UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION	:	
Plaintiff,	:	
v.	:	**Civil Action No.**
ALAN C. GOLDSWORTHY, WALTER T. HILGER and MARK E. SULLIVAN,	:	**JURY TRIAL DEMANDED**
Defendants.	:	**06-10012MLW**

COMPLAINT

MAGISTRATE JUDGE JGD

Plaintiff Securities and Exchange Commission (the "Commission") alleges that:

SUMMARY

1. In late 2001 and in 2002, the Defendants – Alan C. Goldsworthy ("Goldsworthy"), the President and CEO of Applix, Inc. ("Applix"); Walter T. Hilger "Hilger"), its CFO and Treasurer; and Mark E. Sullivan ("Sullivan"), its Director of World-Wide Operations – engaged in two separate schemes to inflate the revenue reported in the company's publicly-filed financial statements.

2. As a result of the first scheme, Applix, a Massachusetts company engaged in the development and sale of enterprise management software, prematurely recognized $898,000 of revenue in its Form 10-K for the year ended December 31, 2001. By recognizing this revenue when it did, Applix not only inflated its revenue for the year 2001, but understated its net loss by 8%. Applix later included this misleading financial information in its Form S-8 registration statement dated July 25, 2002.

3. As a result of the second scheme, Applix improperly recognized $340,000 in revenue in its Form 10-Q for the quarter ended June 30, 2002. Applix reported this revenue from a transaction in which the customer had yet to accept the product and retained the right to return it. Applix thereby inflated its revenue for the quarter, and it understated its net loss for the quarter by 34%. Applix also subsequently filed a Form 8-K on February 5, 2003, that included this improperly-recorded revenue for the second quarter of 2002.

4. On Friday, February 28, 2003, before the stock market opened, the company announced, among other things, that it would be restating its financials to correct its revenue figures. The day of the announcement, Applix's stock price fell 13%, or twenty-six cents, to close at $1.70 per share. By the following Friday, March 7, 2003, Applix's stock closed at $1.40, a 28% decline from the pre-announcement closing price.

5. On March 31, 2003, Applix filed a restated Form 10-K for the year ended December 31, 2001 and restated the Forms 10-Q for the first three quarters of 2002. On April 4, 2003, Applix also amended its Form 8-K dated February 5, 2003.

6. By engaging in the acts alleged in this complaint,

(a) Defendants Goldsworthy, Hilger and Sullivan violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)];

(b) Defendants Goldsworthy, Hilger and Sullivan violated, and/or aided and abetted Applix's violations of, Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

(c) Defendants Goldsworthy, Hilger and Sullivan violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1];

(d) Defendants Goldsworthy, Hilger and Sullivan aided and abetted Applix's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and

Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1. 240.13a-11 and 240.13a-13];

(e) Defendants Goldsworthy, Hilger and Sullivan aided and abetted Applix's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)];

(f) Defendants Goldsworthy, Hilger and Sullivan aided and abetted Applix's violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)];

(g) Defendants Hilger and Sullivan violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]; and

(h) Defendants Goldsworthy and Hilger violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

7. Unless enjoined, the Defendants will continue to engage in acts, practices, and courses of business as set forth in this Complaint or in acts, practices, and courses of business of similar object and purpose.

8. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting each Defendant from further violations of the relevant provisions of the federal securities laws; (ii) disgorgement of revenue-based bonuses as ill-gotten gains from Defendants Goldsworthy and Hilger; (iii) the imposition of a civil monetary penalty against each Defendant; (iv) entry of an order barring each Defendant from serving as an officer or director of a public company; and (v) such other equitable relief as the Court deems just and appropriate.

JURISDICTION

9. This Court has jurisdiction over this action under Section 22 of the Securities Act [15 U.S.C. § 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Additionally, the acts and practices alleged herein occurred primarily within the District of Massachusetts.

10. The Commission brings this action pursuant to the authority conferred upon it by Section 20 of the Securities Act [15 U.S.C. § 77t] and Section 21 of the Exchange Act [15 U.S.C. § 78u].

11. In connection with the conduct alleged, the Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, the facilities of national securities exchanges, and/or of the means or instruments of transportation or communication in interstate commerce.

DEFENDANTS

12. Goldsworthy, of Gloucester, Massachusetts, was Applix's President, Chief Executive Office ("CEO"), and a member of its Board of Directors from April 2000 until he resigned, at the Board of Directors' request, in February 2003.

13. Hilger, of Natick, Massachusetts, was Applix's Chief Financial Officer ("CFO") and Treasurer from September 2001 until he resigned, at the request of the Chairman of the Audit Committee of Applix's Board of Directors, in June 2003.

14. Sullivan, of Bridgewater, Massachusetts, is Applix's Director of World-Wide Operations, a position he has held since late 2001.

RELATED ENTITY

15. Applix is a Massachusetts corporation with its headquarters in Westborough, Massachusetts. The company's stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 781(g)] since December 1994, when it was first publicly traded. From December 9, 1994 until May 28, 2003, the company's stock was traded on the NASDAQ National Market System and thereafter, it was traded on the NASDAQ Small Cap Market System. Throughout the relevant time frame, Applix was required to file periodic reports with the Commission pursuant to Section 13 of the Exchange Act [15 U.S.C. § 78m].

FACTS

I. The Scheme to Prematurely Recognize Revenue from the Consist Transaction

A. The Consist Amendment

16. On October 23, 2001, Applix announced in a press release that the company had total revenue of over $30.6 million through the first three quarters of 2001 and that it had forecast an additional approximately $9.4 million in the fourth quarter of the year, for a total revenue forecast of approximately $40 million for the year. The company also announced that it would soon unveil its "next-generation product," expected to be generally available in early 2002. Hilger and employees working for Hilger drafted the press release, which was reviewed by Goldsworthy and contained quotes from both Hilger and Goldsworthy.

17. During the relevant period, Applix's largest customer was Consist International ("Consist"), a privately-held software reseller headquartered in New York City. In March 2000, Consist had entered an Original Equipment Manufacturer ("OEM")

agreement with Applix, granting Consist the exclusive right to resell certain Applix software known as Customer Relationship Management Product ("CRM Product") in Latin America. The OEM agreement required Consist to pay $1 million for the rights to resell Applix software over the next twelve months. The agreement also contemplated yearly amendments on the March anniversary date over the next five years. Pursuant to those terms, an amendment was executed in March 2001 and the next scheduled amendment was to be executed in March 2002.

18. In November 2001, however, at the suggestion of David Golan ("Golan"), Applix's Vice President of North American Sales & Marketing, Robert Delamore ("Delamore"), Applix's Vice-President of Channels, began negotiating with Consist in an attempt to execute another amendment by year-end 2001. The purpose for doing so was to allow Applix to recognize the revenue from the amendment in 2001, rather than waiting until 2002. Delamore proposed an amendment that would grant Consist certain rights to resell certain products for the year following the date of the amendment. Consist was receptive to an early amendment, but Consist's president, Natalio Fridman ("Fridman"), insisted that the amendment grant Consist the right to resell Applix's recently announced "next-generation" product when it became generally available in 2002. This product, which had by now been given the name "Integra," was a non-CRM product and thus had not been covered under the original terms of the OEM agreement.

19. Early on in the negotiations, in or about late November 2001, Delamore informed Goldsworthy that Fridman was insisting that the amendment grant Consist rights to resell Integra. Further, Delamore told Goldsworthy that Fridman insisted on exclusive rights to resell Integra in the Latin American countries covered under the

original OEM agreement. Goldsworthy told Delamore such a deal would cost Consist $2 million, a 100% increase over the fee in the initial OEM agreement.

20. Under generally accepted accounting principles ("GAAP"), if the amendment granted Consist rights to Integra, an as-yet-unavailable product, then the transaction would need to be accounted for as a subscription and the revenue from the amendment could not be recognized immediately but would have to be recognized ratably over the term of the agreement.

21. Hoping to convince Fridman to accept non-exclusive rights to Integra at a lower price, Delamore put together a written proposal, with Goldsworthy's knowledge, granting Consist the non-exclusive right to resell Integra for a fee of $1.1 million. In the proposal, Delamore described Integra as being included among Applix's "iTM1 Family of Products", a reference to the fact that Integra utilized Applix's iTM1 analytical engine. On December 5, 2001, Delamore e-mailed the proposed terms to Fridman. However, Fridman still insisted on exclusivity.

22. At the time (*i.e.*, early December 2001), Applix was approximately $3.3 million short of its quarterly revenue goal of $9.4 million needed to meet the $40 million figure it had previously projected as its expected revenue for 2001. In the hopes of closing a deal before year-end, Delamore suggested to Goldsworthy that Applix propose a compromise. Under this proposal, Applix would grant Consist the right to resell Integra on a non-exclusive basis and would agree to set a time to revisit the issue of exclusivity when it would be easier to determine a fee for exclusivity. Goldsworthy agreed that the proposal made sense. On December 18, 2001, Delamore sent an e-mail to Fridman, with a copy to Goldsworthy, outlining the proposal.

23. On December 21, 2001, Delamore traveled from his home in California to meet with Fridman at his office in New York City to try and close the deal. At the meeting, Fridman made it clear that he wanted exclusivity on Integra as part of any amendment to the OEM agreement. When Delamore told him that such a deal would cost Consist $2.5-$3 million, Fridman balked at the fee. Over lunch, however, Delamore and Fridman reached a preliminary compromise. For a smaller fee that would still need to be negotiated, Applix would grant Consist the exclusive right to resell Integra in five named Latin American countries and non-exclusive rights in the remainder of Latin America.

24. Because Fridman was concerned that Applix might end up calling Integra by a different name, Fridman insisted that the amendment give Consist rights to sell not only Integra but all non-CRM products. Because the original OEM contract had already given Consist the right to sell CRM products, the contract as amended would provide Consist the right to resell all of Applix's products.

25. On his way to the airport to return home, Delamore called Goldsworthy and explained this newest proposal. In the call, Delamore made it clear to Goldsworthy that under the terms of the amendment, Consist would get rights to sell Integra and all other non-CRM products, in addition to the rights it had to sell CRM products under the original OEM contract. Goldsworthy expressed that he was pleased with the proposal because Applix would receive at least a $1 million fee by year-end 2001 and would relinquish to Consist exclusive rights to sell Integra only in certain named countries.

26. The next day, December 22, after consulting with Goldsworthy, Delamore put together a proposal and e-mailed it to Fridman with a copy to Goldsworthy. Under

the terms of this proposal, Consist would get the exclusive right to distribute Applix's "non-CRM products (iTM1 Family of products)" in Brazil, Argentina, Chile, Paraguay, and Uruguay, and the non-exclusive right to distribute those products in the remainder of Latin America. Delamore set the fee at $1.3 million for the first year and for each succeeding year, a fee due each December 31 would be equal to 5% of Applix's non-CRM revenue for that year. Delamore forwarded the proposal to Sullivan four days later, on December 26, for his review.

27. As Applix's Director of World-Wide Operations, Sullivan was responsible for reviewing sales contracts to determine what the appropriate revenue recognition treatment for those contracts should be and to make recommendations as to the appropriate treatment to Hilger, who then decided such issues with Sullivan's input. Throughout December 2001, Sullivan had numerous discussions with Delamore about the proposed amendment and whether the revenue from that amendment could be recognized in 2001. In those discussions, Delamore informed him that the proposed agreement provided Consist rights to Integra.

28. Concerned about the size of the potential fee, Fridman asked Delamore to provide him an estimate of Applix's projected 2002 non-CRM revenue. On December 26, 2001, Delamore e-mailed Sullivan, Hilger and Golan, asking for an estimate of the 2002 non-CRM revenue.

29. In an e-mail copied to Sullivan and Hilger, Golan responded to Delamore that non-CRM revenue was expected to be $17.5 million, a figure which anticipated $3.0 million in revenue from sales of Integra. Delamore, in turn, informed Fridman that 2001 non-CRM revenue was expected to be $17 million.

30. Once the revenue information was relayed to him, Fridman reached an agreement with Delamore pursuant to which Consist would pay an up-front fee of $1 million on December 31, 2001, a fee of 3.5% of Applix's 2002 non-CRM revenue on December 31, 2002, and a fee of 3.0% for each contract year thereafter. After discussions with Delamore, Sullivan reduced the agreement to writing on December 27, 2001.

31. On December 31, 2001, Goldsworthy and Golan traveled to New York City, where they met with Fridman and where the parties executed the amendment (the "Amendment"). At the signing, there was considerable discussion about when Integra would be generally available for resale.

32. Of the $1 million that Consist was required to pay Applix under the terms of the Amendment, $898,000 was a licensing fee giving Consist the right to resell Applix's product over the course of 2002 and the balance was a maintenance fee. One-third of the total payment, or $333,333, had been due at the signing on December 31, 2001. However, Applix did not receive payment until several days later, on January 4, 2002.

33. From the above-referenced discussions and correspondence, Goldsworthy, Hilger and Sullivan knew that the Amendment allowed Consist to resell Integra. Each also knew that because the Amendment granted Consist the right to resell Integra, GAAP prohibited Applix from recognizing the licensing revenue in 2001. Nonetheless, in early 2002, Sullivan, Goldsworthy and Hilger collectively decided to recognize the revenue from the Amendment in the 2001 calendar year.

B. The Misleading January 29, 2002 Press Release

34. On January 29, 2002, Applix issued a press release, announcing its fourth-quarter and year-end 2001 results. Among other things, Applix reported:

> Revenues for the fourth quarter were $9.7 million, an increase of 9% over the previous quarter. Quarterly net income was a loss of $2.3 million, or $0.19 per share, compared with a net loss of $12.6 million or $1.09 per share in the fourth quarter of 2000. . . .
>
> Revenues for the year were $40.3 million, slightly ahead of the prior year. Net income for the year was a loss of $9.9 million, or $0.83 per share, compared to a net loss of $18.9 million or $1.68 per share in 2000.

35. The fourth-quarter and year-end revenue figures were slightly better than the figures that Applix had publicly projected on October 23, 2001. The revenue figure in the release included $898,000 in revenue that had been improperly recognized from the Amendment. Without this revenue, Applix would not have met its revenue projections, nor would it have been able to report that year-end revenues were slightly ahead of the prior year. As it was, the Consist Amendment accounted for more revenue than any other Applix transaction in 2001.

36. The release misleadingly reported a loss of $2.3 million, or $0.19 per share, for the quarter, when the actual loss was $3.2 million, or $0.27 per share. It also falsely reported that the net income for the year was a loss of $9.9 million, or $0.83 per share, when the actual loss was $10.8 million or $0.91 per share.

37. The release quoted both Hilger and Goldsworthy who had each assisted in drafting and reviewing the press release before it was issued. The company's press release also noted, "Applix ended the year in a strong financial position, with $9.3 million of cash and cash equivalents at December 31, 2001. Cash and equivalents ended

the year with consecutive quarters of cash accretion." This figure for cash included the $333,333 received from Consist in connection with its execution of the Amendment even though Applix did not receive those funds until after December 31, 2001. If Applix had not included those funds, it would not have had consecutive quarters of cash accretion or growth.

38. On February 14, 2002, Applix's Compensation Committee met and with Goldsworthy present by invitation, agreed to pay him an additional $45,000 bonus, "based on the Corporation's operating results for the fourth quarter of fiscal 2001."

39. Hilger received a $29,495 bonus for the fourth quarter of 2001. Of that sum, $9,549 was the result of Applix's attaining its revenue goal for the year. Under the bonus formula, he would not have received that portion of the bonus, if the revenue from the Amendment had not been included as year-end revenue.

C. The Misrepresentations in the Management Letter and Form 10-K for the Year Ended December 31, 2001

40. Ernst and Young ("E&Y") was the outside accounting firm that conducted the audit of Applix's 2001 year-end financial statements. In a face-to-face meeting in January 2002, the E&Y partner assigned to the engagement asked Goldsworthy if the Amendment granted Consist rights to any new, but currently unreleased product. Goldsworthy falsely told him it did not. The E&Y audit partner also asked Goldsworthy if he had taken physical possession of Consist's initial payment of $333,333 on December 31, 2001. Goldsworthy falsely told him that he had.

41. On or about March 19, 2002, Goldsworthy and Hilger signed a management representation letter in connection with the audit of Applix's financials for the year ended December 31, 2001. In that letter, which was dated January 25, 2002,

they stated, "We believe the consolidated statements of financial position, results of operations, and cash flows are fairly presented in conformity with accounting principles generally accepted in the United States applied on a basis consistent with that of the preceding periods." The letter also stated, "There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements." In the letter, in a section headed "Revenue Contracts," Goldsworthy and Hilger also represented, "We have disclosed to you all sales terms" with respect to agreements regarding sales to OEMs, distributors, resellers, end-users, and other customers. These statements were false.

42. On April 1, 2002, Applix filed its Form 10-K for the year ended December 31, 2001. In it, the company reported revenue of $40.3 million, of which, $898,000 was licensing revenue that had been improperly recognized from the Amendment. As a result, the company's revenue was overstated by 2.2%. The company's reported net loss was $9.8 million. If reported correctly, however, the loss would have been $10.7 million. Accordingly, the net loss was understated by 8.3% The Form 10-K also reflected that Applix had received the initial $333,333 payment from Consist by December 31, 2001, when it had not

43. Sullivan and Hilger had been involved in preparing the filing, and Goldsworthy reviewed the document prior to filing and contributed changes and comments. Goldsworthy and Hilger both signed the document. Sullivan, Hilger and Goldsworthy all knew that the financial statement improperly reflected the revenue from the Amendment and also knew that it misrepresented that Applix had received the initial $333,333 payment from Consist by December 31, 2001.

44. Throughout 2002, Goldsworthy, Sullivan, Hilger, and others at Applix acted in a manner consistent with the understanding that the Amendment had granted Consist rights to resell Integra.

II. The Scheme to Improperly Recognize Revenue from the AKDB Transaction

A. The AKDB Arrangement

45. On May 28, 2002, during a weekly staff conference call, employees at Applix's German subsidiary ("Applix-Germany") informed Goldsworthy, Hilger and Sullivan of a software sale worth approximately $350,000 to a German government entity, Institute for Local Data Processing in Bayern, known by its German acronym AKDB ("AKDB"). On the call, Neil Follett ("Follett"), Applix's Vice-President of European Operations, expressly warned the group that the customer had insisted that it be given six months (*i.e.*, until November 28, 2002) to evaluate the software with the right to return the software if it did not accept it. He also warned that AKDB had insisted that it be allowed to pay only 50% of the total licensing fee when it declared acceptance and the remaining 50% ninety days later. Follett told the conference call participants that the Applix-Germany sales team hoped to get AKDB to declare acceptance by September.

46. Under GAAP, a company cannot recognize revenue from a transaction where the customer has not yet accepted the transaction and/or retains the right to return the underlying product.

47. The day after the conference call, Sullivan e-mailed Follett and chastised him for not having spoken to Sullivan before entering into the AKDB arrangement "in case we could have structured things a bit differently so as to help out the company's

ability to recognize revenue." He also asked Follett to tell him "what the issue(s) may be that we'll need to deal with from a rev. rec standpoint."

48. Follett e-mailed back that "[t]he contractual issue is that there is a clause on the software element that gives the client the ability to return the software within 6 months if it fail[s] to perform to promise." Sullivan responded by e-mail that the AKDB transaction concerned him from a revenue recognition standpoint because "any acceptance provisions in a license agreement create major difficulty in recognizing license revenue until such acceptance has taken place." He also asked to see the sales documents so that he could figure out the revenue recognition "options."

49. In response, on May 31, 2002, an Applix-Germany employee e-mailed Sullivan the one-page commitment letter AKDB had sent to Applix-Germany. The letter, which Sullivan had translated into English from German, referenced six other documents, including a May 16, 2002 "Corner Points" agreement (the "Corner Points Agreement"), that set forth the key elements of the arrangement and formed part of the overall agreement with AKDB. In a separate one-sentence paragraph, the letter also stated, "Additional Contracts documents (BVB contracts) will be supplied shortly for your signature." Sullivan came to the conclusion that it was not possible to determine the possibility of revenue recognition based solely on the letter, which referred to six other documents that he did not have. On June 4, 2002, he sent an e-mail to Follett, Hilger and others stating his conclusion and requesting the six other documents referenced in the May 31, 2002 letter, including the yet-to-be-executed BVB or "Specific Contract Terms Contract" ("Specific Terms Contract").

50. During the period from the middle to the end of June, 2002, Goldsworthy, Hilger, and Sullivan participated on extensive telephone conferences with Bernd K. Sandner ("Sandner"), the Country Manager for Germany and the salesman working on the AKDB account; Dieter Luber ("Luber"), Applix-Germany's Director of European Professional Service Organization; and others from Applix-Germany. During these conferences, there was discussion about the fact that AKDB had negotiated the ability to perform acceptance tests on the product until as late as November 28, 2002.

51. On June 18, 2002, Sullivan sent an e-mail to Applix-Germany noting that he was still looking for the documents referenced in the May 31, 2002 letter, including the Corner Points Agreement. He reiterated, "We can't make a revenue determination on the deal without knowing what these other docs say." On June 20, 2002, an Applix-Germany employee confirmed to Sullivan that she had forwarded all documents she had on the AKDB transaction.

52. From the end of June to the middle of July 2002, Sandner had numerous telephone calls with Sullivan. In those calls, he stressed that AKDB could still "step-back" from the transaction at any point up until November 2002. Sullivan repeatedly asked when AKDB would pay and Sandner repeatedly told him that AKDB would not pay until it accepted.

53. On June 28, 2002, Applix-Germany and AKDB executed the Special Terms Contract, which made reference to "acceptance criteria." Specifically, the Special Terms Contract stated that AKDB had from June 25 to November 28, 2002 to determine whether it would accept the product and it explained the criteria AKDB would use to

determine acceptance or rejection. It also stated that payment of 50% would be due following acceptance with the remaining 50% due within 90 days of acceptance.

54. When Applix's second quarter closed on June 30, 2002, Goldsworthy, Hilger, and Sullivan knew that AKDB had still not yet accepted the product.

55. On July 1, 2002, Hilger and Goldsworthy participated in a conference call to clarify the status of the AKDB contract with Follett and Luber. In response to questions from Hilger and Goldsworthy, Follett and Luber told them the money was safe and that if AKDB took no action to reject on or before November 28, it would be deemed to have accepted under the terms of the contract.

56. On or about July 1, 2002, an Applix employee in the U.S. reporting to Sullivan used Applix's accounting system to generate an invoice for the AKDB transaction. Applix-Germany, in turn, printed the invoice off the system. The invoice was false in that it had never been sent to AKDB and indeed, because AKDB had not accepted the product as of June 30, 2002, no invoice should have been generated. Further, the invoice was dated as of June 30, 2002 and had terms indicating that the payment was due by July 30, 2002, when the actual payment terms were that 50% was due on acceptance with the remaining 50% due 90 days later.

57. On the morning of July 8, 2002, Sullivan received the translated copy of the Corner Points Agreement. Under its terms, AKDB had until November 28, 2002 to evaluate the software before deciding whether to accept the arrangement or withdraw from it. This agreement also made clear that AKDB would be required to pay 50% upon acceptance and 50% within 90 days of acceptance.

58. After reviewing the agreement on July 8, Sullivan sent an e-mail the same day to Luber, Follett, and Sandner, with a copy to Hilger and others. In the e-mail, he noted the November deadline for AKDB's acceptance and the payment terms. He also requested a summary regarding the risks associated with AKDB's acceptance.

59. Upon receiving Sullivan's e-mail, Follett called Sullivan and told him that AKDB had not even started its initial testing of the product. Meanwhile, Sandner told Sullivan that he did not expect the customer to issue a formal acceptance letter until November 28, 2002, the last possible day it could do so.

60. On July 9, 2002, Goldsworthy, Hilger, Follett, and Sandner attended a European Operations Meeting. At the meeting, Sandner had a conversation with Goldsworthy in which he again stressed that, while the AKDB deal was a good one, the customer could walk away from the transaction at any time until the end of November 2002. Goldsworthy acknowledged to Sandner that he understood this risk.

61. At some point between July 8 and July 11, 2002, after one or more discussions on the topic, Sullivan, Hilger and Goldsworthy collectively decided to include the revenue from the AKDB transaction in its revenue for the quarter ended June 30, 2002. At the time, they knew that AKDB had not yet accepted the transaction. They also knew that under GAAP it would therefore not be appropriate to recognize revenue from the transaction.

62. On or about July 11, 2002, Applix's outside auditors in Germany conducted a review of Applix-Germany's second quarter financial statements. At least one of the documents provided to the auditors was the false invoice dated June 30, 2002.

63. On July 17, 2002, Hilger reported to Applix's Board of Directors that Applix had revenue of $9.19 million for the second quarter of 2002. This figure misleadingly included $341,000 of revenue from the AKDB contract.

64. On July 18, 2002, Applix issued a press release reporting the company's quarterly results, with a headline that stated, "74% Improvement in Net Loss." By including the $341,000 that was improperly recorded from the AKDB transaction, Applix understated its net loss by 33.6%. In its Statement of Operations, included with the press release, Applix reported revenue of $9.2 million for the quarter and a net loss of $675,000. Without the AKDB revenue, the net loss would have been over $1 million. Hilger and Goldsworthy were involved in preparing the press release, which included quotes from them.

65. During July 2002, Sandner was in contact with Goldsworthy on an almost daily basis. In a phone call regarding his compensation, Sandner discussed with Goldsworthy AKDB's ability to walk away from the transaction and he proposed structuring his commission on the transaction in a manner designed to provide him an incentive for getting acceptance. Goldsworthy complimented Sandner on his proposal.

66. In late July and early August, 2002, Sullivan and Luber exchanged e-mails in which they discussed the fact that because AKDB controlled the timing of the arrangement, there was the possibility that Applix might not receive its initial payment before the end of October or even the middle of November. Sullivan forwarded these e-mails to Hilger, noting, "This is very concerning. . ."

67. On July 31, 2002, Hilger and Goldsworthy received bonuses of $21,563 and $18,000 respectively for the second quarter. These bonuses were based in whole or

in part on the attainment of revenue goals. If the revenue from the AKDB transaction had not been recorded, Goldsworthy would not have received any bonus and Hilger would have received $7,500 less.

B. The Inaccurate Form S-8 Registration Statement

68. On July 25, 2002, Applix filed a Form S-8 Registration Statement to register shares for a directors' stock option plan. The filing incorporated, among other things, the company's misleading Form 10-K for the period ended December 31, 2001 and all future period filings until a later amendment was filed. Because no such amendment was filed, the filing therefore included the company's Form 10-Q for the quarter ended June 30, 2002. Goldsworthy and Hilger signed the Registration Statement and also signed a management representation letter dated July 17, 2002. In that letter, they falsely stated, "We believe the consolidated statements of financial position, results of operations, and cash flows are fairly presented in conformity with accounting principles generally accepted in the United States applied on a basis consistent with that of the preceding periods."

C. The Misleading Form 10-Q for the Quarter Ended June 30, 2002 and Management Representation Letter

69. On August 14, 2002, Applix filed its Form 10-Q for the quarter ended June 30, 2002, including financial statements that were materially misleading insofar as they included all the revenue from the AKDB contract thereby misstating the company's revenue and net loss figures. Hilger and Goldsworthy were involved in the process of preparing the filing and each signed a certification stating that the information in the filing fairly presented, in all material respects, Applix's financial condition and results of

operations. At the time they signed the document, however, they each knew that the AKDB revenue had been improperly included in the revenue figures.

70. Goldsworthy and Hilger had signed a management representation letter in connection with the review of Applix's second quarter financial statements on or about August 13, 2002, In that letter, which was dated July 17, 2002, they had falsely stated, "We believe that such financial statements have been prepared in conformity with accounting principles generally accepted in the United States applied on a basis consistent as that used for the Company's audited financial statements as of and for the year ended December 31, 2001 and prior quarters and reflect all adjustments necessary for a fair presentation of the interim financial statements."

71. On September 19, 2002, at Hilger's request, a conference call was held with Applix Germany to discuss the status of the AKDB transaction. Hilger and Goldsworthy participated in the call, on which Sandner again stressed that AKDB had until November 28, 2002 to accept or reject the software. Sullivan either participated in the call or was made aware of it by Hilger.

72. On November 22, 2002, Luber sent an e-mail to Goldsworthy, stating that one of his main objectives was to make sure that the AKDB project was "accepted and approved by the customer" by the end of November. He went on to state that the risk of losing the project was much higher than Follett had communicated.

73. On or about November 21, 2002, E&Y sent an e-mail to Adam Schauer ("Schauer"), Applix's Controller who worked for Hilger and Sullivan, with a copy to Sullivan, requesting confirmation of the AKDB receivable. On or about November 26, 2002, Applix prepared the confirmation under the signature of Schauer. The

confirmation purported to reflect the terms of the AKDB agreement dated June 28, 2002, and falsely stated that the agreement was irrevocable and non-refundable. It also stated that 50% of the payment was due on December 31, 2002 and the remainder due on February 28, 2003, when in fact, 50% was due if and when AKDB accepted, with the remainder due 90 days later.

74. On November 28, 2002, the date by which AKDB had to declare acceptance or rejection of the goods, Applix-Germany agreed to extend the acceptance period to December 31, 2002, because AKDB had threatened to reject the goods otherwise. On December 1, 2002 Goldsworthy sent a letter to Luber, modifying Luber's objectives so that he now had until the end of December to assure that AKDB "accepted and approved" the agreement.

75. The next day, December 2, 2002, Sandner mentioned the November 28, 2002 extension letter on a conference call with Goldsworthy and other Applix employees in the U.S. Also on December 2, 2002, Applix's European controller e-mailed Hilger and others, noting that because the evaluation period had been extended until December 31, 2002, it was unlikely that any cash would be collected before the year's end. The e-mail was then forwarded to Sullivan.

76. On December 3, 2002, personnel from E&Y e-mailed Sullivan that they had a "concern" that the AKDB confirmation indicated that payment was not due until December 2002 when their initial review for the second quarter 2002 had indicated that payment had been due on July 30, 2002. Despite the fact that Sullivan and Hilger now clearly knew that AKDB had until December to accept the product and that it did not have to make a payment unless and until it accepted, they did not respond to E&Y. In

fact, it was not until January 14, 2003, that Hilger informed E&Y, for the first time, of the acceptance period and the AKDB revenue recognition issue. E&Y, in turn, told Applix's Audit Committee that the company needed to investigate the matter to determine exactly what transpired.

77. In the meantime, on or about December 20, 2002, AKDB indicated, by letter, that it accepted the product and on December 30, 2002, it made the 50% payment due on acceptance.

78. During 2002, Sullivan kept a notebook that contained his notes of meetings, discussions, and telephone calls. Sometime in late December 2002, after he was aware of the AKDB issue and E&Y's concerns, he disposed of the notebook. Goldsworthy likewise kept a notebook during 2002 and it included notes he kept of meetings he attended at Applix-Germany during the week of November 18, 2002 in which the AKDB arrangement was discussed. At some point after February 19, 2003, Goldsworthy lost or otherwise disposed of the notebook.

D. Applix's Misleading Form 8-K

79. On February 5, 2003, Applix filed a Form 8-K related to the sale of its CRM division. That filing included a pro-forma statement of operations for the nine months ended September 30, 2002 and consequently included the improperly recorded June 30, 2002 AKDB revenue.

E. Applix's Restatement of Its Financials

80. On February 28, 2003, Applix announced that the company would restate its financial statements to prorate the revenue from the Consist Amendment over 2002

and to defer the $341,000 in AKDB revenue reported for the second quarter of 2002. In the same press release, the Company also announced that Goldsworthy had resigned.

81. On March 31, 2003, Applix filed its Form 10-K for the year ended December 31, 2002, a restated Form 10-K for December 31, 2001, and restated Forms 10-Q for the first three quarters of 2002. Applix also filed a restated Form 8-K on April 4, 2003.

82. On June 3, 2003, at the request of the Chairman of the Audit Committee, Hilger submitted his resignation.

FIRST CLAIM
(Goldsworthy, Hilger and Sullivan)
Fraud in the Offer or Sale of Securities in Violation of Securities Act § 17(a)

83. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

84. By reason of the foregoing, Goldsworthy, Hilger and Sullivan, directly and indirectly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) acting knowingly or recklessly, have employed or are employing devices, schemes or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities, in violation of § 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

85. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

SECOND CLAIM
(Goldsworthy, Hilger and Sullivan)
Fraud in the Purchase or Sale of Securities in Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

86. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

87. By reason of the foregoing, Goldsworthy, Hilger and Sullivan, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange: (a) have employed devices, schemes or artifices to defraud; (b) have made untrue statements of material fact or have omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) have engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

88. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

THIRD CLAIM
(Hilger and Sullivan)
Circumventing Internal Accounting Controls and/or Falsifying Books and Records in Violation of Section 13(b)(5) of the Exchange Act

89. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

90. By reason of the foregoing, Hilger and Sullivan knowingly circumvented Applix's system of internal accounting controls and/or knowingly falsified Applix's books, records and accounts reflecting the transactions and dispositions of Applix's assets in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

91. The conduct of Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

FOURTH CLAIM
(Goldsworthy, Hilger and Sullivan)
Falsification of Accounting Records in Violation of Exchange Act Rule 13b2-1

92. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

93. By reason of the foregoing, Goldsworthy, Hilger and Sullivan directly or indirectly, falsified or caused to be falsified Applix's books, records and accounts reflecting the transactions and dispositions of Applix's assets, in violation of Rule 13b2-1 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-1].

94. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

FIFTH CLAIM
(Goldsworthy and Hilger)
Providing False and Misleading Information to Accountants in Violation of Exchange Act Rule 13b2-2

95. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

96. By reason of the foregoing, Goldsworthy, a director and officer of Applix, and Hilger, an officer of Applix, directly or indirectly, made or caused to be made a materially false or misleading statement, or omitted to state, or caused another person to omit to state, a material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading, to an accountant in connection with (i) a required audit or examination of Applix's financial statements required or (ii) the preparation or filing of a document or report required to be filed with the Commission, in violation of Rule 13b2-2 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-2].

97. The conduct of Goldsworthy and Hilger involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

SIXTH CLAIM
(Goldsworthy, Hilger and Sullivan)
Aiding and Abetting Applix's Fraud in Connection with the Purchase and Sale of Securities in Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

98. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

99. By reason of the foregoing, Applix, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use

of means and instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange: (a) has employed devices, schemes or artifices to defraud; (b) has made untrue statements of material fact or have omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) has engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

100. Goldsworthy, Hilger and Sullivan knew or recklessly disregarded that Applix's conduct was improper and each knowingly rendered to Applix substantial assistance in this conduct.

101. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

SEVENTH CLAIM
(Goldsworthy, Hilger and Sullivan)
Aiding and Abetting Applix's False Filing of Annual Report with the Commission in Violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 Thereunder

102. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

103. By reason of the foregoing, Applix's materially misstated the company's revenue and net loss figures in its Form 10-K for the year ended 2001, in violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

104. Goldsworthy, Hilger and Sullivan knew or recklessly disregarded that Applix's conduct was improper and each knowingly rendered to Applix substantial assistance in this conduct.

105. As a result, Goldsworthy, Hilger and Sullivan each aided and abetted Applix's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

106. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

EIGHTH CLAIM
(Goldsworthy, Hilger and Sullivan)
Aiding and Abetting Applix's False Filing of Quarterly Report with the Commission in Violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 Thereunder

107. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

108. By reason of the foregoing, Applix's materially misstated the company's revenue and net loss figures in its Form 10-Q for the quarter ended June 30, 2002, in violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13].

109. Goldsworthy, Hilger and Sullivan knew or recklessly disregarded that Applix's conduct was improper and each knowingly rendered to Applix substantial assistance in this conduct.

110. As a result, Goldsworthy, Hilger and Sullivan each aided and abetted Applix's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

111. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

NINTH CLAIM
(Goldsworthy, Hilger and Sullivan)
Aiding and Abetting Applix's False Filing of Form 8-K with the Commission in Violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 Thereunder

112. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

113. By reason of the foregoing, Applix's materially misstated the company's revenue and net loss for the quarter ended June 30, 2002 in its Form 8-K dated February 5, 2003. As a result, Applix violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20 and 13a-11 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-11].

114. Goldsworthy, Hilger and Sullivan knew or recklessly disregarded that Applix's conduct was improper and each knowingly rendered to Applix substantial assistance in this conduct.

115. As a result, Goldsworthy, Hilger and Sullivan each aided and abetted Applix's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and13a-11 thereunder.

116. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

TENTH CLAIM
(Goldsworthy, Hilger and Sullivan)
Aiding and Abetting Applix's Books and Records Violations
Under Section 13(b)(2)(A) of the Exchange Act

117. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

118. By reason of the foregoing, Applix failed to maintain and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Applix's assets, in violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

119. Goldsworthy, Hilger and Sullivan knew or recklessly disregarded that Applix's conduct was improper and each knowingly rendered to Applix substantial assistance in this conduct.

120. As a result, Goldsworthy, Hilger and Sullivan each aided and abetted Applix's violations of Section 13(b)(2)(A) of the Exchange Act.

121. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

ELEVENTH CLAIM
(Goldsworthy, Hilger and Sullivan)
Aiding and Abetting Applix's Internal Controls Violations
Under Section 13(b)(2)(B) of the Exchange Act

122. Plaintiff Commission repeats and realleges paragraphs 1 through 82 above.

123. By reason of the foregoing, Applix failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and to maintain accountability for assets, in violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

124. Goldsworthy, Hilger and Sullivan knew or recklessly disregarded that Applix's conduct was improper and each knowingly rendered to Applix substantial assistance in this conduct.

125. As a result, Goldsworthy, Hilger and Sullivan aided and abetted Applix's violations of Section 13(b)(2)(B) of the Exchange Act.

126. The conduct of Goldsworthy, Hilger and Sullivan involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court issue a Final Judgment:

A. Permanently enjoining Goldsworthy, Hilger and Sullivan from violating, directly or indirectly:

1. Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

2. Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

3. Exchange Act Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1];

4. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13];

5. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]; and

6. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)];

B. Permanently enjoining Hilger and Sullivan from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)];

C. Permanently enjoining Goldsworthy and Hilger from violating, directly or indirectly, Rule 13b2-2 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-2];

D. Requiring Goldsworthy and Hilger to disgorge their ill-gotten gains, including their bonuses related to the violations, as well as prejudgment interest thereon;

E. Requiring Goldsworthy, Hilger and Sullivan to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3) in an amount to be determined by the Court;

F. Barring Goldsworthy, Hilger and Sullivan, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from serving as an officer or director of any issuer required to file reports with the Commission pursuant to Sections 12(b), 12(g) or 15(d) of the Exchange Act [15 U.S.C. §§ 78l(b), 78l(g) and 78o(d)];

G. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

H. Ordering such other and further relief as this case may require and the Court deems appropriate.

JURY DEMAND

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

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION,

By its attorneys,

Luke T. Cadigan (Mass Bar No. 561117)
Senior Trial Counsel
Celia D. Moore (Mass Bar No. 542136)
Deputy Assistant District Administrator
Robert B. Barry (Mass. Bar No. 546645)
Senior Enforcement Counsel
73 Tremont Street, Suite 600
Boston MA 02108
(617) 573-8919 (Cadigan)
(617) 424-5940 (facsimile)

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