

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA**

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SECURITIES AND EXCHANGE COMMISSION, :  
450 Fifth Street, N.W. :  
Washington, DC 20549 :

Plaintiff, :

v. :

C.A. No. \_\_ - \_\_\_\_

R. GEOFFREY LAYNE, JAMES S. SHOLEFF, :  
DALE BOETH, AND SHAWN MCGHEE, :

Defendants. :

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**COMPLAINT**

Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

**SUMMARY**

1. This action arises from a scheme to fraudulently inflate the announced and reported revenues of PurchasePro.com, Inc. (“PurchasePro”) for the first quarter of PurchasePro’s 2001 fiscal year, a quarter that ended on March 31, 2001 (hereinafter “Q1 2001”). Defendants R. Geoffrey Layne, James S. Sholeff, Dale Boeth and Shawn McGhee, who were officers or employees of PurchasePro during the relevant period, each took knowing and deliberate steps in furtherance of that fraudulent scheme, as detailed below.

2. For his part, Layne’s culpable conduct embraced two marketplace license sales by PurchasePro—to Bigstep, Inc. and YellowBrix Inc.—as well as a “Statement of Work” contract between PurchasePro and AOL. In particular, Layne (i) entered into, and concealed the existence of, reciprocal agreements that rendered it improper to recognize revenue from the Bigstep and YellowBrix sales; and (ii) took steps to make it falsely appear that the Statement of Work agreement was executed during Q1 2001.

3. For their part, Boeth and Sholeff also took steps to make it falsely appear that the Statement of Work agreement was executed during Q1 2001. Sholeff took similar steps with respect to a \$3.7 million marketplace license sale by PurchasePro to China.com.

4. For his part, McGhee took steps to (i) make it falsely appear that a \$3.5 million marketplace license sale agreement with Garg Data International, Inc. had been entered into during Q1 2001 and (ii) conceal the existence of reciprocal agreements that rendered it improper to recognize any revenue from that sale.

5. Each of these transactions had a misleading impact on the revenues reported by PurchasePro. For each defendant, that misleading impact was quantitatively material, either to the revenues announced in PurchasePro's Q1 2001 earnings release alone (in the case of Boeth), or to the revenues reported in PurchasePro's Form 10-Q for Q1 2001 as well (in the case of Layne, Sholeff and McGhee).

6. By knowingly or recklessly engaging in the transactions, acts, omissions, practices, and courses of business alleged herein, the defendants violated, and are liable for the violations of, the federal securities laws and regulations as set forth below. Unless enjoined, these defendants are likely to commit similar violations in the future.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. The defendants directly or indirectly used the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, omissions, practices, and courses of business described herein.

8. Venue lies in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 22 of the Securities Act [15 U.S.C. § 77v(a)] because certain acts or transactions constituting the violations occurred in this District.

### **THE DEFENDANTS**

9. R. Geoffrey Layne, age 39, was PurchasePro's Executive Vice President and a co-founder of PurchasePro. Throughout the relevant period, Layne reported directly to PurchasePro's CEO, Charles Johnson Jr. ("Johnson"). Layne resides in Kentucky.

10. James S. Sholeff, age 37, at all relevant times reported directly to Johnson and acted as Johnson's personal assistant. Sholeff held the title of PurchasePro Vice President, a title he assigned to himself when ordering PurchasePro business cards. Sholeff resides in Las Vegas, Nevada.

11. Dale Boeth, age 42, resides in Trophy Club, Texas, and was PurchasePro's Senior Vice President of Consulting Services during the period relevant to the conduct described herein.

12. Shawn McGhee, age 41, resides in Memphis, Tennessee, and was PurchasePro's Chief Operating Officer during the period relevant to the conduct described herein.

### **CORPORATE ENTITY**

13. During the relevant period, PurchasePro was a Nevada corporation, headquartered in Las Vegas, that provided Internet business-to-business electronic-commerce software and services. PurchasePro's common stock was registered with the Commission pursuant to Exchange Act Section 12(g) and traded on the Nasdaq National Market. The company filed a voluntary Chapter 11 bankruptcy petition in September 2002, and has operated as a debtor-in-possession since then. In January 2003, the company changed its name to Pro-After, Inc. and,

with the bankruptcy court's approval, sold substantially all of its assets to a privately held company called Perfect Commerce, Inc.

## **FACTS**

### **PurchasePro Announces and Reports its Q1 2001 Revenue**

14. On April 26, 2001, PurchasePro issued a press release announcing, among other things, that the company's revenues for Q1 2001 totaled \$29.8 million. Later that day, PurchasePro hosted a conference call with analysts and investors in which the company repeated that PurchasePro's revenues for the quarter were \$29.8 million. On May 29, 2001, PurchasePro filed its quarterly report on Form 10-Q, for the first quarter of 2001, reporting revenues of \$16.02 million.

15. Both the \$29.8 million revenue figure publicly announced by PurchasePro on April 26, 2001, and the \$16.02 million revenue figure reported in PurchasePro's first quarter 2001 Form 10-Q were materially overstated. Among other things, both figures included revenue improperly recognized from marketplace license sales by PurchasePro to YellowBrix, China.com and Garg Data International Inc., in the amounts of \$440,000, \$3.7 million, and \$3.5 million, respectively. Recognizing revenue from these sales was improper under generally accepted accounting principles (GAAP) because, in the case of YellowBrix and Garg Data, the sales were conditioned upon undisclosed reciprocal agreements and, in the case of Garg Data and China.com, the sale was executed after the close of the quarter. By including these three marketplace license sales, PurchasePro inflated its publicly announced revenues by at least 20% and its reported revenues by nearly 38%.

16. In addition, PurchasePro's April 26, 2001 earnings announcement also included

revenue improperly recognized from PurchasePro's \$1.1 million marketplace license sale to Bigstep, Inc. and from PurchasePro's "Statement of Work" agreement with AOL, valued at \$3.65 million. Recognizing revenue from these transactions was improper under GAAP because, in the case of Bigstep, the sale was conditioned upon undisclosed reciprocal agreements and, in the case of the Statement of Work, the contract was falsely made to appear to have been executed during the first quarter. By including the Bigstep and Statement of Work contracts, PurchasePro inflated its publicly announced revenues by an additional 14½%.

### **Bigstep**

17. In Q1 2001, Layne and others induced a website services company called Bigstep, Inc. to buy a \$1.1 million marketplace license from PurchasePro by promising that PurchasePro would buy approximately \$1.4 million of goods and services from Bigstep in the next quarter. But for this reciprocal commitment and other simultaneous promises by AOL and its employees (all of which Layne and others intentionally excluded from the documentation of the \$1.1 million "sale" to Bigstep), Bigstep would not have bought this marketplace license. Layne and others did not disclose this inducement to, and took steps to conceal its existence from, PurchasePro's outside auditors. After factoring in AOL's commission, a portion of which PurchasePro netted against its revenues, PurchasePro included \$671,000 in "revenue" from this contract in its April 26<sup>th</sup> earnings announcement.

### **YellowBrix**

18. Also in Q1 2001, Layne and others induced an information services company called YellowBrix Inc. to buy a \$440,000 marketplace license from PurchasePro by promising that PurchasePro would buy \$390,000 of goods and services from YellowBrix in the next

quarter. But for this reciprocal commitment and other simultaneous promises by AOL and its employees (all of which Layne and others intentionally excluded from the documentation of the \$440,000 “sale” to YellowBrix), YellowBrix would not have bought this marketplace license. Layne and others did not disclose this inducement to, and took steps to conceal its existence from, PurchasePro’s internal accountants or outside auditors. After factoring in AOL’s commission, a portion of which PurchasePro netted against its revenues, PurchasePro included \$268,400 in “revenue” from this contract in its April 26<sup>th</sup> earnings announcement and also included it in the revenue reported in its May 29<sup>th</sup> 10-Q filing.

### **China.com**

19. In early April 2001, an e-commerce company called China.com faxed a signed, but undated \$3.7 million marketplace license contract with PurchasePro to AOL’s offices in New York. Sholeff, at the direction of a senior PurchasePro executive (“the Senior Executive”) and with knowledge of an AOL employee, backdated the contract for inclusion in PurchasePro’s Q1 2001 revenue total, by writing the date “3/30/01” under the signature block. Also at the Senior Executive’s instruction and with knowledge of an AOL employee, Sholeff altered the date of a fax machine, so as to make it appear, misleadingly, as if the contract were originally transmitted and received in Q1 2001. In this way, Sholeff, with others, took steps to deceive PurchasePro’s outside auditors concerning the timing of the China.com contract. After factoring in AOL’s commission, a portion of which PurchasePro netted against its revenues, PurchasePro included \$2.257 million in “revenue” from this contract in its April 26<sup>th</sup> earnings announcement and also included it in the revenue reported in its May 29<sup>th</sup> 10-Q filing.

## **Garg Data International**

20. In early April 2001, McGhee, acting with the knowledge or at the direction of the Senior Executive, executed multiple and reciprocal transactions with Sushil Garg and Garg Data International, Inc., including Garg Data's purchase of a \$3.5 million marketplace software license. In an effort to characterize this \$3.5 million purported "sale" as having occurred in Q1 2001, and with the knowledge or at the direction of the Senior Executive, McGhee and Garg signed a contract that, misleadingly, bore no date other than an "effective date" of March 30, 2001. The use of an "effective date" of March 30 for the transaction was designed to allow PurchasePro to record the transaction, improperly, as a sale in a prior reporting period. Upon learning that Garg Data lacked sufficient funds to cover its \$3.5 million obligation, McGhee and others held Garg Data's check until after PurchasePro first wired approximately \$4 million to a separate Garg-controlled entity pursuant to a reciprocal agreement. Garg immediately transferred this money into Garg Data's account and PurchasePro deposited Garg Data's \$3.5 million check; in this way, PurchasePro effectively funded its own revenues.

21. McGhee and others did not disclose to PurchasePro's outside auditors, and actively misled PurchasePro's outside auditors concerning, the reciprocal nature of these arrangements, the nature of the payments, and the fact that the contract was improperly dated. McGhee signed a false contract confirmation, improperly indicating that (1) the Garg transaction was executed before the close of the quarter and (2) Garg Data's purchase was not the subject of any undisclosed side deals or arrangements. As a result, PurchasePro's outside auditors did not detect PurchasePro's improper recognition of revenue from this transaction in Q1 2001, and allowed the \$3.5 million to be included in the company's quarterly report on Form 10-Q, for the

first quarter of 2001. This transaction alone inflated PurchasePro's publicly announced revenues by over 10% and its reported revenues by over 20%.

### **Statement of Work**

22. In early April 2001, Layne, Sholeff and others falsified a contract between PurchasePro and AOL in an effort to bridge the gap between PurchasePro's actual quarterly revenues and its publicly announced quarterly revenue expectations. This contract, entitled PurchasePro AOL/Netbusiness Auction Integration Statement of Work, purported to obligate AOL to pay \$3.65 million to PurchasePro for certain technology services that PurchasePro allegedly provided to AOL.

23. Boeth, Layne, Sholeff and others knew that the Statement of Work contract was not drafted until early April 2001, and that the services described in the contract had not been performed by the close of Q1 2001. Nonetheless, each participated, with others, in creating the false impression for PurchasePro's auditors that the contract was properly executed, and that the services described therein were performed, in Q1 2001. For example, although the draft of the actual agreement was not completed until approximately April 5, 2001, Boeth and others caused the Statement of Work be dated as of February 5, 2001, in order to make it appear, misleadingly, to PurchasePro's auditors as if PurchasePro had the requisite time to perform the services described in the contract. In addition, with the knowledge and at the direction of the Senior Executive, Layne, with the assistance of others, cut-and-pasted the signature of an AOL employee from an earlier piece of correspondence onto the signature page of the document, in order to make it appear as if AOL agreed to its terms and accepted the obligation. At the Senior Executive's direction, Sholeff (i) added the letters "SVP" under the pasted signature, to signify



Senior Vice President, and (ii) made a copy of the forged signature page, followed by numerous successive copies of that copy, in order to conceal or obscure the forgery.

24. During PurchasePro's quarterly review, AOL employees executed false confirmations that were provided to PurchasePro's auditors. Subsequently, Layne, with others, including an AOL employee, participated in a fraudulently scripted conference call with PurchasePro's auditors in which the AOL employee falsely confirmed that the services described in the Statement of Work had been performed by the close of Q1 2001.

25. As a result, PurchasePro's outside auditors did not detect PurchasePro's improper recognition of Q1 2001 revenue from the Statement of Work prior to the company's April 26, 2001 earnings announcement, which included \$3.65 million in "revenue" from this contract in PurchasePro's announced \$29.8 million quarterly revenue figure. Thus, the Statement of Work contract alone accounted for 12% of PurchasePro's Q1 2001 publicly announced revenues.

#### **The Fraud's Aftermath: Retention Bonuses and Document Destruction**

26. In early April 2001, after the Senior Executive falsely assured PurchasePro's board of directors that the company's Q1 2001 results were in accord with the company's prior guidance to investors, PurchasePro paid Layne a \$200,000 retention bonus. At or about the same time, PurchasePro paid Boeth a total of \$150,000 in retention bonuses.

27. In mid-April 2001, Layne and Sholeff attempted to conceal their conduct by destroying certain documents. At the Senior Executive's direction, Sholeff shredded all of his AOL related documents and then destroyed his laptop by smashing his hard drive and raking the pieces into his yard. Sholeff also destroyed certain documents that the Senior Executive brought to Sholeff's residence. Layne and Sholeff, among others, also deleted, or requested others to

delete, their AOL-related emails. In addition, in February 2002, Layne and Sholeff lied to the Commission staff in testimony in order to conceal their fraudulent conduct.

28. As a result of the above-described knowing, deliberate, and reckless conduct by the Defendants and others, PurchasePro materially misrepresented its Q1 2001 revenues in Commission filings, analyst and investor conference calls, and press releases.

### **FIRST CLAIM**

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

29. Paragraphs 1 through 28 are realleged and incorporated by reference.

30. As described above, defendants Layne, Sholeff, Boeth, and McGhee, directly or indirectly, in connection with the purchase or sale of a security, by use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange:

- a. employed devices, schemes or artifices to defraud;
- b. made untrue statements of material fact or omitted 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. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

31. By engaging in the foregoing conduct, defendants Layne, Sholeff, Boeth, and McGhee violated 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].

## **SECOND CLAIM**

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

32. Paragraphs 1 through 31 are realleged and incorporated by reference.

33. As described above, defendants Layne, Sholeff, Boeth, and McGhee knowingly circumvented or knowingly failed to implement a system of internal accounting controls, knowingly falsified books, records, or accounts and directly or indirectly falsified or caused to be falsified books, records, or accounts described in section 13(b)(2) of the Exchange Act.

34. By engaging in the foregoing conduct, defendants Layne, Sholeff, Boeth, and McGhee violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

## **THIRD CLAIM**

### **(Violations of Exchange Act Rule 13b2-2)**

35. Paragraphs 1 through 34 are realleged and incorporated by reference.

36. As described above, defendants Layne, Boeth, and McGhee, directly or indirectly, and in connection with audits or examinations of the financial statements of PurchasePro and the preparation and filing of statements and reports required to be filed with the Commission, made or caused to be made materially false or misleading statements to accountants and omitted to state, or caused another person to omit to state to accountants, material facts necessary in order to make statements made to the accountants, in light of the circumstances under which such statements were made, not misleading.

37. By engaging in the conduct described above, defendants Layne, Boeth, and McGhee violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

## **FOURTH CLAIM**

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

38. Paragraphs 1 through 37 are realleged and incorporated by reference.

39. PurchasePro violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, by filing with the Commission a materially false and misleading quarterly report on Form 10-Q for the first quarter of 2001.

40. By engaging in the foregoing conduct, defendants Layne, Sholeff, and McGhee knowingly provided substantial assistance to PurchasePro's violations 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 & 240.13a-13], and, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], thereby aided and abetted those violations.

## **FIFTH CLAIM**

### **(Violations of Exchange Act Section 13(b)(2)(A) and (B))**

41. Paragraphs 1 through 40 are realleged and incorporated by reference.

42. As described above, PurchasePro violated Section 13(b)(2)(A) of the Exchange Act by failing to make or keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of its assets.

43. As described above, PurchasePro violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that PurchasePro's corporate transactions were executed in accordance with management's authorization and in a manner to permit the preparation of financial statements in conformity with GAAP.

44. By engaging in the foregoing conduct, PurchasePro, directly or indirectly, falsified and caused to be falsified PurchasePro's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act.

45. By engaging in the foregoing conduct, defendants Layne, Sholeff, and McGhee knowingly provided substantial assistance to PurchasePro's violations of Exchange Act Section 13(b)(2)(A) and (B) [15 U.S.C. § 78m(b)(2)(A) and (B)] and, pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], thereby aided and abetted those violations.

## **PRAYER FOR RELIEF**

WHEREFORE, plaintiff Commission respectfully requests that this Court enter a judgment that:

(i) permanently enjoins Layne, Sholeff, Boeth, and McGhee from violating Exchange Act Sections 10(b) and 13(b)(5) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Exchange Act Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5 and 240.13b2-1];

(ii) permanently enjoins Layne, Boeth, and McGhee from violating Exchange Act Rule 13b2-2 [17 C.F.R. §§ 240.13b2-2];

(iii) permanently enjoins Layne, Sholeff, and McGhee from aiding and abetting violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and (B)] and Exchange Act Rules 12b-20 and 13a-13 [17 C.F.R. §§ 240.12b-20 and 240.13a-13];

(iv) bars Layne, Sholeff, Boeth, and McGhee from acting as an officer or director of any public company pursuant to Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)];

(v) orders Layne, Sholeff, Boeth, and McGhee to pay civil penalties pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)];

(vi) orders Layne and Boeth to disgorge, with prejudgment interest, any and all bonuses and other illicit benefits each received as a result of the conduct described herein; and

(vii) grants such other relief as the Court deems just or appropriate.

Respectfully submitted,

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Dated: \_\_\_\_\_, 2004