UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS

Securities and Exchange Commission, Plaintiff, v. Robert D. Orr, Leland G. Orr, Michael S. Lowry, Michael S. Hess, Kyle L. Garst, and Travis W. Vrbas, Defendants.	)	Case No. 11-CV-2251 WEB/KGG JURY TRIAL REQUESTED IN KANSAS CITY

COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC") for its complaint alleges as follows against Robert D. Orr ("Robert Orr"), Leland G. Orr ("Leland Orr"), Michael S. Lowry ("Lowry"), Michael S. Hess ("Hess"), Kyle L. Garst ("Garst"), and Travis W. Vrbas ("Vrbas") (collectively "Defendants"):

I. SUMMARY OF THE CASE

1. This is an SEC enforcement action concerning a massive financial fraud conducted by the former senior management of Brooke Corporation, formerly headquartered in Overland Park, Kansas, and its publicly-traded subsidiaries, Brooke Capital Corporation ("Brooke Capital"), an insurance agency franchisor, and Aleritas Capital Corporation ("Aleritas"), a finance company specializing in providing loans to Brooke franchisees (Brooke Corporation, Brooke Capital, and Aleritas are collectively referred to as "the Brooke Companies").

2. In SEC filings and other public statements for year-end 2007 and the first and second quarters of 2008, the Defendants misrepresented the health of Brooke Capital's franchise

business, Aleritas' loan portfolio, and the increasingly dire liquidity and financial condition of the Brooke Companies.

3. Brooke Capital's management, Defendants Robert Orr, Leland Orr, Garst, and Vrbas, misrepresented two critical elements of the company's franchising business – the total number of franchise locations, and the financial health of their franchisees. Specifically, they inflated the number of franchise locations by including failed and abandoned locations in totals. They also concealed the nature and extent of Brooke Capital's financial assistance to its franchisees, which included making franchise loan payments to Aleritas on behalf of struggling franchisees.

4. By 2008, Brooke Capital's financial assistance to franchisees was so burdensome that Robert Orr and Leland Orr engaged in various undisclosed schemes to meet almost weekly liquidity crises. Among other things, they secretly borrowed funds received from insurance customers of Brooke Capital's franchisees that were supposed to be held by Brooke Capital in trust for payment of insurance premiums to independent third-party insurance companies. They also hid Brooke Capital's inability to timely pay funds owed to profitable franchisees and other Brooke Capital creditors. Robert Orr, Leland Orr, Hess, and Vrbas also misstated Brooke Capital's financial results by improperly recognizing fee revenue on loans by a Brooke Capital subsidiary, when in fact the loans had not been fully funded. In addition, Leland Orr caused Brooke Capital's failure to write off or expense uncollectable amounts owed to Brooke Capital by its many failed franchisees.

5. Management at Aleritas, Robert Orr, Leland Orr, Lowry, and Hess, concealed huge gaps in the company's funding that severely restricted its ability to originate new loans. They misrepresented that the company had successfully refinanced its primary working capital

debt facility. They also hid the company's inability to repurchase millions of dollars of short-term loans sold to its network of regional lenders.

6. As the liquidity of Aleritas became more desperate, Lowry sold or pledged the same loans as collateral to more than one lender. As a loan servicer, Aleritas also received payments from borrowers that it was obligated to promptly remit to lenders that owned the underlying loans. However, Robert Orr, Leland Orr, Lowry, and Hess diverted these borrower payments to cover Aleritas' operating expenses. Robert Orr, Leland Orr, Lowry, and Hess also concealed the rapid deterioration of Aleritas' loan portfolio by falsifying loan performance reports to lenders, understating loan loss reserves, and by failing to write-down Aleritas' residual interests in securitization and credit facility assets.

7. The scheme collapsed in September 2008 when Aleritas' lenders and securitization investors filed a lawsuit to halt the Brooke Companies' diversion of borrower payments for operating expenses and succeeded in petitioning the Court to put the Brooke Companies under the control of a special master. In October 2008, Brooke Corporation and Brooke Capital declared Chapter 11 bankruptcy and suspended most of their operations. Aleritas did not file bankruptcy but instead ceased all operations and transferred its loan servicing duties directly to its lenders and securitization trustees. The Brooke Companies were unable to reorganize in bankruptcy, and therefore in June 2009, the proceedings were converted to liquidation under Chapter 7 of the bankruptcy code.

8. The rapid collapse of the Brooke Companies had a devastating regional impact. With the cessation of bookkeeping and other centralized operations of Brooke Capital, hundreds of its franchisees failed. Because Brooke Capital franchisees had few, if any, tangible assets other than profits from their ongoing operations, lenders and securitization investors holding

franchisee loans originated by Aleritas suffered losses totaling hundreds of millions of dollars. Primarily as a result of losses suffered on Aleritas loans, several regional banks failed. One of Aleritas' largest lenders obtained funds from the U.S. Department of the Treasury under the Troubled Asset Relief Program.

II. JURISDICTION AND VENUE

9. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Sections 21(d) and (e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and(e)] for an order permanently restraining and enjoining Defendants and granting other relief.

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

11. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and 28 U.S.C. § 1391(b)(1) & (2). During the period of conduct alleged herein, each of the Defendants maintained offices and conducted business in the District of Kansas. In addition, Defendants Robert Orr, Leland Orr, Hess, Garst, and Vrbas resided and still reside in the District of Kansas, and many of the acts and practices described in this Complaint occurred in this district.

12. The Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, the means and instrumentalities of interstate commerce, or of the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

III. DEFENDANTS

13. **Robert D. Orr** resides in Smith Center, Kansas. Robert Orr was the founder and chairman of the boards of directors of Brooke Corporation and Brooke Capital until October 2008. He served as Chief Executive Officer ("CEO") of Brooke Capital from August 2008 through October 2008. Robert Orr also served as Chief Financial Officer ("CFO") of Aleritas from March 2008 until October 2008. Through a closely-held company, Brooke Holdings, Inc., Robert Orr was the largest shareholder of Brooke Corporation, Brooke Capital, and Aleritas.

14. **Leland G. Orr** is a resident of Phillipsburg, Kansas and is Robert Orr's brother. Leland Orr was Brooke Corporation's CFO from 1986 through March 2008, its CEO from March 2008 through October 2008, and vice-chairman of its board of directors from 2007 through October 2008. Leland Orr also served as the CFO of Brooke Capital from November 2007 until August 2008. He has been licensed as a CPA in Kansas since 1988.

15. **Michael S. Lowry** is a resident of Austin, Texas. Lowry served as the CEO and a member of the board of directors of Aleritas from February 2003 through March 2008. Lowry is the nephew of Robert and Leland Orr. From March 2008 through October 2008, Lowry was a senior vice-president at Aleritas, and assisted in preparing the company's financial statements during that time period.

16. **Michael S. Hess** is a resident of Smith Center, Kansas. Hess served as the CEO and a member of the board of directors of Aleritas from March 2008 through October 2008. Prior to his role with Aleritas, Hess served as the president and CEO of Brooke Capital Advisors, Inc. ("BCA"), a subsidiary of Brooke Capital.

17. **Kyle L. Garst** is a resident of Overland Park, Kansas. Garst served as the President, CEO, and a member of the board of directors of Brooke Capital from November 2007

through August 2008. He resigned as CEO and from the board of directors in August 2008, but remained as President until early September 2008.

18. **Travis W. Vrbas** is a resident of Phillipsburg, Kansas. Vrbas served as the CFO of Brooke Corporation from March 2008 through October 2008, and as the CFO of Brooke Capital from August 2008 until October 2008. Vrbas held the title of director of internal audit at Brooke Corporation from January 2004 through March 2008, and assisted Leland Orr in preparing the financial statements of Brooke Corporation and Brooke Capital during that time period.

IV. RELATED ENTITIES

19. **Brooke Corporation**, a Kansas corporation previously headquartered in Overland Park and Phillipsburg, Kansas, was a holding company primarily engaged in insurance franchising, insurance agency financing, and banking. Brooke Corporation owned a majority interest in and therefore consolidated the financial results of Brooke Capital, Aleritas, and Brooke Savings Bank ("Brooke Savings"), a/k/a Generations Bank. At times relevant to this Complaint, Brooke Corporation's common stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act. Brooke Corporation's stock was traded on NASDAQ Global Markets until it was suspended from trading on November 3, 2008, and de-listed on or about November 24, 2008. At this time, the stock reverted to its prior registration pursuant to Section 12(g) of the Exchange Act. Brooke Corporation filed a petition for Chapter 11 bankruptcy on October 28, 2008, which, in June 2009, was converted to bankruptcy liquidation pursuant to Chapter 7. The Bankruptcy Trustee is still liquidating Brooke Corporation's assets for the benefit of its creditors. On November 16, 2009, pursuant to Brooke Corporation's consent, the

SEC revoked the Section 12(g) registration of the company's securities pursuant to Section 12(j) of the Exchange Act.

20. **Brooke Capital**, a Kansas corporation previously headquartered in Overland Park and Phillipsburg, Kansas, was primarily a franchisor of insurance agencies. At all times relevant to this Complaint, Brooke Capital's common stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act. Brooke Capital's stock traded on the American Stock Exchange until it was suspended from trading on November 10, 2008, and de-listed on or about December 22, 2008. At this time, the stock reverted to its prior registration pursuant to Section 12(g) of the Exchange Act. Brooke Capital filed a joint petition for Chapter 11 bankruptcy with Brooke Corporation on October 28, 2008, which, in June 2009, was converted to bankruptcy liquidation pursuant to Chapter 7. The Bankruptcy Trustee is still engaged in liquidating the assets of Brooke Capital for the benefit of its creditors. On November 16, 2009, pursuant to Brooke Capital's consent, the SEC revoked the Section 12(g) registration of the company's securities pursuant to Section 12(j) of the Exchange Act.

21. **Aleritas, (f/k/a Brooke Credit Corporation)**, a Kansas corporation previously headquartered in Overland Park, Kansas, originated and serviced loans for the purchase and operation of Brooke Capital franchises, and other, primarily insurance-related businesses. At all relevant times, Aleritas' common stock was registered with the SEC pursuant to Section 12(g) of the Exchange Act. Aleritas' common stock was traded on the OTC Bulletin Board through early December 2008, at which time it began trading on the Pink Sheets. On or about November 14, 2008, Aleritas ceased all operations and transferred applicable loan servicing duties to other lenders or securitization trustees. On August 28, 2009, pursuant to Aleritas' consent, the SEC

revoked the registration of the company's securities pursuant to Section 12(j) of the Exchange Act.

22. Brooke Holdings, Inc. ("BHI") is a private holding company for the Orr family ownership of Brooke Corporation. BHI owned approximately 43% of Brooke Corporation. BHI in turn was owned by Robert Orr (approximately 74%), Leland Orr (approximately 22%), and various other Orr family members (the remaining 4%).

V. SUMMARY OF VIOLATIONS AND RELIEF SOUGHT

23. Defendant Robert Orr violated Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)], Sections 10(b), 13(b)(5), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78p(a)], and Rules 10b-5, 13b2-1, 13b2-2, 13a-14, and 16a-3 thereunder [17 C.F.R. §§ 240.10b-5, 13b2-1, 13b2-2, 13a-14, and 16a-3], and aided and abetted the violations by Brooke Corporation, Brooke Capital, and/or Aleritas of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), (b)(2)(A), and (b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 13a-1, 13a-11, and 13a-13]. Therefore, the SEC seeks an order permanently restraining and enjoining Robert Orr from violating or aiding and abetting violations of these provisions. The SEC also seeks an order permanently barring Robert Orr from serving as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)], imposing third-tier civil penalties under Section 20(d)(1) of the Securities Act and Section 21(d)(3)(A) of the Exchange Act, and ordering disgorgement with prejudgment interest.

24. Defendant Leland Orr violated Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), and 78m(b)(5)]; and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 thereunder [17

C.F.R. §§ 240.10b-5, 13b2-1, 13b2-2, and 13a-14], and aided and abetted the violations by Brooke Corporation and Brooke Capital of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), (b)(2)(A), and (b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 13a-1, and 13a-13]. Therefore, the SEC seeks an order permanently restraining and enjoining Leland Orr from violating or aiding and abetting violations of these provisions. The SEC also seeks an order permanently barring Leland Orr from serving as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)], imposing third-tier civil penalties under Section 20(d)(1) of the Securities Act and Section 21(d)(3)(A) of the Exchange Act, and ordering disgorgement with prejudgment interest.

25. Defendant Lowry violated Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), and 78m(b)(5)]; and Rules 10b-5, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 13b2-1, and 13b2-2], and aided and abetted the violations by Brooke Corporation and Aleritas of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), (b)(2)(A), and (b)(2)(B)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 13a-13]. Therefore, the SEC seeks an order permanently restraining and enjoining Lowry from violating or aiding and abetting violations of these provisions. The SEC also seeks an order permanently barring Lowry from serving as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)], imposing third-tier civil penalties under Section 20(d)(1) of the Securities Act and Section 21(d)(3)(A) of the Exchange Act, and ordering disgorgement and prejudgment interest.

26. Defendant Hess violated Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)]; Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), and 78m(b)(5)]; and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 thereunder [17 C.F.R. §§ 240.10b-5, 13b2-1, 13b2-2, and 13a-14], and aided and abetted the violations by Brooke Corporation, Brooke Capital, and/or Aleritas of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), (b)(2)(A), and (b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 13a-1, 13a-11, and 13a-13]. Therefore, the SEC seeks an order permanently restraining and enjoining Hess from violating or aiding and abetting violations of these provisions. The SEC also seeks an order permanently barring Hess from serving as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)], and imposing third-tier civil penalties under Section 20(d)(1) of the Securities Act and Section 21(d)(3)(A) of the Exchange Act.

27. Defendant Garst violated Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), and 78m(b)(5)]; and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 thereunder [17 C.F.R. §§ 240.10b-5, 13b2-1, 13b2-2, and 13a-14], and aided and abetted the violations by Brooke Corporation and Brooke Capital of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), (b)(2)(A), and (b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 13a-1, and 13a-13]. Therefore, the SEC seeks an order permanently restraining and enjoining Garst from violating or aiding and abetting violations of these provisions. The SEC also seeks an order permanently barring Garst from serving as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act [15

U.S.C. § 78u(d)], and imposing third-tier civil penalties under Section 20(d)(1) of the Securities Act and Section 21(d)(3)(A) of the Exchange Act.

28. Defendant Vrbas violated Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), and 78m(b)(5)], and Rules 10b-5, 13b2-1, and 13a-14 thereunder [17 C.F.R. §§ 240.10b-5, 13b2-1, and 13a-14], and aided and abetted the violations by Brooke Corporation and Brooke Capital of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), (b)(2)(A), and (b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 13a-1, and 13a-13]. Therefore, the SEC seeks an order permanently restraining and enjoining Vrbas from violating or aiding and abetting violations of these provisions. The SEC also seeks an order permanently barring Vrbas from serving as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)], and imposing third-tier civil penalties under Section 20(d)(1) of the Securities Act and Section 21(d)(3)(A) of the Exchange Act.

VI. DEFENDANTS' ROLES IN THE BROOKE COMPANIES' SEC FILINGS AND OTHER PUBLIC STATEMENTS

29. For the periods at issue, because Brooke Capital and Aleritas were material reporting segments, Brooke Corporation's periodic SEC filings pursuant to the Exchange Act largely repeated the substantive disclosures contained in those companies' respective SEC filings. On May 28, 2008, Brooke Corporation filed a Form S-3 with the SEC pursuant to the Securities Act that incorporated by reference the company's 2007 Form 10-K and its Form 10-Q for the first quarter of 2008.

30. Robert Orr had primary responsibility for drafting the Management's Discussion and Analysis ("MD&A") and other substantive disclosures for the following SEC filings: 2007

Forms 10-K for Brooke Corporation and Brooke Capital; and Forms 10-Q for the first and second quarters of 2008 for Brooke Corporation, Brooke Capital and Aleritas. He also signed the 2007 Forms 10-K for Brooke Capital and Brooke Corporation, and Brooke Corporation's Form S-3. In addition, he signed and certified the accuracy of Brooke Capital's Form 10-Q for the second quarter of 2008 and Aleritas' Forms 10-Q for the first and second quarters of 2008. He also spoke on Aleritas' analyst conference calls on May 12, 2008, and August 18, 2008.

31. Leland Orr signed and certified the accuracy of Brooke Corporation's 2007 Form 10-K and first and second quarter 2008 Forms 10-Q, signed Brooke Corporation's Form S-3, and signed and certified the accuracy of Brooke Capital's 2007 Form 10-K and first quarter 2008 Form 10-Q. Although Leland Orr resigned as Brooke Capital's CFO on August 15, 2008, he prepared the financial statements for the company's second quarter 2008 Form 10-Q, which was filed with the SEC three days after his resignation.

32. Lowry drafted and caused the issuance of Aleritas' March 10, 2008 press release. He also assisted in the preparation of financial statements for Aleritas in the first and second quarters of 2008 that he knew were filed with Aleritas' Forms 10-Q, and consolidated into financial statements filed with the Forms 10-Q of Brooke Corporation.

33. Hess signed and certified the accuracy of Aleritas' Forms 10-Q for the first and second quarters of 2008. He also assisted in the preparation of financial statements for Brooke Capital for year-end 2007 that he knew were filed with Brooke Capital's 2007 Forms 10-K, and consolidated into financial statements filed with the 2007 Form 10-K of Brooke Corporation. Hess also spoke on Aleritas' analyst conference calls on May 12, 2008 and August 18, 2008.

34. Garst signed and certified the accuracy of Brooke Capital's 2007 Form 10-K and Form 10-Q for the first quarter of 2008, and he reviewed and provided comments to its Form

10-Q for the second quarter of 2008. He also reviewed and provided comments to relevant portions of Brooke Corporation's 2007 Form 10-K and Form 10-Q for the first quarter of 2008. Garst also spoke on Brooke Capital's March 14, 2008 analyst conference call.

35. Vrbas signed and certified the accuracy of Brooke Corporation's 2007 Form 10-K and its Forms 10-Q for the first and second quarters of 2008, as well as Brooke Capital's Form 10-Q for the second quarter of 2008. He also signed Brooke Corporation's Form S-3.

VII. FACTS

A. The Inter-Relationship of Brooke Corporation, Brooke Capital, and Aleritas

36. Although the Brooke Companies were separate, publicly-traded entities, they were extremely interdependent. Brooke Corporation was essentially a holding company that owned approximately 81% of Brooke Capital and 62% of Aleritas.

37. Brooke Corporation consolidated the financial results of Brooke Capital and Aleritas. During 2007 and 2008, Brooke Capital and Aleritas generated approximately 81% and 15%, respectively, of Brooke Corporation's revenue.

38. Brooke Capital and Aleritas also were interdependent for their core businesses. Brooke Capital sold insurance agency franchises and provided bookkeeping and other back office support for its franchisees. Aleritas was a finance company that specialized in providing loans to franchisees. Aleritas sold the majority of loans it made to franchisees, but typically remained responsible for loan servicing. Almost all individuals that purchased insurance franchises from Brooke Capital did so by obtaining a loan originated by Aleritas. Although Aleritas originated loans for independent insurance agencies, managing general insurance agencies, and funeral homes, Brooke Capital's franchisees made up more than half of Aleritas' loan portfolio.

B. Robert Orr, Leland Orr, Garst, and Vrbas Misrepresented Brooke Capital's Franchise Location Numbers and Growth

39. Brooke Capital's franchise location numbers and growth were important metrics for investors because the company's largest sources of revenue were new franchise sales and its retention of a percentage of insurance commissions earned by its existing franchisees.

40. Historically, Brooke Capital added franchise locations by convincing pre-existing, independent insurance agencies to become Brooke franchisees, calling such locations "conversions." However, in 2004, Brooke Capital began its so-called "startup" franchise program, in which individuals attempted to start Brooke insurance agencies from scratch.

41. Although the program had various iterations, all startup franchisees paid a large up-front franchise fee ranging from $125,000 to $165,000. Most startup franchisees could then draw from $30,000 in working capital for salary and other expenses while they attempted to build their insurance business. With little or no down payment, startup franchisees typically financed the entirety of their franchise fee and initial working capital with an 8-18 month no principal or interest balloon loan originated by Aleritas.

42. By 2006, under Garst's direction, the startup program had become the main driver of Brooke Capital's purported franchise location growth.

43. During the first and second quarters of 2008, Robert Orr, Leland Orr, Garst, and Vrbas made or caused to be made the following public statements reporting continued robust sales of new franchises and commensurate growth in the total number of franchise locations:

- Brooke Capital's 2007 Form 10-K represented that Brooke Capital had 882 "franchised and company-owned locations," at year-end 2007, a net gain of 145 franchise locations from year-end 2006.

- In Brooke Capital's March 14, 2008 analyst conference call, Garst touted the growth of franchise locations by stating: "I first want to start with a recap of 2007 highlights. 2007 was about building a foundation and scale in our organization. The number of franchise and company-owned locations increased significantly from 737 to approximately 900 which represents over 2% of the total U.S. insurance agencies."
- In Aleritas' May 12, 2008 analyst conference call, Robert Orr responded affirmatively to an analyst's question as to whether there remained "800 or 825 . . . strong franchises" at Brooke Capital.

44. However, Robert Orr, Leland Orr, Garst, and Vrbas all knew, or were reckless in not knowing, that Brooke Capital's and Brooke Corporation's above public statements regarding the number of franchise locations were false and misleading because the totals included at least 150 startup locations that had failed and were no longer operating as Brooke insurance agencies.

45. Specifically, Robert Orr, Leland Orr, Garst, and Vrbas all knew, or were reckless in not knowing, that during 2007, Brooke Capital had been inundated with failing startup locations, which by year-end 2007 constituted approximately 17% of the company's purported "franchise locations." In fact, more startup locations had failed during 2007 than had been added.

46. In addition to the affirmative misrepresentations alleged above, pursuant to Item 303(a) of Regulation S-K, the MD&A sections of Brooke Capital's SEC filings were required to "describe any known trends that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations."

47. Robert Orr, Leland Orr, Garst, and Vrbas all knew, or were reckless in not knowing, that Brooke Capital failed to disclose or analyze the failure of 150 startup locations as an unfavorable trend in the MD&A section of its 2007 Form 10-K. To the contrary, Brooke Capital's MD&A misrepresented the favorable impact of franchisee expansion over the three most recent fiscal years by stating that "[o]ur combined results of operations have been significantly impacted by expansion of franchise locations in recent years."

48. Robert Orr, Leland Orr, Garst, and Vrbas all knew, or were reckless in not knowing, that Brooke Capital's 2007 Form 10-K also misrepresented that the rate of new franchise growth had "slowed" beginning in the fourth quarter of 2007 "primarily as the result of our . . . initiative . . . to emphasize quality of franchisees over quantity of franchisees" without disclosing that it had added only nine new franchises in the fourth quarter (a dramatic departure from the 225 new locations added in the first nine months of 2007) due, in significant part, to difficulty in recruiting new franchisees.

49. Brooke Corporation's 2007 Form 10-K similarly misrepresented that Brooke Capital had 882 "franchise locations," at year-end 2007 and was therefore also materially false and misleading.

C. Robert Orr, Leland Orr, Garst, and Vrbas Misrepresented the Nature and Extent of Brooke Capital's Financial Assistance to Franchisees

50. During 2007, Brooke Capital performed the bookkeeping for its franchisees, and therefore it tracked each franchisee's revenue and directly paid many of their expenses, such as franchise loan payments, rent, and utilities. Once a month, Brooke Capital "settled" with each of the franchisees. If a franchisee's commission revenue was greater than expenses, Brooke Capital cut the franchisee a check for its profits. However, if a franchisee's expenses exceeded its

revenue, Brooke Capital offered various forms of financial assistance, either at settlement or throughout the monthly cycle.

51. With respect to its financial assistance to franchisees, Brooke Capital's 2007 Form 10-K, ITEM 7, page 48, disclosed in relevant part:

> [Brooke Capital] assist[s] franchisees with *short-term cash flow assistance* by advancing commissions and granting *temporary* extensions of due dates for franchise statement balances owed by franchisees to us. Franchisees sometimes require *short-term cash flow assistance because of cyclical fluctuations in commission receipts*. . . . Despite commission fluctuations and uncollected [insurance customer] account balances, we expect franchisees to regularly pay their statement balances within a 30-day franchise statement cycle. Any commission advance that remains unpaid after 120 days is placed on "watch" status. (Emphasis added)

52. Brooke Capital made identical disclosures regarding its financial assistance to franchisees in its Forms 10-Q for the first and second quarters of 2008.

53. Robert Orr, Leland Orr, Garst, and Vrbas knew, or were reckless in not knowing, that these disclosures were materially false and misleading because Brooke Capital's financial assistance to franchisees was not "short-term," nor was it prompted by "cyclical fluctuations in commission receipts." Each of them knew, or was reckless in not knowing, that in fact, by year-end 2007, because over half of conversions and startups were not profitable, these franchisees were almost totally reliant upon long-term and accumulating financial assistance.

54. Robert Orr, Leland Orr, Garst, and Vrbas knew, or were reckless in not knowing, that it was materially false and misleading for Brooke Capital to represent that it "expected franchisees to regularly pay their statement balances within a 30-day franchise statement cycle." Although Brooke Capital placed conversion franchisees that had not repaid balances within four months on a "watch" status, this designation was meaningless as both conversion and startup franchises with unpaid balances were still provided with additional funds to enable them to

continue operating. Because these franchisees ran a monthly deficit, they continued to accumulate debt, with little or no ability to pay their existing, and often growing balances.

55. In addition to the affirmative misrepresentations alleged above, pursuant to Items 303(a) and (b) of Regulation S-K, the MD&A sections of Brooke Capital's SEC filings were required to "[i]dentify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way."

56. Robert Orr, Leland Orr, Garst, and Vrbas knew, or were reckless in not knowing, that Brooke Capital's MD&A had failed to disclose that, by year-end 2007, the nature and extent of its financial assistance to franchisees had materially decreased, and was reasonably likely to continue to materially decrease, the company's liquidity. Robert Orr, Leland Orr, Garst, and Vrbas caused Brooke Capital's omission of the following material facts regarding financial assistance to franchisees:

- Brooke Capital omitted disclosure of the high percentage of franchisees requiring financial assistance, and its impact on liquidity. For example, by year-end 2007, more than half of Brooke Capital's conversion and startup franchises were unable to pay their expenses as they came due, and therefore required *monthly* financial assistance.
- Brooke Capital omitted disclosure that the dollar amount of its financial assistance to franchisees had materially decreased Brooke Capital's liquidity. In fact, during 2007, there were so many unprofitable franchisees, and their combined losses were so large, that aggregate franchisee revenue was insufficient to cover aggregate franchisee

expenses. Brooke Capital covered the losses of its unprofitable franchisees only through nonrecurring revenue generated from new franchise sales.

- Brooke Capital omitted disclosure that its financial assistance to franchisees included making loan payments to its sibling company, Aleritas, on behalf of dozens of unprofitable franchisees that otherwise would have been unable to make their loan payments. At year-end 2007, Brooke Capital was paying more than a half-million dollars each month in franchisee loan payments to Aleritas. By the end of the first quarter of 2008, Brooke Capital covered more than $700,000 per month in franchisee loan payments.

57. Brooke Corporation's 2007 Form 10-K was also materially false and misleading because it omitted the material facts regarding Brooke Capital's financial assistance to franchisees alleged in the preceding paragraph.

D. Leland Orr, Robert Orr, Garst, and Vrbas Concealed Brooke Capital's Misuse of Funds to Meet Liquidity Shortfalls

58. Historically, Brooke Capital had relied upon revenue from its sale of new franchises to cover the huge financial burden of providing financial assistance to its many unprofitable franchisees.

59. But with the sharp decline in new franchise sales in the first and second quarters of 2008, Brooke Capital was forced to misuse funds to meet its liquidity shortfalls. Items 303(a) and (b) of Regulation S-K require registrants to "[i]dentify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way." Although known by Leland Orr, Robert Orr, Garst, and in some instances, Vrbas, none of them disclosed to investors Brooke Capital's materially decreasing liquidity and the company's misuse of funds

to meet liquidity shortfalls in Brooke Capital's Forms 10-Q for the first and second quarters of 2008.

60. Brooke Capital received insurance premiums from franchisee customers that were supposed to be held in a trust account pending transmittal to the independent third-party insurance companies. But in early April 2008, Leland Orr and Robert Orr directed that Brooke Capital delay forwarding some of these customer insurance premiums, and instead, use the funds for its own operating expenses.

61. Garst became aware of the delayed premium payments when, at the end of April 2008, he began receiving e-mails and telephone calls from irate agents whose customers had received insurance policy cancellation notices. While Brooke Capital subsequently paid the customer insurance premiums, it continued to pay them late, putting customers at risk of lapses in insurance coverage.

62. In July of 2008, Garst learned from a third-party management consultant that Brooke Capital's premium trust account was once again short, by approximately $5 million, because the funds had been used for operating expenses.

63. From at least January through May 2008, Leland Orr and Robert Orr directed, and Garst knew or should have known that Brooke Capital used funds earned by its franchisees on an intra-month basis to meet operating expenses, and then scrambled to raise cash from other sources to "settle" each month with profitable franchisees. From January 2008 forward, Brooke Capital was unable to timely "settle" with at least some of its franchisees.

64. From at least March 2008 forward, Leland Orr and Robert Orr directed that the company systematically delay or withhold payments to the company's creditors because Brooke Capital lacked the funds with which to pay. By at least May 2008, Garst and Vrbas also knew

that because of Leland Orr's practice of refusing to mail printed accounts payable checks, he had "stacks" of them in his office. As a result of this practice, Brooke Capital owed, but was unable to pay, vendors and franchisees more than $3 million by the end of the first quarter of 2008 and more than $6 million by the end of the second quarter of 2008.

65. Leland Orr and Robert Orr also caused Brooke Capital's failure to disclose in its second quarter Form 10-Q that by the end of April 2008, and for every month after, the company began running significant overdrafts of its operating account at Brooke Savings Bank ("Brooke Savings"). At the direction of Leland Orr and Robert Orr, Aleritas covered Brooke Capital's April 2008 overdrafts by borrowing $1.3 million from a commercial credit facility and transferring the funds to Brooke Capital. To cover subsequent possible overdrafts, Leland Orr, on a daily basis, authorized personnel at Brooke Savings to move cash to Brooke Capital's account at day-end, as necessary, from other Brooke entities and then move the funds back the next morning.

E. Robert Orr, Leland Orr, Hess, and Vrbas Misstated Brooke Capital's Financial Results By Improperly Recognized Revenue on Unfunded Loans

66. During the last week of December 2007, when Brooke Capital was facing reporting a net loss for 2007, its subsidiary, BCA improperly recognized all of its contemplated fee revenue relating to three loans it purported to originate, even though the loans were not fully funded by year-end. This revenue recognition was inappropriate and not in conformity with generally accepted accounting principles ("GAAP") which require the earnings process to be substantially complete before revenue can be recognized.

67. In a transaction with a first borrower, BCA signed documents purporting to originate a $14,162,500 loan. However, the only portion of the loan funded by year-end was the precise amount of BCA's fees due for the transaction, $1,662,500.

68. Because no other portion of the loan was funded, the purported borrower in the transaction received nothing other than a commitment that BCA would provide loan funding by February 29, 2008. Yet, BCA recognized the entire amount of its $1,662,500 fee as revenue in 2007.

69. In a transaction with a second borrower, Hess offered and the borrower agreed on December 27, 2007, to increase its loan amount by $5 million, with funding of the additional $5 million anticipated in the first quarter of 2008. Despite not funding the additional $5 million in 2007, BCA improperly recognized the entirety of its fees on the transaction as revenue in 2007.

70. In a transaction with a third borrower, BCA only located about $2.7 million of the $4.7 million funding promised by December 28, 2007. BCA nonetheless improperly recognized fees on the entire $4.7 million of promised funding as revenue in 2007.

71. Although the respective borrowers had not received all of their funds by year-end 2007, Hess nevertheless directed the improper recognition of $2,361,000 of loan fees and brokerage consulting fees as revenue in BCA's financial statements.

72. BCA's improper revenue recognition on these three transactions caused fiscal year-end net income before taxes to be materially overstated by $2.3 million, or 220% and 1,218%, for Brooke Capital and Brooke Corporation, respectively, making those companies' 2007 Forms 10-K materially false and misleading.

73. At year-end 2007, Robert Orr, Leland Orr, and Vrbas were only aware of BCA's improper revenue recognition on the transaction with the first purported borrower, but this transaction alone caused fiscal year-end net income before taxes to be overstated by $1.6 million, or 155% and 858%, for Brooke Capital and Brooke Corporation, respectively, which was sufficient to make those companies' 2007 Forms 10-K materially false and misleading.

74. During the first quarter of 2008, BCA located full funding for borrowers in the second and third transactions alleged above. However, BCA remained unable to fund the $14,162,500 loan contemplated in the first transaction, and by April 18, 2008, the intended borrower filed suit to demand funding.

75. During the preparation of BCA's financial statements for the first quarter of 2008, both a staff accountant and the vice-president of BCA advised Hess and Leland Orr to reverse the revenue on the transaction because the $14,162,500 loan was still not funded. However, Hess and Leland Orr refused to reverse the revenue or to record a reserve against the receivable.

76. BCA never funded the $14,162,500 loan contemplated in the first transaction alleged above. During the second quarter of 2008, after consultation with Leland Orr, Robert Orr directed a reserve of $800,000 in Brooke Capital's financial statements, less than half of the $1,662,500 in fees recorded by BCA on the loan.

F. Leland Orr Misstated Brooke Capital's Financial Results for the First Quarter of 2008 By Failing to Write-Off Unrecoverable Amounts Owed to Brooke Capital By Failed Franchisees

77. As alleged in paragraphs 50 through 56, Brooke Capital provided extensive financial assistance to many of its unprofitable franchisees, and it recorded the majority of those amounts as receivables on its balance sheet. Leland Orr caused Brooke Capital to materially understate its net loss by failing to write off or reserve for receivables owed by its franchisees that were known to be uncollectible by the first quarter of 2008. This was inappropriate and not in accordance with GAAP, which provide that a loss should be charged to income when it is probable that an asset has been impaired and the amount of loss can reasonably be estimated

78. Specifically, during the first quarter of 2008, Brooke Capital decided to liquidate more than 60 chronically unprofitable franchise locations. Leland Orr knew that Brooke Capital

did not perform any analyses of the collectability of receivables owed to it by the franchises slated for liquidation. Instead, at Leland Orr's direction, Brooke Capital reserved a percentage of total franchise receivables, and only wrote off specific amounts due from troubled franchise locations if and when the franchise location was resold to new franchisees.

79. Brooke Capital's franchise receivable reserve policy, as implemented by Leland Orr, was not in conformity with GAAP because when franchise locations became so financially troubled that they were scheduled for liquidation, the company had almost no probability of collecting receivables owed by those franchisees and the amounts were reasonably estimable. In the first quarter of 2008, Brooke Capital failed to write off or reserve for $2.6 million of receivables owed by 47 of the 60 franchise locations set for liquidation. Brooke Capital's failure to write off receivables associated with franchisee locations set for liquidation caused net loss before taxes for the first quarter of 2008 to be understated by $2.6 million, or 40% and 5%, for Brooke Capital and Brooke Corporation, respectively, causing those companies' first quarter 2008 Forms 10-Q to be materially false and misleading.

G. Lowry, Robert Orr, Leland Orr, and Hess Concealed Aleritas' Inability To Fully Refinance its Working Capital

80. Throughout 2007, Aleritas' primary source of working capital was a senior debt facility from a hedge fund totaling approximately $50 million. By late November 2007, the relationship had soured such that Aleritas and the hedge fund mutually agreed that Aleritas needed to find alternate financing to pay off the facility within approximately 90 days.

81. Although Aleritas sought to raise $52.5 million from a syndicate of commercial lenders, it only raised $41 million by the deadline.

82. Nevertheless, on March 10, 2008, Lowry drafted and caused the issuance of an Aleritas press release that stated in relevant part: "Aleritas Capital Corp. today announced that it

has successfully closed a senior debt offering totaling $52.5 million . . . [a]pproximately $46.7 million of loan proceeds [from the senior debt offering] were used to retire the company's debt obligations [to the hedge fund]."

83. Lowry knew that Aleritas' March 10, 2008 press release was false and misleading because Aleritas had not "successfully closed a senior debt offering totaling $52.5 million," nor had it used "$46.7 million of loan proceeds . . . to retire the company's debt obligations." In fact only approximately $41 million had been raised in the senior debt offering at closing, leaving Aleritas with a critical shortfall in its working capital of approximately $11 million.

84. Aleritas' other main source of working capital was its sale of short-term loan participations (a percentage interest in a specific loan) to its network of more than 100 regional lenders.

85. Aleritas used its sale of short-term loan participations to assist with its cash flow needs, much like larger companies use commercial paper. Aleritas often sold short-term participations in startup franchises, or other higher-risk loans that did not qualify as collateral for its securitizations or commercial credit facilities.

86. Aleritas made short-term loan participations attractive to its network of regional lenders by expressly agreeing to repurchase the loans within 30 to 90 days and by offering above-market interest rates and the payment of other fees. With these incentives, regional lenders had often agreed to extend short-term participations for months at a time.

87. By the end of March 2008, Robert Orr, Leland Orr, Lowry, and Hess knew that Aleritas had defaulted on its obligations to repurchase almost $17 million of short-term loan participations as they came due. Each of them also knew that Aleritas had been unable to negotiate extensions because lenders were unwilling to maintain lower quality loans on their

books, even with Aleritas' repurchase guarantee. However, Aleritas' Form 10-Q for the first quarter of 2008 materially failed to disclose Aleritas' default on almost $17 million of short-term participations by the end of the quarter.

88. Robert Orr, Leland Orr, Lowry, and Hess also knew that Aleritas was unable to cure its defaults in short-term participations during the second quarter of 2008. Aleritas' Form 10-Q for the second quarter of 2008 was materially misleading because it only disclosed Aleritas' forecast of short-term participations coming due by the end of February 2009. Aleritas' second quarter 2008 Form 10-Q failed to disclose that the company was still in default on at least $17 million of past due short-term participations.

H. Lowry Sold and/or Pledged the Same Loans to Multiple Lenders

89. Aleritas' business model contemplated retaining ownership of very few of the loans that it originated. Instead, Aleritas was largely dependent upon three methods of funding loans: (1) selling (participating) short-term and long-term loans to its network of regional lenders; (2) bundling loans into securitizations; and (3) selling or pledging loans to two large credit facilities. As Aleritas' liquidity situation deteriorated during 2008, the company systematically defrauded each of its primary sources of funding.

90. By approximately the fourth quarter of 2007, Aleritas had fully utilized a $150 million credit facility. Therefore, Aleritas had only one other major credit facility left to use, which also had a $150 million limit.

91. In approximately mid-February 2008, Lowry learned that the syndicate of commercial lenders working to refinance Aleritas' hedge fund debt anticipated a shortfall of approximately $11 million. In order to cover this shortfall, and to repurchase some short-term

loan participations coming due, between February 20 and March 7, Lowry pledged 122 loans to Aleritas' remaining credit facility, resulting in Aleritas' receipt of more than $30.9 million.

92. At the time Lowry directed the pledge of these loans, he knew, but withheld from the credit facility, that as many as 70 of the loans had already been sold or pledged as collateral to other lenders. Lowry also knew, but concealed, that none of the 122 loans qualified as collateral under the terms of the credit facility because the underlying borrowers were lower-quality, inexperienced franchisees with two-year balloon payment loans.

93. During a routine audit of loan collateral in late March 2008, the credit facility discovered the ineligible collateral and demanded a cure or the return of its funds. When Aleritas was unable to comply, the credit facility immediately cut off further use of the facility and demanded that Aleritas correct its existing collateral deficiencies.

94. In late March 2008, Lowry informed Robert Orr, Leland Orr, and Hess that he had pledged loans that had been already sold or pledged as collateral to other lenders to Aleritas' remaining credit facility. From that point until the collapse of the Brooke Companies in October 2008, Robert Orr and Hess directed Aleritas' effort to contact small lenders which had purchased the loans that later were pledged to the credit facility in order secretly to swap the loans for different, unencumbered collateral. At Robert Orr's direction, Aleritas also began refinancing the two-year balloon payment loans to straight amortization terms to meet the technical eligibility requirements of the credit facility.

95. In Aleritas' first quarter analyst call on March 14, 2008, Hess misrepresented to investors that Aleritas no longer planned to use its remaining credit facility because Aleritas "[did] not have the capital to use their facilities which require over-collateralization of 20 to 25 percent." Although the credit facility did require over-collateralization by only advancing

approximately 80% of the amount of the loans pledged, Hess' statement was materially false and misleading because it did not disclose that the credit facility cut off further use of its facility after discovering that Aleritas had pledged as collateral loans it had previously sold to other banks and loans that Lowry knew were ineligible.

96. Similarly, in Aleritas' second quarter analyst call on May 12, 2008, Robert Orr falsely claimed that Aleritas had discontinued use of the facility to save fees and that the company continued to enjoy "good working relationships" with its remaining credit facility and other lenders.

97. Aleritas' Forms 10-Q for the first and second quarter of 2008, signed by Robert Orr and Hess, also failed to disclose that the company's only remaining credit facility had halted its use because of Aleritas' fraudulent pledge of duplicate and ineligible collateral.

98. Under Lowry's direction, Aleritas' duplicative sale or pledge of loans as collateral extended beyond those loans inappropriately pledged to its credit facility. By late March 2008, Aleritas' credit review staff had indentified more than 30 other loans that had been both pledged as collateral to one lender or securitization and sold to a different lender. In late March 2008, Aleritas' outgoing CFO informed Robert Orr and Lowry of the over-committed loans, totaling approximately $7.7 million.

99. Aleritas had no ability to return the ill-gotten cash it received from the lenders, and the lenders were unwilling to swap over-committed loans for the unencumbered, but poor-quality loans remaining in Aleritas' inventory.

100. Faced with this predicament, Lowry, Robert Orr, and Hess directed Aleritas' accounting staff to prepare and maintain a "payables list" to track, among other things, amounts owed but not paid to lenders that had purchased the same loans. At the end of the first quarter of

2008, the payables total related to over-pledged loans and diverted borrower payments (as alleged below) was at least $14.2 million.

101. Despite their knowledge of Lowry's sale or pledge of the same loans to more than one lender, Robert Orr and Hess omitted disclosure of it in Aleritas' Form 10-Q for the first quarter of 2008. Instead, page 48 of the MD&A section of Aleritas' Form 10-Q mischaracterized the reason for the large increase in accounts payable as partially attributable to a "*delay* in making loan payments and loan payoffs." (Emphasis added).

I. Lowry, Robert Orr and Hess Diverted Borrower Payments Owed To Lenders For Aleritas' Operating Expenses

102. Aleritas sold loans that it originated to securitizations and its network of regional lenders, and sold or pledged loans to its credit facilities. However, even for loans that it had sold, Aleritas remained as the loan servicer. In this capacity, Aleritas was obligated to receive and track periodic loan payments and loan payoffs from borrowers (most of whom were Brooke Capital franchisees). Aleritas was then obligated to remit borrower payments promptly to the owners of the loans.

103. However, beginning in at least January 2008 and throughout the first quarter, Lowry directed the fraudulent diversion of borrower payments and payoffs owed to lenders, in order to fund Aleritas' operating expenses.

104. Robert Orr and Hess continued this practice at various times from March 2008 through the Court's appointment of a special master to oversee the Brooke Companies in September 2008.

105. Beginning in April 2008, Hess and/or Robert Orr personally determined amounts paid to participating lenders that did not correspond to funds received from underlying

borrowers. In many instances, lenders that owned the loans received payments less than had been paid to Aleritas by the borrowers.

106. In one particularly egregious diversion, in April 2008, Hess and Robert Orr requested that a large borrower pay down its loan by $5 million, but then failed to remit prorated amounts due to the participating lenders that owned the loan. In this and other instances, Hess and Robert Orr directed that Aleritas continue making the same monthly payments to the participating lenders, as though no payoff or pay down had occurred.

107. In approximately May 2008, Robert Orr ordered the disabling of Aleritas' loan software that had automatically calculated funds to be transferred to loan owners when borrower payments were received, so that he and Hess could determine an alternate amount of funds to be remitted.

108. By September 2008, Aleritas had diverted more than $3.1 million from one of Aleritas' credit facilities, and more than $5.6 million from securitizations and participating lenders. Aleritas also included diverted funds within its balance sheet line item of accounts payable in the company's Form 10-Q for the first quarter of 2008, and mischaracterized the reason for the material increase as being related to a "delay" in remitting payments to lenders.

J. Hess, Robert Orr, and Lowry Concealed The Brooke Companies' Scheme to Borrow Funds from Its Own Borrowers

109. At the end of March 2008, the Brooke Companies sought cash infusions from any available source. As alleged herein, Brooke Capital needed cash to continue propping up unprofitable franchisees. Similarly, Aleritas had urgent cash requirements to cover the shortfall in the refinance of its working capital and to attempt to repurchase short-term participations as they came due.

110. In Hess' capacity as president and CEO of BCA, he had brokered loans for several managing general insurance agencies ("MGAs"), which constituted some of the largest loans originated by Aleritas. MGA loans were typically multi-million dollar loans with high credit quality. Moreover, in 2008, most MGA borrowers were thriving, and as a result, many had the capacity to repay their loans early.

111. In late March 2008, Hess, acting on behalf of Brooke Capital, sought approximately $9 million from three of Aleritas' MGA borrowers.

112. In essence, Hess requested that the MGAs make a short-term loan to Brooke Capital. The basic structure of the transactions was as follows: (i) the MGAs agreed to provide Brooke Capital with money for the purchase of Brooke Capital's interest in a large loan; and (ii) Brooke Capital was obligated to repay the money in 90 days by repurchasing the loan interest.

113. However, at the direction of Robert Orr and with Hess' knowledge, Lowry signed a side-letter to each of the MGAs guaranteeing that if Brooke Capital failed to repay the funds, *Aleritas* would reduce the MGAs' outstanding loan principal by that amount, and waive any prepayment penalties.

114. At the time Lowry provided the side letters to the MGAs, Lowry, Robert Orr, and Hess knew that Aleritas had no authority to agree to reduce loan principal because each of the MGA loans had been previously sold to other lenders. Specifically, by March 2008, Aleritas was only the servicer of the MGA loans in question, and therefore it had no right to agree to the reduction of loan principal, even on a contingent basis.

115. In June 2008, Brooke Capital received extensions on its agreement to repay the MGAs because it was unable to pay. At that time, Aleritas was unable to fulfill its side-letter commitments to reduce the MGAs' loan balances.

116. If, after the date of an entity's financial statements but before those financial statements are issued, information becomes available indicating that there is at least a reasonable possibility that a loss was incurred, GAAP requires disclosure of the nature of the loss contingency and an estimate of the amount or range of loss.

117. Robert Orr and Hess knew that Aleritas' first quarter 2008 Form 10-Q omitted any mention of these material guarantees. Aleritas' second quarter 2008 Form 10-Q contained the following cryptic and misleading disclosure: "In some cases, [Aleritas] has agreed to reduce borrower balances on loans sold to participating lenders as a condition of extending credit to Aleritas, in which the Company has a $13,000,000 contingent liability." Robert Orr and Hess knew that this disclosure was false and misleading because, among other things, the MGA borrowers provided credit to Brooke Capital, not Aleritas, and because Aleritas failed to disclose that as merely the loan servicer, it had no authority to agree to reduce borrower balances.

118. Aleritas' first and second quarter 2008 Forms 10-Q were materially false and misleading because the company failed to adequately disclose its guarantees of Brooke Capital's loans from Aleritas' borrowers in conformity with GAAP.

K. Lowry and Robert Orr Misrepresented the Performance of Aleritas' Loan Portfolio

119. Each month, Aleritas was required to provide credit evaluation reports (a/k/a "pass/watch/fail reports") to each of its securitizations and credit facilities assessing the performance of the underlying loans sold or pledged as collateral. Under the terms of each of the credit facilities, loans rated as "fail" were excluded as collateral, while "watch" loans were essentially discounted. If the number of loans rated fail or watch caused the total collateral to fall beneath certain thresholds, Aleritas was required to post additional loans or cash as collateral.

120. After pledging 122 previously-sold and ineligible loans to Aleritas' sole, unused credit facility in late February and early March 2008, Lowry almost immediately was confronted with another problem – many of the pledged loans were rated "fail" or "watch" and thus ineligible or discounted as collateral for the $30.9 million that Aleritas had received.

121. Beginning in March 2008, Lowry falsified the credit evaluation report to the credit facility by directing a clerical employee to double the actual revenue reported by franchise loans initially rated fail or watch. By doubling franchisees' revenue, Lowry significantly reduced the franchisees' debt to revenue ratios, which was the primary metric for determining loan ratings of pass, watch, or fail.

122. In April 2008, this time with Robert Orr's concurrence, Lowry again manipulated the credit evaluation report to the credit facility by using an aggressive and baseless formula for *forecasted* as opposed to actual revenue, thereby again reducing franchisees debt to revenue ratios. Aleritas never publicly disclosed its manipulation of the credit evaluation reports or the material deficiencies in its unused credit facility.

123. Aleritas also had pledged all loans held in its inventory (those loans not pledged or sold to other lenders) as collateral to the syndicate of lenders that had refinanced its working capital in March 2008.

124. In late May 2008, Aleritas' credit review staff reported to Robert Orr, Hess, and Lowry that more than 43% of the startup loans in Aleritas' inventory were rated "fail," resulting in a collateral deficiency to the lending syndicate of more than $6.7 million.

125. Two days later, Lowry directed various manipulations to the startup credit review methodology, including halving the monthly revenue to be earned by a franchisee required to rate it as a "pass."

126. Aleritas, at Lowry's direction and with Robert Orr's knowledge, concealed its changed methodology from its syndicate of participating lenders and omitted disclosure of the material collateral deficiencies to the lending syndicate in its Form 10-Q for the first quarter of 2008.

127. Brooke Corporation's first quarter 2008 Form 10-Q also omitted disclosure of these material collateral deficiencies and was therefore also materially false and misleading.

L. Robert Orr, Lowry, and Hess Concealed That Brooke Capital Made Loan Payments to Aleritas On Behalf of Unprofitable Franchisees

128. As alleged in paragraphs 50 through 56, Brooke Capital made loan payments to Aleritas on behalf of many of its unprofitable franchisees. Aleritas should have treated this portion of its loan portfolio inventory as "fail" and disclosed any collateral deficiency. Yet, although Robert Orr, Hess, and Lowry each were aware of these payments and their distortion of the performance of Aleritas' loan portfolio, they omitted any disclosure of these payments or their impact in Aleritas' Forms 10-Q for the first and second quarters of 2008, and concealed the true, poor condition of the franchise loan portfolio from investors, lenders, and outside auditors. Brooke Corporation's Forms 10-Q for the first and second quarters of 2008 also concealed the true, poor condition of Aleritas' franchise loan portfolio.

M. Robert Orr, Hess, and Lowry Misstated Aleritas' Financial Results By Understating Aleritas' Loan Loss Reserves

129. As a specialty finance company, one of Aleritas' most important financial metrics was the performance of its loan portfolio, and its corresponding loan loss reserves. In the first quarter of 2008, Aleritas increased its loan loss reserves from $1.65 million to $14.1 million, an increase of about $12.5 million, or 700%. Primarily in response to this announcement, Aleritas stock dropped from $1.40 to $1.10 per share.

130. In Aleritas' May 12, 2008 analyst call, Robert Orr and Hess assured investors that the $12.5 million increase to loan loss reserves (and resulting loss for the first quarter) was a one-time event resulting from their personal, comprehensive analysis of the loan portfolio.

131. Robert Orr and Hess knew that their statements as to the health of the remaining loan portfolio were materially misleading because they knew that Brooke Capital was continuing to make loan payments on behalf of dozens of unprofitable franchisees beyond those scheduled for liquidation.

132. Robert Orr, Hess, and Lowry also knew that Aleritas' loan loss reserves were materially understated in that period because Aleritas had not reserved for or written down at least $7.9 million of additional loan losses relating to Brooke Capital's more than 150 failed startup franchise locations. Aleritas' failure to write down failed startup loans receivable caused net loss before taxes for the first quarter of 2008 to be understated by $7.9 million, or 16% and 11%, for Aleritas and Brooke Corporation, respectively, making both companies' Forms 10-Q for that quarter materially false and misleading.

133. In the second quarter of 2008, Aleritas' controller used the same methodology as he had in the first quarter to analyze loan loss reserves. Because Aleritas' loan portfolio had continued to deteriorate, the controller's analysis indicated that the company should take an additional $2.3 million in material loan loss reserves.

134. However, with Lowry's agreement, and Hess' knowledge, Robert Orr rejected the controller's analysis, and recorded *no* significant additional reserves in Aleritas' financial statements accompanying its Form 10-Q for the second quarter of 2008. In doing so, they refused to take reserves for more than 50 additional, troubled franchises that had been scheduled for liquidation during the second quarter and ignored a decrease in expected loan liquidation

values. Aleritas' failure to recognize additional loan loss reserves for the second quarter of 2008 caused its net loss before taxes to be understated by $2.3 million, or 12%, making its Form 10-Q for the second quarter of 2008 materially false and misleading.

N. Robert Orr, Hess, and Lowry Failed to Record Known Impairments to Aleritas' Residual Assets for its Credit Facilities and Securitizations

135. When Aleritas utilized one of its credit facilities or sold loans to its six securitization entities in order to insure against credit losses and prepayments, it only received cash totaling approximately 80% of the aggregate value of loans placed. Therefore, Aleritas maintained a subordinated 20% equity tranche, classified as an asset on the balance sheet.

136. In April 2008, Lowry wrote a memo to Robert Orr and Hess stating that as of March 2008, approximately $4.2 million of failed loans in one of Aleritas' credit facilities was not recoverable. Despite this analysis, Lowry, Robert Orr and Hess failed to recognize other-than-temporary impairment on Aleritas' credit facility asset. This caused net loss before taxes for the first quarter of 2008 to be materially understated by $4.2 million, or 8% and 6%, for Aleritas and Brooke Corporation, respectively, making both companies' Forms 10-Q for that quarter materially false and misleading.

137. Similarly, in a July 2008 memo, Lowry wrote to Robert Orr that as of June 2008, an additional $3.6 million of failed loans in one of its commercial credit facilities would not be recoverable. However, Lowry and Robert Orr failed to recognize other-than-temporary impairment on the credit facility asset. This caused net loss before taxes for the second quarter of 2008 to be materially understated by $3.6 million, or 18% and 7%, for Aleritas and Brooke Corporation, respectively, making both companies' Forms 10-Q for that quarter materially false and misleading.

138. At Lowry's direction, Aleritas also failed to record timely other-than-temporary impairments to its securitization assets. In the second quarter of 2008, Aleritas' controller determined that because Aleritas' loan portfolio had continued to deteriorate, the company should record an additional other-than-temporary impairment of $11.5 million to its securitization equity.

139. GAAP provides that if there has been an adverse change in cash flows expected to be collected, then an other-than-temporary impairment has occurred and the retained interest should be written down to fair value.

140. However, with Lowry's agreement, and Hess' knowledge, Robert Orr rejected the controller's analysis, and recorded *no* additional impairment to its securitization assets. Aleritas' failure to recognize other-than-temporary impairment on the securitization equity caused net loss before taxes for the second quarter of 2008 to be materially understated by $11.5 million, or 57% and 22%, for Aleritas and Brooke Corporation, respectively, making both companies' Forms 10-Q for that quarter materially false and misleading.

141. Although Robert Orr and Hess both knew that Aleritas had only reported profits in the second quarter by understating loan loss reserves and refusing to record known impairments to its credit facility and securitization assets, they falsely touted in Aleritas' analyst call on August 18, 2008 that the company "took [its] medicine in the first quarter in the form of reserves" and was profitable in the second quarter.

O. Robert Orr Directed Aleritas' Improper Reduction of Expenses During the Second Quarter of 2008

142. During the first quarter of 2008, Aleritas incurred certain expenses, referred to as collateral preservation expenses, which were paid to Brooke Capital and other third parties to assist with, among other things, managing or liquidating troubled franchisee borrowers.

143. In the second quarter of 2008, Robert Orr obtained a legal opinion that Aleritas had the contractual right to pass along some collateral preservation expenses to the lenders that had purchased specific loans for which collateral preservation expenses had been incurred.

144. Aleritas' controller advised Robert Orr that the company should restate its financial statements for the first quarter of 2008 to reduce collateral preservation expenses recorded and establish a collateral preservation receivable, in conformity with GAAP.

145. However, Robert Orr once again disregarded the controller's advice, and instead, contrary to GAAP, directed that all of the favorable $4.3 million adjustment be made in the financial statements for the second quarter of 2008. This resulted in the improper reduction of second quarter collateral preservation expenses.

146. Leland Orr, Hess, and Lowry also knew of the misstatement, yet none of them corrected it. Aleritas' improper reduction of collateral preservation expense caused net loss before taxes for the second quarter of 2008 to be materially understated by $4.3 million, or 22% and 8%, for Aleritas and Brooke Corporation, respectively, making both companies' Forms 10-Q for that quarter materially false and misleading.

P. Robert Orr, Leland Orr, Lowry, Hess, and Garst Made Misrepresentations and Omissions to Brooke Companies' Auditors

147. In Aleritas' management representation letter to its outside auditors for the first quarter of 2008, dated May 9, 2008, Robert Orr misrepresented that: receivables were reduced to their net realizable value; intangible assets were reviewed for impairment and appropriately adjusted; related-party loan guarantees and contingent liabilities were properly disclosed; related-party transactions, including loan payments on behalf of unprofitable franchisees, were properly disclosed; and the financials were prepared in conformity with GAAP and included all necessary disclosures. Also, during the outside auditors' review of Aleritas' financial statements, Robert

Orr also verbally misrepresented that he was unaware of any additional loans that should be included in the first quarter loan loss reserve and impairment analysis. Additionally, in conjunction with his affirmative misrepresentations, Robert Orr omitted telling the outside auditors of Lowry's memorandum indicating $4.2 million of failed loans in one of Aleritas' credit facilities was not recoverable in the first quarter.

148. In Aleritas' management representation letter to its outside auditors for the second quarter of 2008, dated August 18, 2008, Robert Orr misrepresented that: receivables were reduced to their net realizable value; intangible assets were reviewed for impairment and appropriately adjusted; material transactions, including the reduction of collateral preservation expense, were properly recorded; related-party loan guarantees and contingent liabilities were properly disclosed; and the financials were prepared in conformity with GAAP and included all necessary disclosures. Additionally, during the outside auditors' review of Aleritas' financial statements, Robert Orr also verbally misrepresented that the second quarter analysis of specific individual loan loss was performed in the same manner as in the previous quarter; and the receivable set up in the reduction of collateral preservation expense was all related to the second quarter and was tied to the recent deterioration of loans. Additionally, in conjunction with his affirmative misrepresentations, Robert Orr omitted telling the outside auditors of Lowry's memorandum indicating an additional $3.6 million of failed loans in one of Aleritas' credit facilities was not recoverable in the second quarter; and that a significant portion of the collateral preservation receivable recorded in the second quarter was related to collateral preservation expenses incurred during the second quarter, and that second quarter collateral preservation expenses were improperly reduced in establishing the receivable.

149. In Brooke Capital's management representation letter to its outside auditors for year-end 2007, dated March 13, 2008, as well as Brooke Corporation's management representation letter to its outside auditors for year-end 2007, dated March 15, 2008, Leland Orr misrepresented that: material transactions, including revenue recognition, were properly recorded; the company complied with all aspects of contractual agreements, including all loan transactions, that would have a material effect on the financials in the event of noncompliance; related-party transactions were properly disclosed, despite his knowledge that Brooke Capital had made loan payments on behalf of unprofitable franchisees; and the financials were prepared in conformity with GAAP and included all necessary disclosures. Additionally, during the outside auditors' audit of Brooke Capital's financial statements for the fiscal year 2007, Leland Orr also verbally misrepresented to Brooke Capital's outside auditors that the $14,162,500 loan was not fully funded because one of BCA's intended borrowers was making corporate structure changes and wasn't ready to receive all of its funds yet, and that the company had satisfied all its duties to earn the revenue on unfunded loans.

150. In Brooke Capital's management representation letter to its outside auditors for the first quarter of 2008, dated May 10, 2008, as well as Brooke Corporation's management representation letter to its outside auditors for the first quarter of 2008, dated May 11, 2008, Leland Orr misrepresented that: receivables were reduced to their net realizable value; the company complied with all aspects of contractual agreements, including all loan transactions, that would have a material effect on the financials in the event of noncompliance; related-party transactions were properly disclosed, despite his knowledge that Brooke Capital had made loan payments on behalf of unprofitable franchisees; and the financials were prepared in conformity with GAAP and included all necessary disclosures.

151. In Brooke Corporation's management representation letter to its outside auditors for the second quarter of 2008, dated August 18, 2008, Leland Orr misrepresented that: material transactions, including the reduction of collateral preservation expense, were properly recorded; the company complied with all aspects of contractual agreements, including all loan transactions, that would have a material effect on the financials in the event of noncompliance; and the financials were prepared in conformity with GAAP and included all necessary disclosures.

152. In Aleritas' management representation letters to its outside auditors for the first and second quarters of 2008, dated May 9, 2008 and August 18, 2008, respectively, Hess misrepresented that: receivables were reduced to their net realizable value; intangible assets were reviewed for impairment and appropriately adjusted; related-party loan guarantees and contingent liabilities were properly disclosed; and the financials were prepared in conformity with GAAP and included all necessary disclosures. Hess also misrepresented in the second quarter management representation letter, dated August 18, 2008, that material transactions, including the reduction of collateral preservation expense, were properly recorded. Additionally, in conjunction with his affirmative misrepresentations, Hess omitted telling the outside auditors of Lowry's memorandum indicating $4.2 million of failed loans in one of Aleritas' credit facilities was not recoverable in the first quarter.

153. In connection with the outside auditors' review of Aleritas' financial statements for the first and second quarters of 2008, Lowry verbally misrepresented that he was unaware of additional loans that should be included in the first quarter loan loss reserve and impairment analysis, and that the second quarter analysis of specific individual loan loss was performed in the same manner as in the previous quarter. Additionally, in conjunction with his affirmative misrepresentations, Lowry omitted telling the outside auditors of his memorandums indicating

$4.2 million and an additional $3.6 million, in the first and second quarters, respectively, of failed loans in one of Aleritas' credit facilities were not recoverable.

154. In Brooke Capital's management representation letter to its outside auditors for the first quarter of 2008, dated May 10, 2008, Garst misrepresented that all related-party transactions were properly disclosed, despite his knowledge that Brooke Capital had made loan payments on behalf of unprofitable franchisees; and the financials were prepared in conformity with GAAP and included all necessary disclosures.

Q. The Brooke Companies Failed to Maintain Accurate Books and Records and Failed to Implement Sufficient Internal Controls

155. Brooke Capital and Brooke Corporation failed to record transactions in conformity with GAAP at year-end 2007 and in the first quarter of 2008. Aleritas and Brooke Corporation failed to record transactions in conformity with GAAP in the first and second quarters of 2008. The Brooke Companies' improper accounting practices caused their books, records, and accounts to be false, in violation of Rule 13b2-1.

156. Robert Orr, Leland Orr, Hess, Garst, and Vrbas aided and abetted Brooke Capital's and Brooke Corporation's violations of the books and records provisions because they knowingly caused the financial statements of Brooke Capital and Brooke Corporation to not be prepared in conformity with GAAP.

157. Robert Orr, Leland Orr, Lowry, and Hess aided and abetted Aleritas' and Brooke Corporation's violations of the books and records provisions because they knowingly caused the financial statements of Aleritas and Brooke Corporation to not be prepared in conformity with GAAP.

158. Brooke Capital, Aleritas, and Brooke Corporation violated the internal control provisions because they failed to establish and maintain sufficient internal controls to record

properly transactions in conformity with GAAP. Each of the Defendants were responsible for devising and maintaining a system of internal controls sufficient to ensure that transactions were recorded such that the Brooke Companies' financial statements could be prepared in conformity with GAAP. Robert Orr was responsible for devising and maintaining a system of internal controls in his capacities as Brooke Capital's CEO from August 2008 through October 2008 and Aleritas' CFO from March 2008 until October 2008. Leland Orr was responsible for devising and maintaining a system of internal controls in his capacities as Brooke Corporation's CFO from 1986 through March 2008, Brooke Corporation's CEO from March 2008 through October 2008, and Brooke Capital's CFO from November 2007 until August 2008. Lowry was responsible for devising and maintaining a system of internal controls in his capacity as Aleritas' CEO from February 2003 through March 2008. Hess was responsible for devising and maintaining a system of internal controls in his capacity as Aleritas' CEO from March 2008 through October 2008. Garst was responsible for devising and maintaining a system of internal controls in his capacity as Brooke Capital's CEO from November 2007 through August 2008. Vrbas was responsible for devising and maintaining a system of internal controls in his capacities as Brooke Corporation's CFO from March 2008 through October 2008, and as Brooke Capital's CFO from August 2008 until October 2008.

159. Robert Orr, Leland Orr, Lowry, Hess, Garst, and Vrbas aided and abetted the Brooke Companies' violations of the internal control provisions because they knowingly or recklessly failed to implement a system of internal controls that ensured that the Brooke Companies prepared their financial statements in conformity with GAAP.

160. Through their participation in Brooke Capital's fraudulent revenue recognition practices, Robert Orr, Leland Orr, Hess, and Vrbas also knowingly or recklessly circumvented

the internal controls Brooke Capital did have and falsified Brooke Capital's revenue and net income figures in direct violation of the internal control provisions of the federal securities laws.

161. Through their participation in Aleritas' fraudulent understatement of loan loss reserves and failure to record known, other-than-temporary impairments to its credit facility and securitization assets, Robert Orr, Lowry, and Hess also knowingly or recklessly circumvented the internal controls Aleritas did have and falsified Aleritas' net income figures in direct violation of the internal control provisions of the federal securities laws.

R. Robert Orr Failed to Report Purchases of Brooke Corporation, Brooke Capital, and Aleritas Stock

162. Robert Orr owned a majority of, and otherwise controlled, the private holding company BHI. At Robert Orr's direction, during March 2008, his son and another BHI employee purchased Brooke Capital stock in BHI's account in 18 transactions in order to "support the stock price." None of BHI's purchases of Brooke Capital stock were disclosed in Forms 4, including by Robert Orr who, as controlling shareholder of BHI, received a proportionate share of the acquired Brooke Capital stock.

163. In April and May 2008, Robert Orr (through BHI) provided his son with $542,000 and his son-in-law with $520,000, for the express purpose of buying stock of the Brooke Companies in their respective personal trading accounts.

164. Although Robert Orr described the funds provided as "loans," he continued to bear the economic risk of the transactions because he assured his son and son-in-law that he would not require repayment unless the Brooke Companies' stock they acquired appreciated.

165. Using Robert Orr's funds, from April through June 2008, his son and son-in-law purchased the stock of Brooke Capital, Aleritas and Brooke Corporation in more than 100 transactions, none of which were disclosed in Forms 4.

S. Personal Profit of Defendants Robert Orr, Leland Orr, and Lowry

166. From the fourth quarter of 2007 until Brooke Corporation filed for bankruptcy in October 2008, Brooke Corporation made dividend payments and other cash transfers to BHI, the Orr's' holding company, totaling more than $4.5 million dollars. From the fourth quarter of 2007 until Brooke Corporation filed for bankruptcy in October 2008, Robert Orr received at least $771,147.37, and Leland Orr received at least $270,000, in dividends and other payments from Brooke Holdings, Inc. During this time period, Robert Orr and Leland Orr knew that the Brooke Companies' financial condition had been materially misstated in the 2007 Forms 10-K for Brooke Capital and Brooke Corporation, the first and second quarter 2008 Forms 10-Q for Brooke Capital, Aleritas, and Brooke Corporation, and other public statements as alleged herein.

167. On approximately June 6, 2008, Lowry realized $214,500 from sales of Aleritas stock. At the time Lowry sold the stock, he knew that the company's financial condition had been materially misstated in Aleritas' March 10, 2008 press release, its Form 10-Q for the first quarter of 2008, and other public statements as alleged herein.

FIRST CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS
Violations of Sections 17(a)(1) and (3) of the Securities Act
[15 U.S.C. §§ 77q(a)(1) and (3)]

168. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

169. Each Defendant, directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud in violation of Section 17(a)(1) of the Securities Act.

170. Each Defendant, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of securities in violation of Section 17(a)(3) of the Securities Act.

171. By reason of the foregoing, each of the Defendants violated, and unless restrained and enjoined, will violate Sections 17(a)(1) and 17(a)(3) of the Securities Act.

SECOND CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

172. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

173. Each Defendant, directly or indirectly, with scienter, in connection with the purchase or sale of a security, by use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of a national securities exchange, used or employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which have been and are operating as a fraud or deceit upon any person, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

174. By reason of the foregoing, each of the Defendants thereby violated, and unless restrained and enjoined, will violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

THIRD CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS
Violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 Thereunder
[15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1]

175. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

176. Each Defendant violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder by knowingly causing the books of the Brooke Companies to be falsified as to the financial misstatements alleged herein, and/or by failing to devise and establish internal controls to assure that the Brooke Companies' financial statements were prepared in conformity with GAAP.

177. By reason of the foregoing, each of the Defendants thereby violated, and unless restrained and enjoined, will violate Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder.

FOURTH CLAIM FOR RELIEF
AGAINST DEFENDANTS ROBERT ORR, LELAND ORR,
LOWRY, HESS, AND GARST
Violations of Rule 13b2-2 of the Exchange Act
[17 C.F.R. § 240.13b2-2]

178. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

179. Defendants Robert Orr, Leland Orr, Lowry, Hess, and Garst each made or caused to be made materially false or misleading statements to an accountant in connection with audits, reviews or examinations of one or more of the Brooke Companies' financial statements or in the preparation or filing of one or more of the Brooke Companies' documents or reports required to be filed with the SEC; or omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such

statements were made, not misleading, to an accountant in connection with audits, reviews, or examinations of financial statements or in the preparation or filing of Brooke Companies' document or report required to be filed with the SEC.

180. By reason of the foregoing, Defendants Robert Orr, Leland Orr, Lowry, Hess, and Garst thereby violated, and unless restrained and enjoined, will violate Rule 13b2-2 of the Exchange Act.

FIFTH CLAIM FOR RELIEF
AGAINST DEFENDANTS ROBERT ORR, LELAND ORR, HESS, GARST & VRBAS
Violations of Rule 13a-14 of the Exchange Act
[17 C.F.R. § 240.13a-14]

181. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

182. Defendants Robert Orr, Leland Orr, Hess, Garst, and Vrbas each signed Sarbanes-Oxley Section 302 certifications, which state that the signing officer has reviewed the report, and: (1) based on the officer's knowledge, the report does not contain any untrue statement of material fact; (2) based on the officer's knowledge, the financial statements fairly present, in all material respects, the financial results of operations; and (3) the signing officers are responsible for establishing and maintaining adequate internal controls over financial reporting, have designed and evaluated such controls, and have disclosed any changes or weaknesses to the registrant's auditor and audit committee. As alleged in paragraphs 30, 31, 33, 34, and 35, each of defendants Robert Orr, Leland Orr, Hess, Garst, and Vrbas signed certifications that they knew or should have known were false.

183. By reason of the foregoing, Defendants Robert Orr, Leland Orr, Hess, Garst, and Vrbas thereby violated, and unless restrained and enjoined, will violate Rule 13a-14 of the Exchange Act.

SIXTH CLAIM FOR RELIEF
AGAINST ROBERT ORR
Violations of Section 16(a) of the Exchange Act and Rule 16a-3 Thereunder
[15 U.S.C. § 78p(a)(14) and 17 C.F.R. § 240.16a-3]

184. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

185. Robert Orr, while the beneficial owner of more than 10% of the shares of Brooke Capital and the chairman of its board of directors, failed to file Forms 4 as required under Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, for his proportionate share of Brooke Capital stock purchased by BHI during 2008.

186. Robert Orr, while the beneficial owner of more than 10% of the shares of Brooke Corporation, Brooke Capital, and Aleritas, and/or an officer or director of Brooke Corporation, Brooke Capital and Aleritas, failed to file Forms 4 as required under Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, for purchases of Brooke Corporation, Brooke Capital and Aleritas stock in the personal accounts of his son and son-in-law wherein Robert Orr directed trading, provided funds, and bore the economic risk of the transactions.

187. By reason of the foregoing, Defendant Robert Orr thereby violated, and unless restrained and enjoined, will violate Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

SEVENTH CLAIM FOR RELIEF
AGAINST ROBERT ORR, LELAND ORR, HESS, GARST AND VRBAS
Aiding and Abetting Violations of Section 13(a) of the Exchange Act
and Rules 12b-20 and 13a-1 Thereunder
[15 U.S.C. §§ 78m(a), and 17 C.F.R. §§ 240.12b-20 and 240.13a-1]

188. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

189. Brooke Capital violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder because its 2007 Form 10-K contained false and misleading statements or omissions regarding: the total number of its franchise locations; the nature and extent of its financial assistance to franchisees; and revenue recognition on unfunded loans.

190. Brooke Corporation violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 by incorporating the false and misleading statements from Brooke Capital's 2007 Form 10-K into its own 2007 Form 10-K.

191. As alleged herein, Robert Orr, Leland Orr, Hess, Garst and Vrbas aided and abetted the reporting violations of Brooke Capital and Brooke Corporation because they knowingly or recklessly provided substantial assistance to Brooke Capital and Brooke Corporation in committing these reporting violations.

192. By reason of the foregoing, Robert Orr, Leland Orr, Hess, Garst and Vrbas thereby aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder, and unless restrained and enjoined will aid and abet violations of these provisions.

EIGHTH CLAIM FOR RELIEF
AGAINST ROBERT ORR AND HESS
Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 Thereunder
[15 U.S.C. §§ 78m(a), and 17 C.F.R. §§ 240.12b-20 and 240.13a-11]

193. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

194. Aleritas violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 because it filed Forms 8-K attaching misstated financial results for the first and second quarters of 2008.

195. As set forth above, Defendants Robert Orr and Hess aided and abetted the reporting violations of Aleritas because they knowingly or recklessly provided substantial assistance to Aleritas in committing these reporting violations.

196. By reason of the foregoing, Defendants Robert Orr and Hess thereby aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder, and unless restrained and enjoined will aid and abet violations of these provisions.

NINTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS
Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 Thereunder
[15 U.S.C. §§ 78m(a), and 17 C.F.R. §§ 240.12b-20 and 240.13a-13]

197. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

198. Brooke Capital violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder because the following filings contained false and misleading statements or omissions: first quarter 2008 Form 10-Q as to financial assistance to franchisees, liquidity,

revenue recognition on unfunded loans, and uncollectible franchisee receivables; and second quarter 2008 Form 10-Q as to financial assistance to franchisees, and liquidity.

199. Aleritas violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 because the following filings contained false and misleading statements: first quarter 2008 Form 10-Q as to short-term participation defaults, sale or pledge of the same loans to more than one lender, diversion of borrower payments, falsification of loan ratings, improper guaranty of Brooke Capital loan repayments, understatement of loan loss reserves, and failure to record impairments to credit facility assets; and second quarter 2008 Form 10-Q as to short-term participation defaults, sale or pledge of the same loans to more than one lender, diversion of borrower payments, falsification of loan ratings, improper guaranty of Brooke Capital loan repayments, understatement of loan loss reserves, failure to record impairments to securitization and credit facility assets, and improper reduction of collateral preservation expenses.

200. Brooke Corporation violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 by incorporating the false and misleading statements from the Forms 10-Q of Brooke Capital and Aleritas for the first and second quarters of 2008.

201. As alleged herein, Defendants Robert Orr, Leland Orr, Hess, Garst and Vrbas aided and abetted the reporting violations of Brooke Capital, and Brooke Corporation because they knowingly or recklessly provided substantial assistance to Brooke Capital and Brooke Corporation in committing these reporting violations.

202. As alleged herein, Defendants Robert Orr, Hess, and Lowry aided and abetted the reporting violations of Aleritas and Brooke Corporation because they knowingly or recklessly provided substantial assistance to Aleritas and Brooke Corporation in committing these reporting violations.

203. By reason of the foregoing, each of the Defendants thereby aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, and unless restrained and enjoined will aid and abet violations of these provisions.

TENTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS
Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act
[15 U.S.C. § 78m(b)(2)(A)])

204. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

205. Brooke Capital, Aleritas, and Brooke Corporation violated Section 13(b)(2)(A) of the Exchange Act by failing to record transactions accurately in conformity with GAAP. Specifically, Brooke Capital recorded revenue on unfunded loans at year-end 2007, and it failed to write-off uncollectable franchise receivables in the first quarter of 2008. In the first and second quarters of 2008, Aleritas understated loan loss reserves and failed to record known impairments to securitization and credit facility assets. In the second quarter of 2008, Aleritas improperly reduced collateral preservation expenses. By incorporating the financial misstatements of Brooke Capital and Aleritas, Brooke Corporation likewise failed to record these transactions in conformity with GAAP.

206. Each of the Defendants knowingly or recklessly provided substantial assistance to Brooke Capital, Aleritas, and Brooke Corporation in violating Section 13(b)(2)(A) of the Exchange Act.

207. By reason of the foregoing, each of the Defendants thereby aided and abetted the Brooke Companies' violations of Section 13(b)(2)(A) of the Exchange Act, and unless restrained and enjoined will aid and abet violations of these provisions.

ELEVENTH CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS
Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act
[15 U.S.C. § 78m(b)(2)(B)]

208. The SEC incorporates the allegations of paragraphs 1 through 167 as if fully set forth herein.

209. Brooke Capital, Aleritas, and Brooke Corporation violated Section 13(b)(2)(B) of the Exchange Act by, among other things, failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit financial statements in conformity with GAAP.

210. Each of the Defendants knowingly or recklessly provided substantial assistance to Brooke Capital, Aleritas, and Brooke Corporation in violating Section 13(b)(2)(B) of the Exchange Act.

211. By reason of the foregoing, each of the Defendants thereby aided and abetted the Brooke Companies' violations of Section 13(b)(2)(B) of the Exchange Act, and unless restrained and enjoined will aid and abet violations of these provisions.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

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

II.

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

III.

Order each of the Defendants to pay third tier civil penalties pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 78u(t)(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Order that Defendants Robert Orr, Leland Orr, and Lowry disgorge ill-gotten gains, with prejudgment interest, pursuant to the equitable powers of the Court.

V.

Order that each of the Defendants be permanently prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

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

REQUEST FOR JURY AND PLACE OF TRIAL

The Securities and Exchange Commission requests that a jury trial be had in the city of Kansas City, Kansas.

Dated: May 4, 2011

Respectfully submitted,

s/ Rick A. Fleming
Rick A. Fleming, Kansas Bar # 17127
Office of the Kansas Securities Commissioner
109 S.W. 9th Street, Suite 600
Topeka, KS 66612
rick.fleming@ksc.ks.gov
Phone: 785-296-3307
Fax: 785-296-6872

s/Stephen C. McKenna
Stephen C. McKenna, Colorado Bar # 28744
(pro hac vice application pending)
Attorneys for Plaintiff
Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, Colorado 80202
mckennas@sec.gov
Telephone: (303) 844-1000
Facsimile: (303) 844-1010