP bill and hold sales. Moreover, Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that the Company failed to properly

disclose that these sales were revenue shifting devices, conceived to conceal the Company's lagging sales efforts, and would likely have a material negative effect on its results of operations in subsequent periods.

87. In the course of Andersen's audit of Sunbeam's 1997 year-end financial statements, Harlow performed certain procedures to verify that the Company's bill and hold revenue complied with GAAP requirements for revenue recognition. As a result of his review, Harlow knew or recklessly disregarded facts indicating that the fourth-quarter bill and hold transactions did not satisfy required revenue recognition criteria. Nevertheless, Harlow acquiesced in Kersh and Gluck's decision to recognize revenue for all of these non-GAAP sales

*In the fourth quarter of 1997, Sunbeam executes a sham sale of inventory to increase its sales numbers.*

88. At year-end 1997, Sunbeam recorded another \$11 million in revenue and \$5 million in income from a sham sale of spare parts inventory to its warranty and spare parts fulfillment house, EPI Printers, Inc. Prior to this transaction, EPI had satisfied the spare parts and warranty requests of Sunbeam customers on a fee basis. To raise additional revenue at year-end 1997, however, Sunbeam arranged to "sell" EPI the warranty and spare parts inventories already in EPI's warehouse. Uzzi and Kersh received Dunlap's approval to go forward with the EPI transaction.

89. An internal document provided to Kersh, Gluck, and Uzzi stated that Sunbeam was prepared to sell this inventory, carried at \$4 million on its books, for \$2 million. In late December, however, Gluck supplied an arbitrary sales figure of \$11 million to the individual who was negotiating with EPI, and Gluck and Uzzi pushed him to complete the transaction so that it could be booked by year-end. EPI valued the inventory at no more than \$2 million and did



not agree to accept any risk of ownership at the \$11 million price. Instead, it executed a mere "agreement to agree," upon which Sunbeam fraudulently recognized sales revenue of \$11 million.

90. By its terms, the EPI contract would terminate on January 23, 1998, with no payment obligation on the part of EPI, absent agreement between Sunbeam and EPI on the value of the inventory. In order to induce EPI to enter into the transaction, moreover, Sunbeam agreed to pay certain fees to EPI and to guarantee a 5% profit on the resale of the inventory. In sum, the relationship between EPI and Sunbeam was not fundamentally altered by the purported sale; EPI remained a contractor compensated by Sunbeam on a fee basis for its services.

91. In connection with Andersen's 1997 year-end audit of Sunbeam's financial statements, Harlow proposed an adjustment to reverse accounting entries on Sunbeam's books and records reflecting the revenue and income recognition for this transaction, having concluded that the profit guarantee and the indeterminate value of the contract rendered revenue recognition inconsistent with GAAP. Kersh and Gluck refused to reverse this transaction but agreed to take a \$3 million reserve against the profit margin from this transaction. Harlow acquiesced in their refusal to reverse this sham sale.

92. Thus, Dunlap, Kersh, Gluck, and Uzzi, knew or recklessly disregarded facts indicating that approximately 8% of Sunbeam's fourth-quarter income derived from a transaction that was a mere sham, employed to fraudulently boost Sunbeam's reported revenue and income.

*In the fourth quarter of 1997, Sunbeam conceals disappointing sales by raiding its balance sheet for credits to add to earnings.*

93. Despite the improper sales and undisclosed channel stuffing described above, Sunbeam still faced an earnings shortfall at year-end 1997. A Sunbeam manager whose duties included analyzing the Company's business results and prospects informed Dunlap in early December that Sunbeam would not make its numbers from operations alone. As the situation worsened, the Sunbeam Defendants tried numerous tactics to supplement earnings from sources other than sales operations.

94. In the last two weeks of the year, Uzzi ran meetings at which individuals were assigned tasks to pursue any opportunity to find balance sheet credits to use as additional sources of income. These tasks and their potential contribution to the targeted earnings figure were set out on schedules -- entitled "Initiatives for Success in 4Q97" -- opposite the names of the assigned employees.

*In the fourth quarter of 1997, Sunbeam again uses excessive restructuring reserves to reduce current expenses.*

95. Kersh and Gluck improperly offset \$4.9 million in costs against reserves, knowing or recklessly disregarding facts indicating that this would cause a material misstatement of Sunbeam's reported results of operations. This included the use of \$1.5 million of non-GAAP restructuring reserves, created in 1996, to improperly reduce current fourth-quarter 1997 expenses.

96. Harlow learned of this inappropriate use of reserves in connection with the year-end audit of Sunbeam's financial statements, and put the full \$4.9 million on the list of proposed audit adjustments. Kersh and Gluck, however, refused to make the proposed adjustments.

Harlow acquiesced in their refusal to reverse these improper reductions in current-period costs, although he knew or recklessly disregarded facts indicating that this improper accounting would materially distort Sunbeam's reported results of operations. In fact, this use of reserves increased fourth-quarter income by almost 8%.

*In the fourth quarter of 1997, Sunbeam improperly increases its income by releasing excessive litigation reserves.*

97 As alleged in Paragraph 26 above, at year-end 1996, Sunbeam established a \$12 million litigation reserve for its potential liability to pay for a portion of the clean-up of a hazardous waste site, although it had no reasonable basis to anticipate liability in that amount. In the fourth quarter, Sunbeam settled this litigation for approximately \$3 million. Kersh and Gluck released the remaining \$9 million of the reserve into income, including at least \$6 million that they knew or were reckless in not knowing constituted excessive (non-GAAP) reserves established at year-end 1996. Moreover, there was no disclosure that the release of this reserve constituted a non-recurring item that materially inflated Sunbeam's fourth-quarter 1997 results.

*In the fourth quarter of 1997, Sunbeam again recognizes income from improper accounting for supplier rebates.*

98. Kersh and Gluck recorded approximately an additional \$2 million in supplier rebates as income in the fourth quarter. As in previous quarters, the rebates related to future sales and therefore, under GAAP, should have been recorded as price discounts in the periods when the related sales occurred, not as current period income. Kersh and Gluck knew or recklessly disregarded facts indicating that this accounting treatment was improper and would contribute to the material misstatement of Sunbeam's reported results of operations for the fourth quarter of 1997.

*In the fourth quarter of 1997, Sunbeam's advertising costs are artificially reduced.*

99 Sunbeam should have recognized fourth-quarter expenses of at least \$660,000 for advertising fees. Kersh, Gluck and Uzzi knew or recklessly disregarded facts indicating that by moving these expenses into 1996, as described above in Paragraphs 28 and 29. Sunbeam improperly understated its fourth-quarter 1997 expenses (and consequently overstated income) by that amount.

*At year-end 1997, Sunbeam increases earnings by including in income certain miscellaneous improper accounting items.*

100. In connection with the year-end 1997 audit work, Harlow proposed adjustments to reverse \$2.9 million related to inventory overvaluation and \$563,000 related to various miscellaneous items. Kersh and Gluck refused to make appropriate adjustments and Harlow acquiesced in their refusal to reverse these errors. Harlow did so despite knowing or recklessly disregarding facts indicating that these items added over 5.4% to Sunbeam's reported earnings for the fourth quarter and contributed to the larger misstatement of Sunbeam's reported results of operations stemming from the fraudulent conduct alleged in Paragraphs 17 through 99 above.

101. Kersh and Gluck knew or recklessly disregarded facts indicating that Sunbeam's failure to adjust its books and records to eliminate known errors was improper and contributed to the material misstatement of Sunbeam's reported results of operations for fiscal year 1997.

*Sunbeam misrepresents its fourth-quarter and year-end 1997 results in public statements.*

102. On January 28, 1998, Sunbeam issued a press release, announcing its "record" fourth-quarter and fiscal 1997 results. Dunlap, as quoted in the release, claimed that the

Company's sales increase was a "clear indication that [Sunbeam's] strategy is working." Further, he claimed a "remarkable improvement in operating margins, year over year."

103. The press release was materially false and misleading because the fourth-quarter sales, annual revenue and earnings per share figures it reported were inflated through the improper accounting practices described above, and because the release disclosed neither the one-time items used during 1997 nor the accelerated sales in the fourth quarter that materially affected the reported results for the quarter and the year. In addition, Dunlap's statement concerning the purported improvement in the Company's margins was false and misleading because it failed to mention the contribution to results from any of the earnings management techniques described above.

104. Defendants Dunlap, Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that Sunbeam's January 28, 1998, press release was materially false and misleading.

105. In a conference call with analysts on the same date, Dunlap boasted about the Company's "tremendous turnaround." He cited improved sales of grills, without mentioning the extraordinary initiatives used to accelerate sales of this product into 1997. Dunlap knew or recklessly disregarded facts indicating that Sunbeam management had not achieved a successful turnaround but, to the contrary, was actively concealing the failure of its restructuring through aggressive channel stuffing and other forms of earnings management.

*Sunbeam misrepresents its 1997 year-end results in its year-end periodic filing on Form 10-K.*

106. Dunlap, Kersh, and Gluck signed Sunbeam's 1997 Form 10-K filed on March 6, 1998. In the financial statements included in that filing, prepared by Kersh and Gluck, Sunbeam

reported annual income of \$186 million. That figure was materially overstated because approximately 30% of Sunbeam's reported income did not comply with GAAP requirements. Specifically, that figure improperly included approximately \$35 million in income derived from the use of non-GAAP reserves and accruals taken at year-end 1996, approximately \$6 million from non-GAAP fourth-quarter sales with a right of return, approximately \$4.5 million from non-GAAP fourth-quarter bill and hold sales, approximately another \$5 million from the sham sale to EPI, and millions from miscellaneous items, including other proposed year-end adjustments.

107. The 1997 Form 10-K did not provide any disclosure in the section entitled Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") or otherwise of any of the items discussed above, except that it revealed the existence of the "early buy" program and bill and hold sales. The filing, however, suggested that Sunbeam was engaged in a limited attempt to smooth, across different selling seasons, sales from certain seasonal items like grills and blankets, rather than across-the-board channel stuffing that would inevitably lead to an earnings shortfall the following year. The report did not disclose, as was the case, that Sunbeam was experiencing increased product returns, enormous inventory levels on hand with customers, and deteriorating margins.

108. At the time Sunbeam's 1997 Form 10-K was filed, Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that Sunbeam's Form 10-K was materially false and misleading because of these disclosure failures and improper accounting.

109. In addition, in furtherance of the fraudulent scheme, in connection with the issuance of the Form 10-K, Dunlap, Kersh, and Gluck, knowingly or with reckless disregard of

the relevant facts, signed a management representation letter to Andersen in which they represented, *inter alia*, that: (a) Sunbeam's accounting records fairly reflected the transactions of the Company and its subsidiaries; (b) other than three acquisitions (discussed below), after the balance sheet date, there were no events that would require disclosure in or adjustments to the financial statements; and (c) "[t]he Company believes that the costs charged to the restructuring reserves during 1997 were materially in accordance with the Company's 1996 restructuring plan." For all of the reasons set forth in Paragraphs 17 through 108, Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that these representations were false and misleading.

110. Harlow caused Andersen to render an unqualified audit opinion for Sunbeam's 1997 financial statements included in the 1997 Form 10-K. This document represented:

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements ... present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 29, 1996 and December 28, 1997, and results of its operations and its cash flows for each of the three fiscal years in the period ended December 28, 1997 in conformity with generally accepted accounting principles.

ARTHUR ANDERSEN LLP

(Emphasis added.)

111. Harlow knew or recklessly disregarded facts indicating that this unqualified audit opinion was false and misleading. In connection with each of Andersen's quarterly reviews of Sunbeam's books, and its year-end 1997 audit, Harlow had learned or recklessly disregarded facts indicating that Sunbeam was bringing into income non-GAAP reserves and accruals established at year-end 1996. As a result, he knew or recklessly disregarded facts indicating that the quarterly results reported in Sunbeam's year-end financial statements were inflated and quarter-to-quarter trends were altered.

112. Indeed, at year-end 1997, Harlow specifically knew that approximately 16% of Sunbeam's reported 1997 income came from items that he found to be in contravention of GAAP in connection with his 1996 and 1997 audits. He also knew that almost another 5% of Sunbeam's reported 1997 income (and almost 22% of its fourth-quarter reported income) came from the undisclosed release of \$9 million of the \$12 million non-GAAP litigation reserve. Even if Harlow thought that, under the circumstances, GAAP permitted reversing into income various reserves and accruals, he knew or recklessly disregarded facts indicating that their non-recurring nature should have been disclosed in order for Sunbeam's financial statements to present fairly. In all material respects, its results of operations and cash flows. Further, as noted, Harlow knew or recklessly disregarded facts indicating that Sunbeam's fourth-quarter 1997 bill and hold sales, which contributed approximately another \$5 million to the Company's reported income did not comply with GAAP.

113. In addition, the audit opinion was false and misleading because Harlow did not perform a GAAS audit; he failed to perform adequate procedures and caused Andersen to issue an unqualified audit opinion despite Sunbeam's GAAP and disclosure failures.



IN EARLY 1998, SUNBEAM ACTIVELY CONCEALS ITS DETERIORATING  
FINANCIAL CONDITION AND IMPROPER FINANCIAL DISCLOSURE PRACTICES.

114. Even before 1998 began, the aggressiveness of channel stuffing in the fourth quarter of 1997 and the depletion of the \$35 million in cookie-jar reserves established at year-end 1996 threatened Sunbeam with an earnings and revenue shortfall because its previous means of fraudulently supplementing income were no longer available. With no sale of the company in sight, Sunbeam began negotiating to buy The Coleman Company, Inc., First Alert, Inc., and Signature Brands USA, Inc. To finance the cash portion of these acquisitions, Sunbeam needed to obtain \$700 million in cash through a private Zero Coupon bond offering (the "\$700 million bond offering" or "bond offering") and, in addition, a \$1.7 billion revolving credit line. Any news of problems with Sunbeam's financial condition or results of operations likely would have scuttled these deals.

115. Also in connection with the purchases of these three companies, Dunlap demanded a new contract from the Board of Directors even though he still had two years left on his current one. He also demanded a new contract for Kersh. Under the new agreement, Dunlap doubled his base salary to \$2 million, received a grant of shares that netted him approximately \$15 million immediately, and received approximately another \$41 million as a result of the early vesting of all of his then outstanding options. He also received a new grant of 3,750,000 options. Kersh also had his salary doubled to \$875,000. He too received grants of restricted stock representing a net gain of approximately \$1.4 million. Kersh received 1,125,000 new options, a quarter of which vested immediately. As a result of these new agreements, Dunlap and Kersh beneficially owned, respectively, 5% and 1% of a company with a market capitalization of over \$3.5 billion, *i.e.*, over \$125 million for Dunlap and \$25 million for Kersh. As was the case with

their original employment agreements, under these new agreements, Dunlap and Kersh had the incentive to raise the price of Sunbeam's stock and sell the Company to cash in all of these holdings.

*The Doom Loop Closes.*

116. In the early months of 1998, Sunbeam faced a sales crisis resulting from its aggressive channel stuffing in December 1997. In early January 1998, a Sunbeam manager with responsibility for monitoring the Company's financial performance told Kersh and Uzzi that Sunbeam had pulled sales of \$25 million in outdoor cooking products and \$11 million in appliances into the fourth quarter of 1997. Later in January, that employee informed Uzzi that weak sales threatened an earnings shortfall of approximately half of analysts' consensus estimate for the quarter. In early February, Uzzi and Griffith were informed that the sales organization was projecting a \$75 million sales shortfall for the first quarter of 1997. Also in early February, Uzzi told Dunlap and Kersh that January sales were short of plan by \$17 million and that February sales would fall short of plan by \$14 million. He told them that "customers were loaded," with major customers holding as much as 80 weeks of inventory in particular product lines. Uzzi also informed Dunlap and Kersh that the earnings shortfall was likely to be proportionately greater than the sales shortfall.

117. As the quarter progressed, the Sunbeam manager monitoring financial performance regularly informed Kersh and Uzzi about Sunbeam's projected earnings shortfall. For example, around February 25, she informed Kersh and Uzzi that projected earnings of 20¢ per share reflected, among other things, deteriorating sales and margins and an under-accrual during 1997 for certain distribution and warehousing expenses. These expenses were an attendant result of Sunbeam's channel stuffing program.

*In the first quarter of 1998, Kersh orders the fraudulent deletion of return authorizations from Sunbeam's computer system.*

118. By Sunbeam's normal practice, customers who wished to return Sunbeam product obtained from Sunbeam personnel return authorization numbers, which were entered in a file on the Company's main computer system and used to determine whether and when returned product would be accepted. This computer file also served as a basis for determining the adequacy of Sunbeam's reserves for expected returns.

119. As a consequence of the sales with a right of return and of the parking arrangements effected by the Company in 1997, Sunbeam customers attempted to return large amounts of product in the first quarter of 1998. In late January, Kersh, in the presence of Uzzi and Gluck, ordered the deletion of all return authorizations from the Company's computer system. Griffith learned about Kersh's instruction immediately.

120. Kersh, Gluck, Uzzi, and Griffith knew or recklessly disregarded facts indicating that Sunbeam could not avoid accepting authorized returns merely by deleting information from its computer system. They also knew or recklessly disregarded facts indicating that by delaying pending returns, Sunbeam would artificially increase its reported net sales (which would have been reduced by the profit margins associated with returns), and that deleting Sunbeam's internal records of return authorizations might conceal the inadequacy of its reserves for expected returns. Hence, by causing the deletion of all return authorizations from Sunbeam's computer system, Kersh, Gluck, Uzzi, and Griffith knowingly or recklessly falsified or caused the falsification of Sunbeam's books and records and knowingly or recklessly circumvented or caused the circumvention of Sunbeam's system of accounting controls.

121. Kersh and Gluck knew or recklessly disregarded facts indicating that Sunbeam was not adequately reserved for returns. At year-end 1996, the Company had a sales return reserve of \$6.5 million. At year-end 1997, that reserve was reduced by Kersh and Gluck, without justification, to \$2.5 million. Despite the existence of \$18 million in outstanding return authorizations, Kersh and Gluck further reduced Sunbeam's reserve for expected returns by another \$1 million at the end of February of 1998.

122. In early 1998, while Andersen was conducting its audit of Sunbeam's 1997 year-end financial statements and performing certain other work in connection with the bond offering, the auditors asked for information about pending returns. A high level of expected returns could have alerted Sunbeam's auditors to a) the existence of numerous sales with unlimited right of return; b) the need to reduce Sunbeam's first-quarter 1998 net sales to reflect returns; and c) the inadequacy of Sunbeam's return reserve. Any of these outcomes would have cast Sunbeam's financial condition in a less favorable light, thus affecting the completion of the bond offering and the purchases of the three companies. Knowing this, Kersh and Gluck told the auditors that the Company had adopted a "no-returns" policy and would accept no returns. This statement was false and misleading because Sunbeam had no reasonable expectation that it could refuse to accept previously authorized returns, or returns made pursuant to a specific contractual right of return or pursuant to Sunbeam's established practice of accepting returns of seasonal merchandise.

*In the first quarter of 1998, to facilitate Sunbeam's bond offering, Dunlap, Kersh, and Gluck sign a misleading representation letter.*

123. Sunbeam's \$700 million bond offering for the purpose of financing the acquisitions of the three companies was expected to be completed at the end of March 1998. In

connection with its role in the bond offering, Andersen sought certain representations from Sunbeam's management about the current state of its business. Management's representation letter, dated March 16, 1998, and signed by Dunlap, Kersh, and Gluck, disclosed that, through the end of February 1998, year-to-date sales were approximately half of sales in the same period of the prior year, a shortfall of approximately \$70 million. Going beyond the disclosure in the Company's 1997 Form 10-K, filed only 10 days before, the letter admitted that this shortfall was caused, in part, by the Company's early-buy program "which accelerated outdoor grill sales into the fourth quarter of fiscal 1997." Additionally, it acknowledged for the first time that the comparison to results from the first quarter of 1996 was affected by the non-recurring sale in January 1997 of excess and obsolete inventory.

124. Nevertheless, this letter was false and misleading because it omitted certain material facts. It did not mention the impact on sales from the many weeks of household inventory on hand with major customers. It also did not disclose the level of product returns, which would have served as an indication of the level of channel stuffing that took place in the fourth quarter of 1997, and would have further reduced net sales. Finally, it failed to mention the impact on earnings from 1997 costs flowing into 1998, as discussed in Paragraph 117 above. Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that the letter was false and misleading for these reasons.

*Sunbeam misleads the public in its March 19, 1998  
press release and its bond offering.*

125. On or about March 18, Sunbeam's investment banker, lender, loan arranger, and syndication manager ("banker"), learned that the Company's sales were about half of what they had been in the same period of the prior year. In response to the banker's request for further

information, Uzzi faxed it a document that included a schedule of quarterly sales to that date and of projected sales for the remainder of March. It forecast that, at a minimum, there would be a slight increase in sales over the same quarter of the previous year.

126. The document was materially false and misleading for two reasons. First, the sales-to-date numbers were *net* of costs to obtain those sales, but the projected sales for the remainder of the quarter were in *gross* numbers. They were added together, however, into what appeared to be projection of total *net* sales for the quarter. The failure to reduce the March numbers by cost of sales, therefore, caused the quarterly projections to be overstated. In addition, the sales-to-date numbers were calculated using an estimated cost of goods sold that was a fraction of actual cost. This also contributed to the inflation of the quarterly projections. The document presumed a cost of sales figure of 7-10% of *gross* sales, when the actual figure was over 20%. Uzzi knew or recklessly disregarded facts indicating that the information he provided to the banker was materially false and misleading.

127. Even these inflated numbers, however, indicated a strong possibility that the Company would not meet analysts' expectations for the quarter. The following day, March 19, 1998, the Company -- under pressure from the professionals involved in preparing the offering memorandum -- issued a press release, approved by Dunlap, Kersh, and Uzzi, stating:

[It] is possible that [Sunbeam's] net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for \$285 million to \$295 million, but net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. ... The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

128. The release falsely implied that Sunbeam's lower sales to retailers stemmed from an industry-wide effort to reduce inventory levels, rather than from Sunbeam's 1997 channel stuffing. Further, the Company's reference to the purported strength of its new products was false. Sunbeam's new products were a failure and, hence, the Company had no basis to claim they would support future growth.

129. Significantly, the press release was additionally misleading because it addressed only sales and not earnings. Based on internal projections, however, Dunlap, Kersh, and Uzzi knew or recklessly disregarded facts indicating that even if the Company somehow achieved the same sales level as in the first quarter of 1997, earnings per share would be substantially lower.

130. The false and misleading March 19 press release was included in the final version of the offering memorandum for Sunbeam's \$700 million bond offering, which was issued when the offering closed on March 25, 1998. Also included in that memorandum were the false and misleading financial statements issued in connection with the Company's year-end 1997 audit.

*In the first quarter of 1998, Sunbeam books \$35 million in improper bill and hold sales.*

131. Kersh and Gluck caused Sunbeam to record approximately \$35 million in revenue and approximately \$4 million in income for the first quarter of 1998 from bill and hold transactions that failed to comply with GAAP for the same reasons as the second and fourth-quarter 1997 bill and hold sales, described in Paragraphs 52 through 56 and 84 through 87 above, failed to do so. For example, the first-quarter 1998 bill and hold transactions again resulted from a program of inducing customers, already overloaded with Sunbeam inventory, to sign purchase orders well in advance of their actual need for product by offering discounts and extended payment terms. In addition, there was no customer business reason to request bill and hold sales,

as evidenced by the fact that the "hold" period in many instances was so short that the product would clearly have been available for delivery under standard terms.

132. Uzzi oversaw the program. Dunlap, Kersh, Gluck, Uzzi and Griffith knew or recklessly disregarded facts indicating that these transactions were mere revenue shifting devices, and that the recognition of revenue from these transactions in the first quarter of 1998 was improper, distorted the Company's reported results and would likely affect future reported performance.

*In the first quarter of 1998, Sunbeam records additional sales revenue by means of an undisclosed extension of its quarter-end date.*

133. Although Sunbeam's \$700 million bond offering memorandum was issued on March 25, the \$1.7 billion revolving loan agreement was not completed until March 30, one day after Sunbeam's first quarter would have ended consistent with the fiscal year-end then in effect. Sunbeam's lenders funded the first installment of the loan on April 1, 1998. The loan was to be syndicated to other banks in July. On March 29, however, Sunbeam was \$29 million short of the \$253.4 million in net sales it had promised to exceed in its March 19 press release. Sunbeam's real 1997 results and its first-quarter 1998 earnings shortfalls resulting from lower sales coupled with increased expenses would have put Sunbeam in default of its loan agreement on the day of its signing.

134. To avoid recognizing this sales shortfall, Kersh and Gluck, with the knowledge of Dunlap and Griffith, caused Sunbeam's fiscal year-end to be changed from the last Sunday of the year to a calendar year-end (December 31), thereby extending the first quarter from March 29 to March 31. This allowed the Company to record another \$5 million in net sales (on \$38 million in gross sales) from Sunbeam's operations and almost \$15 million in net sales from Coleman,



which Sunbeam acquired on March 30. Investors were never advised that the \$5 million in net sales improvement from Sunbeam's operations, excluding Coleman, resulted from the extension of the quarter by two days and the booking of \$38 million in gross sales in the last two days of the quarter. Sunbeam's failure to disclose this fact concealed the erosion of profit margins resulting from Sunbeam's aggressive channel stuffing.

*Sunbeam misleads the public in its April 3, 1998, press release and conference call.*

135. By the first week of April, Sunbeam could no longer contend that its results for the first quarter would reach the level it had predicted in its March 19 press release. On April 3, 1998, two days after the loan was funded and one day after all legal requirements were fulfilled and the acquisitions of Signature Brands and First Alert became final, the Company issued a press release drafted by Dunlap, Kersh, and Gluck, announcing that Sunbeam expected to show a loss for the quarter. It attributed the earnings shortfall to sales 5% below those of the same quarter of 1997 and one-time charges related to the three acquisitions. The release quoted Dunlap as follows:

Our first quarter started slowly this year after an excellent Holiday season; however, we fully expected our grill sales, especially reorder business late in the quarter, to meet a level, which was not realized. In addition, we believe retailers are continuing to manage down their inventories, although retail sales reports are encouraging. We were offered to sell additional product at margins that we thought were unacceptable, and we rejected that business... We had an excellent March and had expected until the very end of the quarter that we could exceed last year's results.

Although this release provided a misleadingly incomplete picture of the reasons for Sunbeam's earnings shortfall, as discussed below, Sunbeam's stock price dropped by over 24%.

136. On the same day, Dunlap and Kersh held a telephone conference with analysts. In the conference call, Dunlap and Kersh expanded on the press release by stating that the acquisition-related one-time charges meant the difference between a profit and a loss for the quarter.

137. Thus, Dunlap, Kersh and Gluck knowingly or with reckless disregard for the truth, attempted to gloss over the first-quarter repercussions of Sunbeam's 1997 earnings management, and in particular, its late December channel stuffing, by falsely blaming first-quarter results on a surprising slowdown after "an excellent Holiday season." In the release and the conference call, Dunlap, Kersh, and Gluck did not disclose, although they knew or recklessly disregarded facts indicating that Sunbeam's loss for the quarter would have been substantially greater were it not for: the concealment of the inadequacy of Sunbeam's reserves for returns by the deletion of return authorizations from its computer system; the first quarter bill and hold sales, which pulled \$35 million in net sales into the quarter; and the extension of the quarter-end date by two days, which added \$20 million in net sales to the quarter. In fact, the impact of both bill and hold sales and the \$20 million improvement in net sales due to the extension of the quarter-end were not disclosed until the middle of May, when Sunbeam filed its report on Form 10-Q for the first quarter of 1998.

138. Moreover, the statement in the press release that Sunbeam believed "until the very end of the quarter" that it would exceed results from the first quarter of 1997 was intentionally or recklessly false and misleading because Dunlap, Kersh, and Gluck, among others, had received detailed sales reports throughout the quarter that consistently predicted a substantial sales shortfall. The statement that Sunbeam had rejected low margin sales, suggesting that Sunbeam did not stuff its channels through aggressive discounting, was misleading because the Company,

sometimes with Kersh's personal approval, had sold product at margins that were a fraction of what was customary. Finally, Dunlap's statement that the Company would not have experienced a loss for the quarter but for the one-time charges was false and misleading because without those charges, had Sunbeam's financial statements been otherwise accurate, Sunbeam would have still posted a loss for the quarter.

*Sunbeam again misleads the public in its May 11, 1998, earnings release and press conference.*

139. On May 11, 1998, Sunbeam issued its earnings release for the first quarter of 1998. The release, drafted by, among others, Dunlap, Kersh, and Gluck, disclosed a loss of 52¢ per share for the quarter, compared to earnings of 8¢ for the same quarter of the prior year. Again, however, Sunbeam did not disclose the negative effect on the first quarter of the acceleration of sales in the fourth quarter of 1997, or the positive effect of the first-quarter bill and hold sales and the failure adequately to reserve for returned product. In the press release, the Company predicted \$1 earnings per share for the year, and promised annual growth in revenues and operating margins of 10-12% and 15-18%, respectively. These predictions were without a reasonable basis in fact and were contrary to Sunbeam internal forecasts predicting substantially poorer results of operations. Dunlap, Kersh, and Gluck knew or recklessly disregarded facts indicating that the May 11, 1998 press release was materially false and misleading for the above reasons.

140. In a press conference on the same day, May 11, 1998, Dunlap, Kersh, and Griffith addressed the earnings shortfall. Again, Dunlap falsely denied that the Company had engaged in channel stuffing: "I categorically reject all accusations that we tried to stuff the channel and artificially pump up the fourth quarter." Griffith echoed this assertion, stating: "[w]e were not

overloading the channel. We were just pursuing a sound marketing idea....” Kersh reiterated his earnings projection of \$1 per share for the full year, and added that the Company expected to earn 5-10¢ per share in the second quarter. The earnings projection for the second quarter, like the full year projection, was false and misleading because it was without a reasonable factual basis and contrary to Sunbeam’s internal projections. The prior week, specifically, Kersh had received an earnings estimate for the second quarter of 1.9¢ per share. Dunlap, Kersh, and Griffith knew or recklessly disregarded facts indicating that the above statements, made in the May 11, 1998, press conference, were materially false and misleading.

*Sunbeam issues a false and misleading report on  
Form 10-Q for the first quarter of 1998.*

141. Sunbeam filed its quarterly report on Form 10-Q for the first quarter of 1998 on May 15, 1998. It reported net sales of \$244.3 million, a decrease of \$9.2 million from the comparable period in 1997. The reported net sales figure was overstated, however, because of the non-GAAP bill and hold sales and failure to reserve adequately for product returns, discussed above in Paragraphs [x and y]. In the Form 10-Q filing, Sunbeam disclosed the existence of bill and hold sales in the first quarter but misleadingly described them as a means of accomplishing “improved customer service levels” rather than accurately describing them as improper accounting and another exercise in channel stuffing intended to salvage Sunbeam’s first-quarter financial results at the expense of later periods. Defendants Dunlap, Kersh, Gluck, and Griffith knew or recklessly disregarded facts indicating that Sunbeam’s Form 10-Q for the first quarter of 1998 was materially false and misleading.

*THE SCHEME UNRAVELS.*

142. In June 1998, negative press coverage concerning Sunbeam’s sales and accounting practices resulted in additional significant declines in the price of Sunbeam stock. It was now

trading at approximately \$20, down \$32 from its high of \$52 before the March 19 announcement. In a June 9, 1998, meeting with the Company's board of directors, Dunlap, Kersh, and Gluck falsely denied that Sunbeam management had engaged in accounting improprieties and Kersh misrepresented the extent of Sunbeam's second-quarter sales shortfall.

143. Alerted by another officer that Dunlap and Kersh had provided misinformation to it, the Sunbeam board voted to begin an investigation that led it to terminate Dunlap and Kersh. Also in June 1998, Andersen withheld its consent for use of its opinion in connection with a registration statement for resale by holders of the Zero Coupon bonds and Sunbeam announced that its prior financial statements should not be relied upon.

144. In November of 1998, the Company issued substantially restated financial statements for the six quarters from the fourth quarter of 1996 through the first quarter of 1998, the period during which the Dunlap team controlled Sunbeam's financial reporting. In connection with the restatement, Andersen issued a new unqualified opinion for the Company's restated financial statements. For 1997, Sunbeam reported \$93 million in income, approximately one half of the amount Harlow had previously opined was free from material errors. The price of Sunbeam's stock continued to fall after the termination of Dunlap, Kersh, and Gluck. The stock price dropped even further in response to the announcement of Sunbeam's 1996 and 1997 results, as restated. Subsequently, the Company filed a voluntary petition for Chapter 11 on February 5, 2001. The shareholders of Sunbeam, including individuals, mutual funds, pension funds, retirement accounts, and others saw the value of their stock decline by over \$5 billion from its peak in early March 1998 to February 5, 2001.

**CLAIM ONE**

**Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.**

**(Defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow)**

145. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 144 above.

146. As set forth more fully above, Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails and of the facilities of a national securities exchange, in connection with the offer, purchase or sale of securities: have employed devices, schemes, or artifices to defraud, have made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or have engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.

147. By reason of the foregoing, Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow have directly or indirectly, violated and aided and abetted violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

148. By reason of the foregoing, Dunlap and Kersh were each a controlling person of Sunbeam and its executives and employees, and Dunlap a controlling person of Kersh, within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], and by virtue of that control violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

**CLAIM TWO**

**Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13] thereunder.**

**(Defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow)**

149. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 144 above.

150. By engaging in the conduct described above, defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow caused Sunbeam to file materially false and misleading annual reports on Form 10-K and materially false and misleading quarterly reports on Form 10-Q with the Commission during the period December 1996 through at least May 1998.

151. By reason of the foregoing, defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow aided and abetted violations by Sunbeam of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

152. By reason of the foregoing, Dunlap and Kersh were each a controlling person of Sunbeam and its executives and employees, and Dunlap a controlling person of Kersh, within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], and by virtue of that control violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

**CLAIM THREE**

**Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] thereunder.**

**(Defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow)**

153. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 144 above.

154. By engaging in the conduct described above, defendants Dunlap, Kersh, Gluck, Uzzi, Harlow, and Griffith, aided and abetted failures to make and keep books, records and accounts which accurately and fairly reflected Sunbeam's transactions and dispositions of its assets, in violation of Section 13(b)(2)(A) of the Exchange Act, and further aided and abetted failures to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that Sunbeam's corporate transactions were executed in accordance with management's authorization and in a manner to permit the preparation of financial statements in conformity with generally accepted accounting principles in violation of Section 13(b)(2)(B) of the Exchange Act.

155. By engaging in the conduct described above, defendants Dunlap, Kersh, Gluck, Uzzi, Harlow, and Griffith directly or indirectly, falsified and caused to be falsified Sunbeam's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act in violation of Rule 13b2-1 thereunder.

156. By reason of the foregoing, defendants Dunlap, Kersh, Gluck, and Griffith, aided and abetted violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and defendants Dunlap, Kersh, Gluck, Harlow, and Griffith violated Rule 13b2-1 thereunder.



157. By reason of the foregoing, Dunlap and Kersh were each a controlling person of Sunbeam and its executives and employees, and Dunlap a controlling person of Kersh, within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], and by virtue of that control violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rule 13b2-1 thereunder.

#### **CLAIM FOUR**

##### **Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] (Defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow)**

158. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 144 above.

159. By engaging in the conduct described above, defendants Kersh and Gluck, aided and abetted by Harlow, Uzzi, and Griffith, knowingly circumvented or knowingly failed to implement a system of internal financial controls at Sunbeam.

160. By reason of the foregoing, defendants Kersh and Gluck violated Section 13(b)(5) of the Exchange Act and defendants Harlow, Uzzi, and Griffith aided and abetted these violations.

161. By reason of the foregoing, Kersh was a controlling person of Sunbeam and its executives and employees within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], and by virtue of that control violated Section 13(b)(5) of the Exchange Act.

**CLAIM FIVE**

**Violations of the Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] thereunder  
(Defendants Dunlap, Kersh, Gluck, and Griffith)**

162. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 144 above.

163. By engaging in the conduct described above, defendants Dunlap, Kersh, Gluck, and Griffith directly or indirectly made or caused to be made false and misleading statements or omitted or caused others 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 Sunbeam's independent accountants and Sunbeam's auditors in connection with audits and examinations of Sunbeam's required financial statements and in connection with the preparation and filing of documents and reports required to be filed with the Commission, in violation Exchange Act Rule 13b2-2.

164. By reason of the foregoing, defendants Dunlap, Kersh, Gluck, and Griffith violated and aided and abetted violations of the Exchange Act Rule 13b2-2.

165. By reason of the foregoing, Dunlap and Kersh were each a controlling person of Sunbeam and its executives and employees, and Dunlap a controlling person of Kersh, within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], and by virtue of that control violated Exchange Act Rule 13b2-2.

**PRAYER FOR RELIEF**

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

I.

Enter an Order permanently enjoining defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow from future violations and aiding and abetting future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder;

Enter an Order permanently enjoining defendants Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow from aiding and abetting future violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder;

Enter an Order permanently enjoining defendants Dunlap, Kersh, Gluck, and Griffith from aiding and abetting future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and from future violations and aiding and abetting future violations of Rule 13b2-1 thereunder;

Enter an Order permanently enjoining defendants Kersh, Gluck, Harlow, Uzzi, and Griffith future violations and aiding and abetting future violations of Section 13(b)(5) of the Exchange Act;

Enter an Order permanently enjoining defendants Dunlap, Kersh, Gluck, and Griffith from future violations and aiding and abetting future violations of the Exchange Act Rule 13b2-2;

Enter an Order directing Dunlap, Kersh, Gluck, Uzzi, Griffith, and Harlow to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

II.


Enter an Order, pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act prohibiting Dunlap, Kersh, Gluck, and Uzzi from serving as an officer or director of a public company; and

III.

Grant such other relief as this Court may deem appropriate.

Respectfully submitted,

Dated: May 14, 2001



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