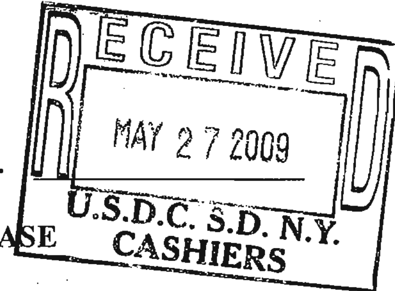
'09 CIV 4945

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	Civ. No.
v.	ECF CASE
RICHARD J. MILLER, GARY S. JENSEN, AND MICHAEL E. BEAULIEU, Defendants.	



COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("Commission"), alleges for its Complaint as follows:

SUMMARY

1. At different times from at least September 2000 through at least March 2004, three former senior accounting and finance officers of Cardinal Health, Inc. ("Cardinal") engaged in a fraudulent earnings and revenue management scheme to inflate Cardinal's publicly reported operating revenue, earnings and growth trends. Defendants Richard J. Miller ("Miller"), Cardinal's former chief financial officer, Gary S. Jensen ("Jensen"), Cardinal's former controller and principal accounting officer, and Michael E. Beaulieu ("Beaulieu") the former senior vice president of finance in Cardinal's pharmaceutical products division (collectively, the "Defendants"), presented a false picture of Cardinal's operational results to the financial community and the investing public – one that matched Cardinal's publicly

disseminated earnings guidance and analysts' expectations, rather than its true economic performance.

2. As a result of the Defendants' actions, as described in this complaint, Cardinal was able to meet its publicly proclaimed financial targets between its fiscal years ("FY") 2001 and 2004. The company had reported 16 consecutive years of 20% or higher growth in earnings per share before special items ("EPS") and 77 fiscal quarters in which it met or beat performance guidance. By the fall of 2001, however, due to changes in the pharmaceutical distribution business, Cardinal began to experience downward pressure on its operating revenue, operating revenue growth rates and earnings. These changes reduced Cardinal's ability to generate growth and meet its public earnings guidance and analysts' expectations.

3. A significant part of the scheme involved the undisclosed inflation of Cardinal's reported operating revenue, a key performance metric for Cardinal and the pharmaceutical distribution industry. Each Defendant's involvement in this aspect of the scheme varied over time. In total, however, these actions had the effect of inflating Cardinal's reported operating revenue through the improper reclassification of more than $5 billion of bulk revenue as operating revenue. As a result, the public and analysts were deceived as to the quality of Cardinal's revenue and its prospects for continued growth.

4. The Defendants also manipulated Cardinal's reported earnings in certain quarters by selectively accelerating, without disclosure, Cardinal's payment of vendor invoices to prematurely record a cumulative gross total of $133 million in cash discount income. These undisclosed changes in the timing of its payments allowed Cardinal to make its earnings targets in those periods. At different times, the Defendants further boosted Cardinal's reported earnings by improperly establishing and utilizing a general reserve account and engaging in other

improper practices regarding reserves. In addition, Defendant Miller advocated for and approved the improper and misleading classification of $22 million in anticipated litigation settlement proceeds, which enabled Cardinal to meet its earnings targets in two quarters.

5. As a result of the Defendants' conduct, Cardinal materially misrepresented its trends in reported operating revenue and earnings in periodic reports filed with the Commission, as well as in certain registration statements and earnings releases. Each Defendant knew, or was reckless in not knowing, that these earnings releases and filings were materially false and misleading. As described in greater detail below, each Defendant was substantively involved, at varying times during the relevant period, in generating the false and misleading information concerning Cardinal's operating revenue and earnings, as well as preparing or reviewing the company's filings and/or earnings releases containing the false and misleading data. Defendant Miller also made materially misleading statements about Cardinal's reported revenue and earnings during quarterly and annual earnings conference calls by omitting to disclose the material impact of the practices in question.

6. On October 26, 2004, following the company's internal investigation of the practices and disclosure issues described herein, Cardinal restated its financial results for FY 2000 to 2003 and for the first three quarters of FY 2004. In its restatement, Cardinal disclosed, among other things, that it had improperly classified $1.2 billion of bulk revenue as operating revenue and that Cardinal had an undisclosed practice of accelerating payment of vendor invoices at the end of certain reporting periods, which improved operating results for those periods. The restatement (as subsequently corrected) also reduced Cardinal's net earnings by a cumulative total of $65.9 million, due to Cardinal's adjustments to reserves and other accruals, which were restated as a result of misapplications of generally accepted accounting principles

("GAAP"), other errors or an absence of substantiation. In addition, Cardinal reversed, reclassified and recognized in a later period the $22 million of expected litigation settlement proceeds it had previously recognized during the second quarter of FY 2001 and the first quarter of FY 2002.

7. By engaging in the conduct described herein, the Defendants violated the antifraud, internal controls and books and records provisions of the federal securities laws and aided and abetted Cardinal's violations of the internal controls, books and records and reporting provisions of those laws. Defendants Miller and Jensen further violated the federal securities laws in connection with management representation letters delivered to Cardinal's external auditor, and Defendant Miller violated the federal securities laws in connection with certifications of Cardinal's periodic filings. Through this action, the Commission requests that the Court, among other things: (1) permanently enjoin the Defendants from further violations of the federal securities laws; (2) prohibit the Defendants from serving as officers or directors of a public company; and (3) order the Defendants to pay civil monetary penalties.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

9. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d)(1) and 77v(a)] and Sections 21(d)(3)(A), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3)(A), 78u(e) and 78aa]. The Defendants, directly and indirectly, used the means or instrumentalities of transportation, interstate

commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of conduct alleged in this Complaint.

10. Certain of the acts, practices and courses of conduct constituting the violations of law alleged in this Complaint occurred within this judicial district and, therefore, venue is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. The Defendants, directly and indirectly, have engaged in transactions, acts, practices and courses of business that violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), 78(m)(b)(5)] and Exchange Act Rules 10b-5 and 13b2-1. [17 C.F.R. §§ 240.10b-5, 240.13b2-1]. In addition, Defendants Miller and Jensen have violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2], and Defendant Miller has violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14]. The Defendants also aided and abetted Cardinal's violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13]. Unless restrained and enjoined by this Court, the Defendants will continue to violate and aid and abet violations of these provisions of the federal securities laws.

DEFENDANTS

11. Miller, age 52, joined Cardinal in 1994, became its chief financial officer ("CFO") in 1998 and held that position until July 2004, when he resigned. He was licensed as a certified public accountant ("CPA") by the state of Ohio.

12. Jensen, age 54, joined Cardinal in 1999, became its senior vice president and corporate controller in August 2002 and held those positions until February 2005, when he

resigned. From January 2003 until October 2004, Jensen also served as Cardinal's principal accounting officer. He was licensed as a CPA by the state of Missouri. Jensen's role in the conduct described in this complaint began in FY 2003, when he began serving as Cardinal's corporate controller.

13. Beaulieu, age 51, joined Cardinal in 1988 and was promoted to corporate vice president, controller and principal accounting officer in 1998. From January 2001 through January 2004, he was the senior vice president of finance for Cardinal's Pharmaceutical Distribution and Provider Services and Medical Products and Services business segments. From February 2004 until his resignation in March 2006, he held the position of senior vice president of finance for Cardinal's Pharmaceutical Distribution and Provider Services business segment. Beaulieu was licensed as a CPA by the state of Massachusetts.

RELEVANT ENTITY

14. Cardinal, a Fortune 20 company, is an Ohio corporation with headquarters in Dublin, Ohio. Cardinal's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trades on the New York Stock Exchange. At all times relevant to this Complaint, Cardinal was a diversified provider of products and services in the health care industry, and its businesses were classified into four reporting segments: Pharmaceutical Distribution and Provider Services ("Pharmaceutical Distribution"), Pharmaceutical Technologies and Services ("Pharmaceutical Technologies"), Medical Products and Services and Automation and Information Services. Cardinal's fiscal year ends on June 30. For FY 2001 through 2004, Cardinal reported total revenues of $47 billion, $51 billion, $56 billion and $65 billion, respectively. During the relevant period, Cardinal asserted that it had achieved 16 consecutive years of 20% or higher growth in earnings per share before special items ("EPS")

and 77 fiscal quarters in which it had "met or beat guidance." As described below, those statements were untrue. On August 1, 2007, Cardinal was enjoined from violating the antifraud, internal controls, books and records and reporting provisions of the federal securities laws by the United States District Court for the Southern District of New York in a case filed by the Commission alleging, among other things, the fraudulent and improper conduct detailed below.

I. DEFENDANTS CLOSELY MONITORED CARDINAL'S SEGMENT AND CONSOLIDATED PERFORMANCE

15. The Defendants engaged in the revenue and earnings management practices described herein within the context of a detailed budgeting, forecasting and internal reporting process for operating earnings, revenue and net income. The Defendants and other members of Cardinal's management closely monitored Cardinal's segment and consolidated financial performance to assess whether it was in line with internal expectations and the external guidance from Cardinal on which analysts based their projections. As part of this process, after the end of each quarter and prior to Cardinal's earnings release and conference call, the Defendants generally attended quarterly business review ("QBR") meetings with other members of Cardinal's management and the senior management of the reporting segments. At the QBR meetings, segment management presented detailed materials describing the segments' quarterly financial performance, As the Defendants knew, Cardinal's goal was to meet or exceed revenue and earnings guidance, including year-over-year quarterly EPS growth of 20% or more.

16. As a result of this detailed monitoring, the Defendants knew when the monthly forecast for a business unit or segment was less than its budgeted expectations. Within Cardinal, these shortfalls were referred to as "gaps." Once gaps were identified, the Defendants, along with other Cardinal employees, identified, developed or solicited ideas for "initiatives" (*i.e.*,

actions to take to improve financial performance) to close the gaps. As discussed below, some of these initiatives involved fraudulent and improper accounting or disclosure practices.

II. DEFENDANTS ENGAGED IN IMPROPER AND FRAUDULENT ACCOUNTING AND DISCLOSURE PRACTICES

A. Misclassification of Over $5 Billion of Bulk Sales as Operating Revenue

1. Cardinal's Historical Classification of Revenue

17. At all relevant times, Pharmaceutical Distribution was Cardinal's largest segment, generally representing over 80% of Cardinal's consolidated total revenue and over 40% of its consolidated total gross profits. Pharmaceutical Distribution divided its business during the relevant period between "Direct Store Door" business and the "Brokerage" business.

18. Direct Store Door business was the basic business of Pharmaceutical Distribution, which was buying pharmaceutical products in full case quantities (bulk), breaking those products down to fill customized orders and delivering these orders to pharmacies and other provider customers. Cardinal classified revenues from this Direct Store Door business as operating revenue. During the relevant period, Direct Store Door business generally consisted of sales by Cardinal directly to customers out of inventory Cardinal held at its warehouses. Cardinal historically profited from price increases that occurred between the time it bought the inventory from manufacturers and the time it sold the inventory to customers.

19. The Brokerage business consisted of sales of bulk product to customer warehouses. Certain bulk sales ("Drop Ship" transactions) went directly from the manufacturer to Cardinal's customer. Cardinal also ordered bulk product from the manufacturer for its customer, received the product on a Cardinal loading dock, and then shipped it to the customer, usually within 24 hours ("Cross Dock" transactions). These two types of bulk sales provided virtually no profit margin to Cardinal and Cardinal incurred minimal holding and handling costs

for these sales. Cardinal's profit on these bulk sales primarily consisted of interest it earned on cash between the time Cardinal received payment from the customer until the time that Cardinal made payment to the manufacturer. In addition, the Brokerage business sold certain products in full-case quantities from inventory that Cardinal had acquired and held in order to profit from manufacturer price increases ("Bulk from Stock" transactions).

20. During the relevant time period, Cardinal reported its revenue, along with the associated cost of sales, as two separate line items, one being operating revenue and the other being bulk sales to customer warehouses ("bulk revenue"). Historically, bulk revenue included Drop Ship and Cross Dock sales, but not Bulk from Stock transactions.

21. The Defendants understood that investors and analysts focused on Cardinal's operating revenue, rather than its bulk revenue, in evaluating Cardinal's financial performance. The Defendants also understood that Cardinal sought to report high operating revenue and operating revenue growth rates, as compared to prior quarters and fiscal years.

22. As the Defendants knew, Cardinal consistently reported increasing operating revenue growth for the company and the Pharmaceutical Distribution segment prior to the fall of 2001. In the fall of 2001, Cardinal and Pharmaceutical Distribution began to experience downward pressure on their operating revenue, operating revenue growth rates and earnings.

23. Cardinal responded to this downward pressure on its operating revenue by misclassifying billions of dollars of almost zero profit margin bulk sales as operating revenue. At different times and to different degrees, the Defendants employed three undisclosed initiatives to effect this transformation and thereby improperly inflate Cardinal's faltering operating revenue and operating revenue growth, even though the initiatives also materially reduced Cardinal's operating gross margins as a percentage of operating revenue.

2. The "24-Hour Rule" Initiative to Convert Bulk to Operating Revenue

24. In November 2001, Cardinal created and began to follow an undisclosed internal practice whereby it classified revenue from the sale of bulk product as operating revenue, provided the bulk product had been in Cardinal's possession for more than 24 hours prior to being shipped ("the 24-Hour Rule."). Based on a suggestion from a Pharmaceutical Distribution executive, Defendant Beaulieu discussed the 24-Hour Rule initiative with Defendant Miller, who approved its implementation. As Defendants Miller and Beaulieu knew, from that point until Cardinal's restatement in 2004, Cardinal used the 24-Hour Rule to improperly inflate reported operating revenue and operating revenue growth rates. After Defendant Jensen became Cardinal's controller in August 2002, he was aware of the undisclosed practice and its impact on operating revenue and did not object.

25. Defendants Miller, Jensen and Beaulieu reviewed QBR materials that highlighted the impact of the 24-Hour Rule on operating revenue and attended certain QBR meetings at which Pharmaceutical Distribution management made presentations that included discussions of the components of operating revenue. As the Defendants understood, the 24-Hour Rule did not create any new revenue, but, instead, shifted revenue that would have been previously reported on the bulk revenue line to the operating revenue line.

26. Unbeknownst to investors and analysts, the 24-Hour Rule overstated Cardinal's reported operating revenue for 10 consecutive quarters, from the quarter ended December 31, 2001, through the quarter ended March 31, 2004, and overstated Cardinal's reported operating revenue growth rates for six out of eight quarters during FY 2002 and 2003. During this time period, the 24-Hour Rule overstated Cardinal's reported operating revenue by approximately $2

billion ($466 million during FY 2002, $1 billion during FY 2003 and $526 million during the first three quarters of FY 2004).

3. The "24-Hour Lever" Initiative to Convert Bulk to Operating Revenue

27. Shortly after implementing the 24-Hour Rule, and based on the suggestion of a Pharmaceutical Distribution executive, Cardinal began to implement a new and undisclosed initiative to inflate operating revenue. Defendant Miller began directing Pharmaceutical Distribution employees to intentionally hold bulk inventory orders on Cardinal's premises for longer than 24 hours, in order to convert the sale of this product from bulk revenue to operating revenue (the "24-Hour Lever"). Defendant Beaulieu, and Defendant Jensen, once he became controller, also participated in deciding to activate the 24-Hour Lever. As the Defendants knew, Cardinal used the 24-Hour Lever to shift additional revenue from the bulk revenue line to the operating revenue line.

28. Defendants Jensen and Beaulieu generally monitored Cardinal's quarterly operating revenue. At different times, they and others suggested to Defendant Miller when to start and stop the 24-Hour Lever, based on the strength or weakness of quarterly sales. With this input, Defendant Miller decided when to use the 24-Hour Lever. As a result, Cardinal did not apply the 24-Hour Lever in every quarter, and did not use it throughout an entire quarter when it was applied. As the Defendants understood, Cardinal's use of the 24-Hour Lever also depended, in part, on how strong or weak Cardinal's quarterly earnings were, since it could appear anomalous to analysts and investors if Cardinal reported strong operating revenue alongside weak operating earnings. For instance, in a February 18, 2003 e-mail from Defendant Jensen to Defendant Beaulieu and others, which was later forwarded to Defendant Miller, Defendant Jensen asked what was the "latest date" that Cardinal could "turn on the 24 hr. sales lever and

achieve a meaningful benefit for [the] quarter." Defendant Miller informed Defendants Beaulieu and Jensen in a February 27, 2003 e-mail that he wanted to understand the success of "additional initiatives to help the earnings" before turning on the 24-Hour Lever, because he preferred "not to have the quarter be upside down."

29. The Defendants reviewed materials distributed to attendees of QBR meetings that broke out the impact of the 24-Hour Lever, along with the 24-Hour Rule, separately from other sources of operating revenue and attended QBR meetings at which its impact was discussed. Beginning after the third quarter of FY 2003, the QBR materials identified bulk revenue misclassified under the 24-Hour Rule as "24 Hour Reclass (1)" and identified bulk revenue misclassified under the 24-Hour Lever as "24 Hour Reclass (2)." The Defendants understood the distinction between these two types of misclassified revenue.

30. Unbeknownst to investors and analysts, the 24-Hour Lever overstated Cardinal's reported operating revenue and operating revenue growth rates during two quarters of FY 2002 and two quarters of FY 2003. During these four quarters, the 24-Hour Lever overstated Cardinal's reported operating revenue of approximately $48.5 billion by $1.2 billion ($414 million during the two relevant quarters of FY 2002 and $813 million during the two relevant quarters of FY 2003). In particular, during the quarter ended December 31, 2002, the 24-Hour Lever improperly classified $673 million of bulk sales as operating revenue. This represented 5.30% of Cardinal's total reported operating revenue for the quarter and 6.39% of Pharmaceutical Distribution's total reported operating revenue for the quarter.

4. The "Just-in-Time" Initiative to Convert Bulk to Operating Revenue

31. Beginning in the quarter ended March 31, 2002, Cardinal implemented a third undisclosed initiative, called "Just-in-Time" ("JIT"), which artificially converted bulk revenue to

operating revenue. At different times, the Defendants were aware of the JIT initiative and its impact on operating revenue, and none objected to it. Under JIT, Cardinal, based on past customer buying trends, placed orders for bulk product in advance of anticipated customer orders. Cardinal then received the bulk product into its inventory and held the product until a customer placed an order. In this way, Cardinal could hold bulk product for longer than 24 hours and convert the sales to operating revenue. Like the 24-Hour Rule and the 24-Hour Lever, Cardinal used JIT to shift revenue from the bulk revenue line to the operating revenue line and thereby inflate reported operating revenue and operating revenue growth rates.

32. The Defendants attended QBR meetings at which segment management discussed the impact of the JIT initiative on operating revenue. Beginning after the second quarter of FY 2003, the Defendants also reviewed QBR materials that broke out the amount of operating revenue attributable to the JIT program, alongside the amount generated by the 24-Hour Rule and the 24-Hour Lever.

33. Unbeknownst to investors and analysts, the JIT program overstated Cardinal's reported operating revenue for nine consecutive quarters, from the quarter ended March 31, 2002, through the quarter ended March 31, 2004, and overstated Cardinal's reported operating revenue growth rates for four out of eight quarters during FY 2002 and 2003. During this time period, JIT overstated Cardinal's reported operating revenue by approximately $1.8 billion ($482 million during the last two quarters of FY 2002, $1.2 billion during FY 2003 and $118 million during the first three quarters of FY 2004).

5. Material Impact of the Operating Revenue Initiatives

34. From the quarter ended December 31, 2001, through the quarter ended March 31, 2004, the three operating revenue initiatives combined inflated the portion of Cardinal's

revenues that were classified as operating revenue by over $5 billion: $1.4 billion in FY 2002, $3 billion in FY 2003, and $644 million in the first three quarters of FY 2004. On a quarterly basis, the combined overstatement of Cardinal's reported operating revenue ranged from 1.22% to 8.96% and the overstatement of Pharmaceutical Distribution's operating revenue ranged from 1.50% to 10.80% during this period. The Defendants knew, or were reckless in not knowing, that the three operating revenue initiatives materially overstated reported operating revenue for Cardinal and Pharmaceutical Distribution.

35. As the Defendants knew, or were reckless in not knowing, through the three undisclosed initiatives, Cardinal misleadingly portrayed its trend in reported operating revenue growth. Moreover, they knew, or were reckless in not knowing, that there was a difference between the quality of true operating revenue, as compared to bulk revenue improperly reported as "operating revenue" as a result of the 24-Hour Rule, 24-Hour Lever, and JIT initiatives.

36. Cardinal's use of the three initiatives peaked during the quarter ended December 31, 2002, and the impact was dramatic. As the Defendants knew, or were reckless in not knowing, in that quarter, Cardinal misclassified approximately $1.1 billion of bulk sales as operating revenue. This represented 8.96% of Cardinal's total reported operating revenue and 10.80% of Pharmaceutical Distribution's reported operating revenue.

37. The combined impact of the 24-Hour Rule, 24-Hour Lever and JIT initiatives materially overstated Cardinal's operating revenue growth throughout the relevant period. For example, without the initiatives, Cardinal's FY 2002 operating revenue growth would have been 11.31%, instead of the 14.83% Cardinal reported, representing a 31.12% overstatement of consolidated operating revenue growth. Similarly in FY 2003, Cardinal's operating revenue growth would have been only 10.27%, instead of the 13.68% Cardinal reported, representing a

33.20% overstatement of consolidated operating revenue growth. On a quarterly basis during FY 2002 and 2003, the consolidated growth rate was overstated through the three initiatives between 16.73% and 148.68%. The impact of the three initiatives on Pharmaceutical Distribution's reported operating revenue growth rates was even greater. Finally, the 24-Hour Rule, 24-Hour Lever and JIT initiatives reduced Cardinal's and Pharmaceutical Distribution's reported gross margin as a percentage of operating revenue. The Defendants knew, or were reckless in not knowing, that the three operating revenue initiatives materially overstated reported operating revenue growth rates for Cardinal and Pharmaceutical Distribution.

6. Defendants Caused Material Misstatements of Cardinal's Operating Revenue in Public Earnings Releases and Reports

38. As the Defendants knew, or were reckless in not knowing, the 24-Hour Rule, 24-Hour Lever and JIT initiatives resulted in the material misstatement of Cardinal's operating revenue, operating revenue growth and/or gross margin rates in earnings releases and periodic filings with the Commission for 10 consecutive quarters, from the quarter ended December 31, 2001, through the quarter ended March 30, 2004. The Management's Discussion and Analysis of Results of Operations and Financial Condition ("MD&A") section of each periodic filing Cardinal made with the Commission stated that "[f]luctuations in bulk deliveries result largely from circumstances that the Company cannot control." The Defendants knew, or were reckless in not knowing, that this statement was materially false and misleading because their actions contributed to causing billions of dollars of fluctuations in bulk revenue through the undisclosed reclassification of non-operating "bulk revenue" into "operating revenue."

39. At various times between December 2001 and March 2004, the Defendants signed Cardinal's quarterly and annual filings with the Commission, reviewed earnings releases, and/or signed internal certifications regarding corporate or segment financial performance which they

knew, or were reckless in not knowing, materially misstated operating revenue, operating revenue growth and gross margin rates as a result of the three operating revenue initiatives. Throughout this period, Defendant Miller signed all of Cardinal's periodic filings, and, beginning with the Form 10-K for FY 2002, also signed public certifications to Cardinal's filings. He also reviewed Cardinal's earnings releases and made materially misleading statements about reported revenue on quarterly and annual earnings conference calls by omitting to disclose the material impact of the operating revenue initiatives. During this period, Defendant Beaulieu reviewed and signed internal certifications as to the accuracy of business unit/segment financial information and disclosures in connection with the preparation of Cardinal's quarterly and annual filings, reviewed draft periodic filings and prepared or reviewed information included in Cardinal's earnings releases. After becoming Cardinal's controller in August 2002, Defendant Jensen reviewed Cardinal's quarterly and annual filings and earnings releases, signed internal certifications attesting to the accuracy of the disclosures in those filings and signed Cardinal's Form 10-K for FY 2003 as principal accounting officer.

40. In September 2003, Pharmaceutical Distribution employees voiced concerns about the propriety of the 24-Hour Lever. On September 18, 2003, Defendant Miller and others met with the employees and told them that the market focused on the operating revenue line and that Cardinal used the 24-Hour Lever to manage the "optical" balance between operating and bulk revenue. After the meeting, Defendant Miller decided to stop using the 24-Hour Lever. By this time, Cardinal also had decided to gradually stop JIT.

41. After discontinuing the 24-Hour Lever and JIT initiatives, Cardinal was faced with declines in reported operating revenue growth rates, as compared to the year-ago quarters in which operating revenue had been substantially inflated by these initiatives. On December 16,

2003, Cardinal distributed an investor newsletter, which it also filed as an exhibit to a Form 8-K filed with the Commission (collectively, the "Newsletter"). The Newsletter included a prospective discussion of business model changes within the pharmaceutical distribution industry, as well as historical information regarding the composition of Cardinal's pharmaceutical distribution revenues. The Newsletter ascribed expected declines in operating revenue growth to changes in Cardinal's business model and the greater industry, including declines in "bulk from stock" transactions. Defendant Miller, who along with other members of Cardinal's management had reviewed and edited drafts of the Newsletter, knew, or was reckless in not knowing, that these statements were materially false and misleading because the Newsletter failed to disclose that the decisions to stop the 24-Hour Lever and sharply decrease the use of JIT would also cause significant declines in reported year-over-year operating revenue growth, because Cardinal was no longer using these initiatives to inflate operating revenue artificially.

42. The Newsletter also stated that future operating revenue growth would be impacted negatively by a significant decline in "bulk from stock" revenues, which it described as bulk orders sold from inventory (and thus accounted for as operating revenue). The Newsletter also stated that Cardinal would be holding less bulk inventory under the new business model and that, as a result, fewer bulk orders would be filled from inventory, resulting in lower operating revenues. It then indicated that roughly $5.6 billion – or 14.35% – of reported Pharmaceutical Distribution operating revenue for FY 2003 consisted of "bulk from stock revenue." As Defendant Miller knew, or was reckless in not knowing, this statement was materially false and misleading, because the Newsletter failed to disclose that more than half of that $5.6 billion in

"bulk from stock" sales was simply bulk revenue that had been improperly converted to operating revenue through the 24-Hour Rule, 24-Hour Lever and JIT initiatives.

43. As Defendants Miller, Jensen and Beaulieu knew, or were reckless in not knowing, Cardinal never disclosed the 24-Hour Rule, 24-Hour Lever and JIT initiatives or their impact until Cardinal announced its impending restatement in a Form 8-K filed with the Commission on September 13, 2004.

B. <u>Use of Cash Discounts to Improperly Inflate Operating Earnings</u>

44. Cardinal selectively paid vendor invoices early in order to generate cash discount income in quarters when it needed income to meet its financial targets, rather than in the immediately following quarters when that income normally would have been recorded. Between FY 2001 and FY 2004, Cardinal prematurely recorded a cumulative gross total of $133 million in cash discount income. Within Cardinal, this practice was referred to as the "cash discount buyout" initiative, or "buying out" cash discounts. During the relevant time, Cardinal accounted for cash discounts as a reduction in the cost of sales immediately upon payment of vendor invoices. As a result, Cardinal increased its reported gross margin and operating earnings for the quarters in which it bought out cash discounts. The net impact of the cash discount buyout in any particular quarter depended on the amount of cash discount income prematurely recorded in the prior quarter. As the Defendants knew, or were reckless in not knowing, Cardinal did not disclose its use of cash discount buyouts to inflate operating income until its September 13, 2004 Form 8-K announcing the restatement.

45. Cardinal ordinarily received cash discounts for paying invoices within a certain time, typically 30 days from delivery of the product. Those discounts typically were the same whether Cardinal paid on the first or last day of the discount period. Because there was no

economic benefit in paying the invoice before the last day, Cardinal normally paid the invoice as late as possible, in order to earn interest on its cash while still obtaining the full benefit of the cash discount.

46. However, in some quarters, when Cardinal was at risk of missing analysts' expectations, the business units paid invoices early that otherwise would have been paid up to five days into the next quarter. At different times, Defendants Jensen and Beaulieu made recommendations to Defendant Miller about whether to do a cash discount buyout and how many days to buy out, and Defendant Miller made the final decisions. The Defendants also monitored the earnings impact of the practice through their review of QBR materials and participation in QBR and other meetings.

47. Cardinal bought out cash discounts in the first, second, third and fourth quarters of FY 2001, resulting in the acceleration of cash discount income in the gross amounts of $4.26 million, $11.21 million, $9.02 million and $9.97 million, respectively. Cardinal again bought out cash discounts in FY 2002, resulting in the acceleration of cash discount income in the gross amounts of $1.85 million in the first quarter and $559,000 in the second quarter.

48. Cardinal bought out cash discounts in the second, third and fourth quarters of FY 2003, resulting in the acceleration of cash discount income in the gross amounts of $2.77 million, $11.34 million and $14.14 million, respectively. Cardinal again bought out cash discounts in the first, second, third and fourth quarters of FY 2004, resulting in the acceleration of cash discount income in the gross amounts of $13.83 million, $19.33 million, $18.15 million and $16.53 million, respectively.

49. As the Defendants knew, or were reckless in not knowing, Cardinal did not disclose the use of cash discount buyouts to accelerate the recording of income, which materially

misstated Cardinal's reported net earnings throughout the relevant period. At different times during FY 2001 through FY 2004, the Defendants prepared or reviewed information included in earnings releases and prepared or reviewed periodic filings, which misstated Cardinal's net earnings as a result of the use of cash discount buyouts. The Defendants each signed internal certifications as to the accuracy of these periodic filings or certain financial information and disclosures contained in these filings. Defendant Miller signed each of the periodic filings, and Defendant Jensen signed Cardinal's Form 10-K for FY 2003.

C. <u>Use of Improper Reserve Practices</u>

50. At various times during the relevant period, the Defendants approved improper adjustments to balance sheet reserve accounts as another initiative to manage Cardinal's earnings. The Defendants also failed to ensure that Cardinal had adequate internal controls with respect to reserves. The Defendants' misconduct related to reserves contributed to Cardinal's approximately $65.9 million overstatement of its net earnings from FY 2000 through FY 2004. The Defendants knowingly or recklessly condoned improper reserve practices at Cardinal, and in some instances, were directly involved in the manipulation of reserve accounts.

51. Cardinal's business units tracked reserve balances or excesses on a quarterly basis. In virtually every quarter, to varying degrees, the Defendants analyzed the reserve balances and, in some instances, instructed business unit employees to use adjustments to reserves as initiatives to help Cardinal meet its earnings goals. The Defendants analyzed, or reviewed the analysis of, various reserve adjustments to show their effect on Cardinal's EPS.

52. As outlined in Statement of Financial Accounting Standards ("SFAS") No. 5, Accounting for Contingencies, at paragraph 8, GAAP requires a reserve to be created, and a charge to income to be taken, if it is both probable that a liability has been incurred and the

amount of the liability can be reasonably estimated. Conversely, to the extent a liability is no longer probable and reasonably estimable, a reserve should be removed from the books or decreased and income should be increased. In addition, paragraph 14 of SFAS No. 5 specifically prohibits the accrual of "reserves for general contingencies" or for "[g]eneral or unspecified business risks." Impact on reported earnings is not a proper factor to consider in determining whether to adjust a reserve.

53. On various occasions, the Defendants directed or approved the adjustment of reserves and other accruals – or the delay of adjustments – in order to meet Cardinal's internal earnings projections, earnings guidance and analysts' expectations. In addition, the Defendants sometimes identified reserves as an "available item not used," indicating that the reserve should have been reversed at that time but was maintained to help Cardinal meet its earnings goals in a future quarter. For example, the Defendants, to varying degrees, created and used a general contingency reserve, which eventually totaled $2 million, and which the Defendants reversed in FY 2003 as a fraudulent earnings initiative.

54. Cardinal's improper reserve practices were due in part to a material weakness in Cardinal's internal controls with respect to reserves. As the Defendants knew, or were reckless in not knowing, Cardinal did not have adequate procedures and controls for substantiating the establishment and release of reserves. As senior finance officers of Cardinal, the Defendants failed to take sufficient steps to ensure that the company's internal controls were adequate to substantiate the establishment and release of reserves in conformity with GAAP.

55. On a quarterly basis, the reserve practices overstated Cardinal's reported EPS by between one and three cents during eight of 11 quarters from the first quarter of FY 2002 through the third quarter of FY 2004. Specifically, these practices overstated Cardinal's reported

EPS for the first two quarters of FY 2002 by $.01 each, for the first quarter of FY 2003 by $.02, for the third quarter of FY 2003 by $.03, for the fourth quarter of FY 03 by $.02 and for the first three quarters of FY 2004 by $.01 each. Without the impact of the improper reserve practices, Cardinal would have missed analysts' EPS consensus estimates by essentially these amounts.

56. As the Defendants knew, or were reckless in not knowing, Cardinal did not disclose its fraudulent and improper reserve practices, which materially misstated Cardinal's reported net earnings. At various times, the Defendants prepared or reviewed information included in earnings releases and prepared or reviewed periodic filings which misstated Cardinal's net earnings as a result of the improper use of reserves. The Defendants each signed internal certifications as to the accuracy of these periodic filings, or certain financial information and disclosures contained in these filings. Defendant Miller signed each of the periodic filings, and Defendant Jensen signed Cardinal's Form 10-K for FY 2003.

D. Improper Classification of Expected Litigation Recoveries

57. Cardinal, through RP Scherer, a Pharmaceutical Technologies segment subsidiary, was a plaintiff in a 1999 class action to recover overcharges from vitamin manufacturers that pleaded guilty to fixing prices from 1988 to 1998. In March 2000, the parties reached a provisional settlement, under which Cardinal could have received approximately $22 million. Cardinal, among other plaintiffs, opted out of the settlement and filed a separate lawsuit in federal district court in May 2000. Subsequently, without adequate disclosure and not in accordance with GAAP, Cardinal improperly classified the $22 million in contingent vitamin litigation gains, thereby helping the company manage its quarterly earnings.

58. In October 2000, Defendant Miller and other members of Cardinal's management began considering recording a portion of the expected vitamin settlement, a contingent litigation

gain, for the purpose of closing a gap to Cardinal's budgeted earnings for the quarter ended December 31, 2000. With Defendant Miller's approval, RP Scherer classified $10 million of the contingent vitamin litigation gain, which it recorded effective December 31, 2000, the last day of the quarter, as a reduction to cost of sales. Near the end of FY 2001, Cardinal's external auditor (the "auditor") expressed disagreement with the classification of the $10 million as a reduction of cost of sales and proposed that the $10 million be reclassified outside of operating income and disclosed. On Defendant Miller's recommendation, Cardinal decided not to reclassify the $10 million. The auditor advised Defendant Miller and Cardinal that it disagreed with this decision but would treat the $10 million as a "passed adjustment" and include the issue in its summary of audit differences.

59. Because the expected vitamin litigation settlement was an unusual item related to overcharges that had occurred years before, the classification as a reduction to cost of sales was not in accordance with GAAP. As Defendant Miller knew, or was reckless in not knowing, the impact of recording and classifying the gain as a reduction to cost of sales was material. Without that gain, Cardinal would have missed analysts' average consensus EPS estimate for the quarter by $.02, missed the low end of analysts' end-of-period EPS estimate range by $.01 and missed its commitment to 20% or higher EPS growth from the year-ago quarter.

60. During the quarter ended September 30, 2001, Defendant Miller and others at Cardinal considered recording an additional gain from the vitamin litigation for the purpose of improving reported earnings. With Defendant Miller's approval, RP Scherer classified an additional $12 million of the contingent vitamin litigation gain, which it recorded effective September 30, 2001, the last day of the quarter, as a reduction to cost of sales. As Defendant Miller knew, or was reckless in not knowing, the impact of recording the gain and its

classification were material. Without the gain, Cardinal would have missed analysts' average consensus estimate for the quarter by $.02, as well as the low end of analysts' end-of-period EPS estimate range by $.01 and its commitment to 20% or higher EPS growth from the year-ago quarter.

61. The auditor disagreed with the classification of the $12 million as a reduction to cost of sales, and advised Cardinal that the amount should have been recorded outside of operating income, as non-operating income, and should be disclosed. The auditor advised Cardinal to reclassify both the $10 million and the $12 million prior to its earnings release for the quarter ended September 30. Defendant Miller signed a management representation letter noting the auditor's disagreement. On Defendant Miller's recommendation, Cardinal decided not to reclassify the $22 million. Later, in connection with the audit of Cardinal's financial statements for FY 2002, Cardinal's new external auditor also advised Defendant Miller and the company that it disagreed with the company's classification of the expected vitamin recoveries but would treat the $12 million recorded during FY 2002 as a "passed adjustment" and include the issue in its summary of audit differences.

62. As Defendant Miller knew, or was reckless in not knowing, through the undisclosed recording and classification of the $10 million contingent vitamin litigation gain, Cardinal materially misstated its operating earnings and growth rates in its earnings release and Form 10-Q for the second quarter of FY 2001. Without the undisclosed and misclassified gain, Cardinal would have missed its EPS and growth targets for the quarter, and the Pharmaceutical Technologies segment's operating earnings would have decreased almost 5%, rather than the 15% increase Cardinal reported. Defendant Miller reviewed the earnings release and reviewed and signed the Form 10-Q for the quarter.

63. As Defendant Miller knew, or was reckless in not knowing, through the undisclosed recording and classification of the additional $12 million contingent vitamin litigation gain, Cardinal materially misstated its operating earnings and growth rates in its earnings release for the first quarter of FY 2002. Further, as Defendant Miller knew, or was reckless in not knowing, Cardinal materially misstated its operating earnings and growth rates in Cardinal's Form 10-Q for the first quarter of FY 2002. Even though Cardinal disclosed in this Form 10-Q that certain declines in Pharmaceutical Technologies' business "were largely offset by the recording of the minimum recovery expected to be received for claims against vitamin manufacturers for amounts overbilled in prior years" and that "[t]his pricing adjustment was recorded as a reduction of cost of goods sold, consistent with the original overcharge," Cardinal did not disclose the amount of the "recovery" it had recorded. Therefore, investors and analysts were unaware that, without the misclassified gain, Cardinal would have missed its EPS and growth targets for the quarter, and operating earnings for the segment would have declined 8.4%. Defendant Miller reviewed the earnings release and reviewed and signed the Form 10-Q for the quarter.

III. CARDINAL INCORPORATED MATERIALLY FALSE AND MISLEADING PERIODIC REPORTS IN SECURITIES REGISTRATION STATEMENTS FILED WITH THE COMMISSION, DUE TO THE DEFENDANTS' MISCONDUCT

64. During the relevant time period, Cardinal filed at least 10 registration statements with the Commission which incorporated by reference one or more of the materially false and misleading periodic reports described above. These periodic reports materially overstated Cardinal's operating revenue, operating earnings, net income, EPS, operating gross margins and earnings and revenue growth trends.

65. The registration statements included filings Cardinal made to register stock used to acquire other companies and in certain business combinations. The registration statements also included three shelf registrations, through which Cardinal offered the sale of a combination of common shares and debt securities, and two prospectus supplements under which Cardinal offered the sale of debt securities. Finally, the registration statements also included filings Cardinal made to register stock to be used in stock option or incentive plans for employees of companies it acquired.

66. As a result of the acts and omissions described above, the Defendants knew, or were reckless or negligent in not knowing, that one or more of the above-mentioned filings with the Commission contained material misstatements and omissions.

IV. MISREPRESENTATIONS IN MANAGEMENT REPRESENTATION LETTERS TO CARDINAL'S AUDITORS AND CERTIFICATION OF PERIODIC REPORTS

67. Defendants Miller and Jensen each signed at least one management representation letter to Cardinal's auditor, which they knew, or were reckless in not knowing, was materially false and misleading, in that, among other things, it stated that they believed Cardinal's financial statements were presented in conformity with GAAP.

68. Defendant Miller also signed certifications to all of Cardinal's periodic filings for the fiscal year ended June 30, 2002, through the quarter ended March 31, 2004, which he knew, or was reckless in not knowing, falsely certified the accuracy of the financial statements and disclosures contained in those reports.

CLAIMS FOR RELIEF

FIRST CLAIM

Defendants Violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5

69. Paragraphs 1 through 68 above are realleged and incorporated herein by reference.

70. The Defendants, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly, in connection with the purchase or sale of securities, have each: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary to make the statements made, in 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 on any person.

71. By engaging in the conduct alleged above, the Defendants each violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM

Defendants Violated Section 17(a) of the Securities Act of 1933

72. Paragraphs 1 through 68 above are realleged and incorporated herein by reference.

73. The Defendants, directly or indirectly, knowingly, recklessly or negligently, 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, have each: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material

facts or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

74. By engaging in the conduct alleged above, the Defendants each violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM

Defendants Violated Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1

75. Paragraphs 1 through 68 above are realleged and incorporated herein by reference.

76. The Defendants knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified books, records or accounts subject to Section 13(b)(2) of the Exchange Act.

77. The Defendants, directly or indirectly, falsified or caused to be falsified books, records or accounts subject to Section 13(b)(2) of the Exchange Act.

78. By engaging in the conduct alleged above, the Defendants each violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

FOURTH CLAIM

Defendants Miller and Jensen Violated Exchange Act Rule 13b2-2

79. Paragraphs 1 through 68 above are realleged and incorporated herein by reference.

80. Defendants Miller and Jensen each signed one or more representation letters to Cardinal's external auditor, in which they stated, among other things, that they believed Cardinal's financial statements were presented in conformity with GAAP. They thereby, directly or indirectly, (i) made or caused to be made materially false or misleading statements or (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review or examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

81. By engaging in the conduct alleged above, Defendants Miller and Jensen each violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

FIFTH CLAIM

Defendant Miller Violated Exchange Act Rule 13a-14

82. Paragraphs 1 through 68 above are realleged and incorporated herein by reference.

83. Defendant Miller certified in all of Cardinal's periodic filings from its Form 10-K for FY 02 through its Form 10-Q for the third quarter of FY 04 that, among other things, he reviewed each of these reports and, based on his knowledge, these reports: (i) did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading and (ii) included financial statements and other information which fairly present, in all material respects, Cardinal's financial condition, results of operations and cash flows.

84. By engaging in the conduct alleged above, Defendant Miller violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

SIXTH CLAIM

Defendants Aided and Abetted Cardinal's Violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13

85. Paragraphs 1 through 68 above are realleged and incorporated herein by reference.

86. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11 and 240.13a-13] require issuers of registered securities to file with the Commission factually accurate annual, quarterly and current reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

87. As alleged above, Cardinal filed with the Commission annual and quarterly reports, from the first quarter of its FY 2001 through the third quarter of its FY 2004, that were materially false and misleading or failed to include material information necessary to make the required statements in those reports, in light of the circumstances under which they were made, not misleading. During this period, Cardinal also furnished to the Commission, as part of required current reports on Form 8-K, at least five earnings releases that were materially false and misleading or failed to include material information necessary to make the required statements in those reports, in light of the circumstances under which they were made, not misleading. Cardinal thereby violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11 and 240.13a-13].

88. By engaging in the conduct alleged above, the Defendants knowingly provided substantial assistance to and thereby aided and abetted Cardinal in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11 and 240.13a-13]; therefore, each is liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

SEVENTH CLAIM

Defendants Aided and Abetted Cardinal's Violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

89. Paragraphs 1 through 68 above are realleged and incorporated herein by reference.

90. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the issuer's transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for the issuer's assets.

91. As alleged above, Cardinal 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. Likewise, by having insufficient internal controls to prevent the recording of erroneous, misleading and fraudulent entries, Cardinal did not prepare its financial statements in accordance with GAAP, and thus violated Section 13(b)(2)(B) of the Exchange Act. Cardinal admitted in its October 26, 2004 Form 10-K and restatement that its auditor had identified material weaknesses in its internal controls, based

on, among other things: the inappropriate application of Cardinal's bulk sales revenue recognition policy; errors or a lack of substantiation with respect to the amount of reserves and the timing of reserve adjustments; lack of effective communication related to bulk sales and balance sheet reserves; and restatement of Cardinal's financial statements and corresponding expanded disclosures.

92. By engaging in the conduct alleged above, the Defendants knowingly provided substantial assistance to Cardinal in its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act; therefore, each is liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment which:

(a) Permanently restrains and enjoins each Defendant from further violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5] and Exchange Act Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5, 240.13b2-1], and from further aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13];

(b) Permanently restrains and enjoins Defendants Miller and Jensen from further violations of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2];

(c) Permanently restrains and enjoins Defendant Miller from further violations of Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14];

(d) Orders each Defendant to pay a civil money 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)];

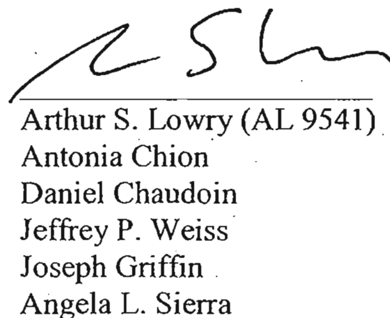
(e) Prohibits each Defendant, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

(f) Retains jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

(g) Grants such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: May 22, 2009

Respectfully submitted,



Arthur S. Lowry (AL 9541)
Antonia Chion
Daniel Chaudoin
Jeffrey P. Weiss
Joseph Griffin
Angela L. Sierra

Attorneys for Plaintiff
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-4030
(202) 551-4918 (Lowry telephone)
(202) 772-9245 (Lowry facsimile)