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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE SUPREMA SPECIALTIES, INC.
SECURITIES LITIGATION

:
: Master File No. 02-168 (WHW)
:
: SECOND AMENDED CLASS ACTION
: COMPLAINT FOR VIOLATIONS OF
: THE FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Pages

I.	NATURE OF THE ACTION	1
II.	JURISDICTION AND VENUE	2
III.	PARTIES AND RELEVANT NON-PARTIES	3
	A. Lead Plaintiff.....	3
	B. Suprema Specialties, Inc.	4
	C. The Officer Defendants.....	5
	D. The Director Defendants	6
	E. Auditor Defendant	7
	F. The Underwriter Defendants.....	7
IV.	CLASS ACTION ALLEGATIONS	9
V.	CLAIMS FOR RELIEF	12
	COUNT ONE Against All Defendants for Violations of Section 11 of the Securities Act	12
	A. BACKGROUND	12
	(1) The Reported Astronomical Growth Of Suprema's Business	12
	(2) Suprema Attributed its Class Period Growth to Increased Sales of Cheese That it Manufactured	15
	(3) Suprema and its Senior Management Capitalize on Their Reported Success.....	18
	(a) Suprema Increases Its Debt Under Its Revolving Credit Facility	18
	(b) The Secondary Offering.....	19
	(4) The Truth About Suprema Begins To Emerge	21
	B. UNTRUE STATEMENTS AND OMISSIONS OF MATERIAL FACT CONTAINED IN THE REGISTRATION STATEMENT AND PROSPECTUS	25
	C. SUPREMA'S MATERIALLY UNTRUE FINANCIAL STATEMENTS	31

TABLE OF CONTENTS CON'T

	<u>Pages</u>
(1) Overstated Revenue	33
(2) Overstated Accounts Receivables and Inadequate Allowance for Doubtful Accounts	34
(3) Overstatement of Inventories	36
(4) Failure to Adequately Disclose the Nature of the Operations	38
(5) Failure to Disclose Certain Other Concentrations	39
(6) Failure to Disclose Violations of Loan Covenants	41
D. THE DEFENDANTS' NEGLIGENCE.....	42
COUNT TWO Against Defendants Cocchiola and Venechanos and the Underwriter Defendants for Violations of Section 12(a)(2) of the Securities Act	44
COUNT THREE Against Defendants Cocchiola and Venechanos for Violations of Section 15 of the Securities Act.....	46
COUNT FOUR Against Cocchiola and Venechanos for Violations of Section 10(b) of the Exchange Act	50
A. THE PRIOR PROPOSED COMPLAINT AND THE GUILTY PLEAS	51
B. ADDITIONAL EVIDENCE OF ROUND-TRIP AND FICTITIOUS SALES BETWEEN SUPREMA AND ITS LARGEST CUSTOMERS	55
(1) Gaglio: The Gaglio Entities	55
(2) Gaglio: The Gaglio Sham Cheese Suppliers.....	62
(a) Whitehall Specialties, Inc.	62
(b) Commodities and Cal Fed.....	66
(c) St. Charles Trading, Inc.	71
(3) Zambas: Tricon and Noram	73
(a) Tricon and Noram are One in the Same.....	74
(b) Suprema's Sales to Tricon were Fictitious.....	75
(c) Suprema's Purchases from Noram were Fictitious	75

TABLE OF CONTENTS CON'T

	<u>Pages</u>
(4) Quattrone: Battaglia, Packing Products	76
(5) Vieira: CMM and WCC.....	79
(6) Fransen: LNN and WSC	80
(7) Suprema's Accounts Receivable And Accounts Payable	81
C. ADDITIONAL EVIDENCE THAT SUPREMA'S CHEESE WAS MISLABELED AND ADULTERATED	85
D. LAURIERO'S DEATH AND CHRISTENSEN'S RESIGNATION	87
E. STATEMENTS BY SUPREMA'S BANKRUPTCY TRUSTEE.....	89
F. FALSE AND MISLEADING STATEMENTS	91
(1) The 2000 Form 10-K.....	91
(2) Quarterly and Year-End Results for Fiscal 2001	96
(3) The 2001 Form 10-K.....	97
(4) The Registration Statement and Prospectus.....	103
(5) First Quarter 2002 Results	103
G. COCCHIOLA AND VENECHANOS ACTED WITH SCIENTER.....	104
H. FRAUD ON THE MARKET: PRESUMPTION OF RELIANCE.....	112
COUNT FIVE Against BDO for Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder	113
A. BDO VIOLATED GAAS IN THAT IT FAILED TO EXERCISE DUE PROFESSIONAL CARE IN THE PERFORMANCE OF ITS AUDIT	119
B. BDO VIOLATED GAAS BY FAILING TO ADEQUATELY PLAN ITS AUDIT AND ASSESS THE NATURE OF SUPREMA'S BUSINESS.....	121
C. BDO VIOLATED GAAS BY FAILING TO OBTAIN REASONABLE ASSURANCE THAT THE FINANCIAL STATEMENTS WERE FREE FROM MATERIAL MISSTATEMENT CAUSED BY FRAUD.....	127
D. FRAUD RISK FACTORS IGNORED BY BDO	129
(1) Suprema Was Unable to Generate Cash Flows From Operations While Reporting Earnings and Earnings Growth	129

TABLE OF CONTENTS CON'T

Pages

(2)	Suprema Reported Unusually Rapid Growth and Profitability as Compared to Other Companies in the Cheese Industry.....	131
(3)	Suprema Had Significant Assets That Were Based on Estimates Involving Unusually Subjective Judgments or Uncertainties, or That Were Subject to Potential Significant Change in the Near Term.....	133
(4)	The Characteristics and Influence of Management Presented a Glaring Red Flag.....	135
(5)	Significant Discrepancies in the Accounting Records and Unsupported or Unauthorized Balances or Transactions	137
(6)	Unexplained Items, Missing Documents and Implausible Responses from Management	138
(a)	Increased Sales Volume	139
(b)	Seriously Past Due Accounts and Growth of Accounts Receivable	140
(c)	Missing Invoices	142
(7)	Denial of Access and Unusual Delays in Providing Requested Information.....	142
E.	BDO VIOLATED GAAS BY FAILING TO INVESTIGATE RELATED PARTY TRANSACTIONS	143
F.	BDO VIOLATED GAAS BY FAILING TO OBTAIN SUFFICIENT COMPETENT EVIDENTIAL MATTER	146
(1)	Concentration of Risk	147
(2)	Sales and Accounts Receivable	148
(3)	Inventory	150
(4)	Going Concern Assessment	151
G.	BDO VIOLATED GAAS BY FAILING TO TAKE INTO ACCOUNT SUPREMA'S WEAK INTERNAL CONTROLS	152
COUNT SIX	Violations of Section 20 of the Exchange Act.....	154

SECOND AMENDED CLASS ACTION COMPLAINT

Court-appointed Lead Plaintiff, the Teachers' Retirement System of Louisiana, on behalf of itself and all others similarly situated, brings this action as a class action individually and on behalf of all other persons and entities who purchased the common stock of Suprema Specialties, Inc. ("Suprema" or the "Company") during the period September 27, 2000 through and including December 21, 2001 (the "Class Period").

I. NATURE OF THE ACTION

1. This case arises out of the massive fraud that was perpetrated at Suprema, and the resulting demise of the Company that rendered its stock worthless a mere six weeks after Class members invested over \$40 million in a November 2001 secondary offering of Suprema common stock (the "Secondary Offering"). As has now been confirmed by various employees and customers of Suprema who have pled guilty to criminal Informations before this Court, throughout the Class Period, Suprema materially misrepresented both the fundamental nature of its business and its financial results. Indeed, in view of these guilty pleas, there can no longer be any dispute that numerous statements contained in the Registration Statement that Suprema filed with the SEC on November 6, 2001 in connection with the Secondary Offering (the "Registration Statement" or "Reg. St."), as well as other public filings throughout the Class Period, were materially false and misleading. Consequently, Lead Plaintiffs and the Class are entitled, pursuant to Section 11 of the Securities Act of 1933 (the "Securities Act"), to pursue claims against each of the defendants named in this action.

2. Lead Plaintiff's Securities Act claims are not based on any knowing or reckless misconduct on the part of the defendants -- i.e., they do not allege, and do not sound in fraud. Rather, they are premised on the fact that there were material misrepresentations and omissions in the Registration Statement, and the defendants' negligence in failing to recognize this fact.

That the Registration Statement was materially false and misleading has now been conclusively established by the guilty pleas, and this fact is all that is necessary for plaintiffs' Securities Act claims to be sustained at this stage of the proceedings.

3. In addition, this Complaint sets forth claims under the Securities Exchange Act of 1934 (the "Exchange Act") against the CEO and CFO of Suprema, both of whom were knowing participants in the fraud and were directly responsible for all of the Company's public statements during the Class Period, and Suprema's auditors, who certified its financial statements despite the fact that they knew or recklessly disregarded that the vast majority of the Company's business was a complete sham. These claims are also sufficient, because, as detailed below, there are numerous particularized facts alleged that raise a strong inference that these defendants acted with the required state of mind.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78aa. The claims arise under Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2) and 77o; under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a); and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. 240.10b-5. Venue is proper in this District pursuant to Section 22 of the Securities Act, Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b) and (c). At all times relevant to this Complaint, Suprema's principal executive offices were located in this District, at 510 East 35th Street, Paterson, New Jersey, 07543. In addition, many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the public of materially false and misleading public filings, occurred in this District.

5. In connection with the wrongful acts and conduct alleged herein, the defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mail and the facilities of a national securities market.

III. PARTIES AND RELEVANT NON-PARTIES

A. Lead Plaintiff

6. Lead Plaintiff Teachers' Retirement System of Louisiana ("Louisiana Teachers" or "Lead Plaintiff") is a public pension fund organized for the benefit of the current and retired public school teachers of the State of Louisiana. Louisiana Teachers is located in Baton Rouge, Louisiana, and has total assets of approximately \$10.0 billion.

7. Pursuant to the underwriting agreement, the Company and the selling shareholders agreed to sell to the underwriters, and the underwriters agreed to purchase, a total of 4,050,000 shares of common stock at \$12.75 per share, less the underwriting discount, in a firm commitment underwriting.

8. Louisiana Teachers purchased shares of Suprema common stock in the Secondary Offering. Specifically, Lead Plaintiff purchased 47,000 shares at the Secondary Offering price of \$ 12.75 per share, on November 8, 2001, the date of the Secondary Offering. Said shares were purchased from Janney Montgomery from the shares that Janney Montgomery underwrote and sold to customers. Lead Plaintiff paid no commission on said purchases, as set forth in the certification attached hereto as Exhibit A.

9. Lead Plaintiff suffered damages as a result of the violations of the federal securities laws as alleged herein. By Order of the Court dated June 28, 2002, Louisiana Teachers was appointed Lead Plaintiff in this action in accordance with Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4, and Section 27(a)(3) of the Securities Act, 15 U.S.C. § 77z-1.

10. The persons and entities listed on Exhibit B annexed hereto are additional plaintiffs who filed separate actions that were consolidated with this action pursuant to Order of the Court dated February 28, 2002. During the Class Period, each of these plaintiffs purchased or acquired the securities of Suprema and suffered damages as a result of defendants' violations of the federal securities laws.

B. Suprema Specialties, Inc.

11. Suprema Specialties, Inc. ("Suprema" or the "Company") is a New York corporation with corporate headquarters in Paterson, New Jersey. According to its public filings during the Class Period, Suprema manufactured and marketed all natural Italian cheeses, including mozzarella, ricotta, provolone, parmesan and romano cheeses. At all times relevant, Suprema had three wholly-owned subsidiaries, Suprema Specialties West, Inc., Suprema Specialties Northeast, Inc., and Suprema Specialties Northwest, Inc., and operated facilities in Paterson, New Jersey; Ogdensburg, New York; Manteca, California; and Blackfoot, Idaho (since December 2000).

12. During the Class Period, the Company's common stock was traded on the NASDAQ under the symbol "CHEZ" and the Company filed annual reports on Form 10-K ("Forms 10-K") and quarterly reports on Form 10-Q ("Forms 10-Q") with the SEC. As of November 14, 2001, there were 9,792,538 shares of Suprema common stock issued and outstanding. Suprema operated on a fiscal year that ended on June 30.

13. On February 24, 2002, Suprema filed a petition for bankruptcy protection under Chapter 11 of the Bankruptcy Code and on March 20, 2002, the case was converted to a liquidation under Chapter 7. For this reason, Suprema is not named as a defendant in this Action.

C. The Officer Defendants

14. **Mark Cocchiola**. Defendant Mark Cocchiola was a founder of Suprema and its Chief Executive Officer and Chairman of the Board of Directors. According to the Company, Suprema's success was "largely dependent on the personal efforts of Mark Cocchiola... We believe that his expertise and knowledge of the natural cheese products industry are critical factors in our continued growth and success." (Reg. St. at 5) In addition, after the death of Paul Lauriero, Suprema's co-founder and Executive Vice President, on August 27, 2001, Cocchiola assumed all of Lauriero's responsibilities, which included "overseeing the procurements of raw materials for production and the general operation of [Suprema's] facilities." (2001 Form 10-K at 26) As of September 24, 2001, Cocchiola was the largest shareholder of the Company. He owned or controlled 1,100,635 million shares, or approximately 17.4% of Suprema's common stock issued and outstanding. (2001 Form 10-K at 31)

15. During the Class Period, Cocchiola was a director of Suprema and signed the Registration Statement. Cocchiola also signed each of the Company's Forms 10-K and 10-Q filed with the SEC.

16. In addition, during the Class Period, Cocchiola sold 347,809 shares of Suprema common stock, realizing proceeds of over \$4.1 million, and on or about September 19, 2001 he pledged an additional 200,000 shares of Suprema common stock as collateral for a \$600,000 personal loan from Fleet National Bank.

17. **Steven Venechanos**. Defendant Steven Venechanos ("Venechanos") was Suprema's Chief Financial Officer and Secretary. He was also a member of the Board from September 2001 until December 21, 2001 (the last day of the Class Period). On December 21, 2001, Venechanos, along with the Controller of Suprema, Art Christensen, resigned their positions at the Company, prompting the NASDAQ to halt trading, the Company to initiate an

internal investigation, and the SEC to commence a formal investigation. As of September 24, 2001, Venechanos was one of the largest shareholders of the Company, exercising ownership or control over 138,000 shares, or approximately 2.4% of Suprema's common stock issued and outstanding. (2001 Form 10-K at 31)

18. During the Class Period, Venchanos was a director of Suprema and signed the Registration Statement. In addition, Venecahnos also signed each of the Company's Forms 10-K and Forms 10-Q filed with the SEC. Venechanos sold 52,937 shares of Suprema common stock in the Secondary Offering, realizing proceeds of approximately \$628,000.

19. Defendants Cocchiola and Venechanos are referred to as the "Officer Defendants."

D. The Director Defendants

20. **Marco Cocchiola.** Defendant Marco Cocchiola was a member of the Board, as well as the Operations Manager of Suprema. Marco Cocchiola is the father of defendant Mark Cocchiola.

21. During the Class Period, Defendant Marco Cocchiola was a director of Suprema and signed the Registration Statement.

22. **Rudolph Acosta, Jr.** Defendant Rudolph Acosta, Jr. ("Acosta") was a member of the Board and the Board's Audit Committee. According to the 2001 Form 10-K (at 27), the function of the Audit Committee was "to review and monitor [the Company's] financial reporting, external audits, internal control functions and compliance with applicable laws and regulations that could have a significant effect on [the Company's] financial condition and results of operation. In addition, the audit committee had the responsibility to consider and recommend the appointment of, and to review fee arrangements with, our independent auditors."

23. During the Class Period, Acosta was a director of Suprema and signed the Registration Statement.

24. **Paul DeSocio.** Defendant Paul DeSocio (“DeSocio”) was a member of the Board and a member of the Company’s Audit Committee.

25. During the Class Period, DeSocio was a director of Suprema and signed the Registration Statement.

26. **Barry S. Rutcofsky.** Defendant Barry S. Rutcofsky (“Rutcofsky”) was a member of the Board and a member of the Audit Committee.

27. During the Class Period, Rutcofsky was a director of Suprema and signed the Registration Statement.

28. Defendants Marco Cocchiola, Acosta, DeSocio and Rutcofsky are collectively referred to herein as the “Director Defendants.”

E. Auditor Defendant

29. **BDO Seidman** Defendant BDO Seidman, LLP (“BDO”), headquartered in Chicago, Illinois, is a professional services firm that provides tax, assurance, financial advisory and consulting services. BDO was Suprema’s auditor throughout the Class Period. On September 18, 2000 and August 7, 2001, BDO issued unqualified audit opinions on the Company’s consolidated financial statements for the fiscal years ended June 30, 2000 and June 30, 2001, respectively. On November 5, 2001, BDO also consented to Suprema using BDO’s August 7, 2001 audit report in the Registration Statement and referring to BDO as an “expert” in that Registration Statement.

F. The Underwriter Defendants

30. **Janney Montgomery**. Defendant Janney Montgomery Scott LLC (“Janney Montgomery”) is a national investment firm headquartered in Philadelphia, Pennsylvania, that

provides securities underwriting, financial advisory services and equity research services.

Janney Montgomery was the lead underwriter of Suprema's Secondary Offering and it sold and distributed 1,923,750 shares of Suprema common stock to the investing public pursuant to the Registration Statement and Prospectus filed with the SEC in connection with the Secondary Offering.

31. As part of its duties as an underwriter, Janney Montgomery was required to conduct, prior to the Secondary Offering, a due diligence investigation of the Company. Pursuant to its underwriting agreement with Suprema, Janney Montgomery earned approximately \$1.7 million in fees for its underwriting services in connection with the Secondary Offering. On November 14, 2001, Janney Montgomery initiated investment research coverage on Suprema with a "buy" recommendation. Just six weeks later, on December 24, 2001, Janney Montgomery suspended this rating.

32. **Pacific Growth**. Defendant Pacific Growth Equities, Inc. ("Pacific Growth") is a national research-driven investment bank headquartered in San Francisco, California, that provides securities underwriting, investment banking, brokerage and equity research services. Pacific Growth was one of the underwriters of Suprema's Secondary Offering and it sold and distributed 1,518,750 shares of Suprema common stock to the investing public pursuant to the Registration Statement and Prospectus filed with the SEC in connection with the Secondary Offering.

33. As part of its duties as an underwriter, Pacific Growth was required to conduct, prior to the Secondary Offering, a due diligence investigation of the Company. Pursuant to its underwriting agreement with Suprema, Pacific Growth earned approximately \$1.35 million in fees for its underwriting services in connection with the Secondary Offering. On November 13,

2001, Pacific Growth initiated investment research coverage on Suprema with a “buy” recommendation. Just six weeks later, on December 24, 2001, Pacific Growth suspended this rating.

34. **Roth Capital.** Defendant Roth Capital Partners, LLC (“Roth Capital”) is a national full-service investment bank headquartered in Newport Beach, California, that provides securities underwriting, financial advisory services and equity research services. Defendant Roth Capital was one of the underwriters for Suprema’s Secondary Offering and it sold and distributed 607,500 shares of Suprema common stock to the investing public pursuant to the Registration Statement and Prospectus filed with the SEC in connection with the Secondary Offering.

35. As part of its duties as an underwriter, Roth Capital was required to conduct, prior to the Secondary Offering, a due diligence investigation of the Company. Pursuant to its underwriting agreement with Suprema, Roth Capital earned approximately \$540,000 in fees for its underwriting services in connection with the Secondary Offering. On November 12, 2001, Roth Capital initiated investment research coverage on Suprema with a “buy” recommendation.

36. Janney Montgomery, Pacific Growth and Roth Capital are collectively referred to herein as the “Underwriter Defendants.”

IV. CLASS ACTION ALLEGATIONS

37. Lead Plaintiff brings this action on its own behalf and as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all persons or entities (the “Class”) who (i) acquired Suprema common stock in the Company’s Secondary Offering pursuant to the Registration Statement; or (ii) acquired Suprema common stock during the period from September 27, 2000, through December 21, 2001, inclusive (the “Class Period”), and who sustained a loss as a result of said acquisition. Excluded from the Class are: (i) the defendants; (ii) members of the family of each individual defendant; (iii) the Estate of Paul

Lauriero; (iv) any person who was an officer or director of Suprema during the Class Period; (v) any person who was an employee of any Underwriter Defendant during the Class Period; (vi) any person who is named as a defendant in any criminal proceeding brought by the U.S. Government relating to Suprema; (vii) any firm, trust, corporation, officer, or other entity in which any defendant has a controlling interest; and (viii) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

38. The Class is so numerous that joinder of all Class members is impracticable. Suprema common stock was actively traded on the NASDAQ, an efficient market, throughout the Class Period. While the exact number of Class members can only be determined by appropriate discovery, Lead Plaintiff believes that Class members number in the thousands. As of November 14, 2001, there were over 9 million shares of Suprema common stock issued and outstanding. Approximately 4.05 million shares of Suprema's common stock were issued pursuant to the Company's Secondary Offering. Based upon the volume of trading of Suprema common stock during the Class Period, it is believed that hundreds, if not thousands, of investors purchased Suprema common stock in the Secondary Offering and in the open market during the Class Period, rendering joinder of all such purchasers impracticable.

39. Lead Plaintiff's claims are typical of the claims of the members of the Class. Lead Plaintiff and all Class members sustained damages as a result of the wrongful conduct complained of herein.

40. Lead Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel competent and experienced in class action and securities litigation. Lead Plaintiff has no interests that are contrary to or in conflict with those of the Class members that Lead Plaintiff seeks to represent.

41. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members individually to seek redress for the wrongful conduct alleged herein.

42. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

- (i) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (ii) whether documents, including the Registration Statement, press releases and public statements made by defendants during the Class Period contained misstatements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (iii) whether the defendants acted with the requisite state of mind in omitting and/or misrepresenting material facts in the documents filed with the SEC, press releases and public statements;
- (iv) whether the market prices of Suprema's common stock during the Class Period were artificially inflated due to the material misrepresentations complained of herein; and
- (v) whether the Class members have sustained damages and, if so, the appropriate measure thereof.

43. Lead Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

44. The names and addresses of the record owners of Suprema's common stock purchased during the Class Period in the Secondary Offering and in the open market are obtainable from information in the possession of the Company's transfer agent(s) and the Underwriter Defendants. Notice can be provided to the record owners of Suprema stock via first

class mail using techniques and a form of notice similar to those customarily used in securities class actions.

V. CLAIMS FOR RELIEF

COUNT ONE

Against All Defendants for Violations of Section 11 of the Securities Act

45. Lead Plaintiff repeats and realleges each and every allegation above as if set forth fully herein. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of all Class members who purchased Suprema common stock in the Secondary Offering. This claim is not based on and does not sound in fraud.

46. This claim is asserted against (a) defendants Cocchiola, Venechanos and the Director Defendants, all of whom signed the Registration Statement and were directors at the time of the filing of the Registration Statement with the SEC; (b) BDO, Suprema's independent auditors, who expressed an unqualified opinion on Suprema's financial statements and, by letter dated November 5, 2001, consented to the inclusion of its audit opinion for the Company's June 30, 2000 and 2001 consolidated financial statements in the Registration Statement, and (c) the Underwriter Defendants who, pursuant to their underwriting agreements, were the underwriters and sellers of the common stock sold in the Secondary Offering within the meaning of the Securities Act.

A. BACKGROUND

(1) The Reported Astronomical Growth Of Suprema's Business

47. Suprema reported that its business had experienced astronomical growth in fiscal 2000 and 2001. Specifically, the Company's net sales for fiscal year 2000 increased to \$278.4

million, a 58% increase over 1999 net sales and net sales for fiscal year 2001 increased to \$420.3 million, or 51%, over fiscal year 2000. (Reg. St. at 3)

48. Suprema's astonishing growth rate far outpaced the growth in the industry in which Suprema operated. The Registration Statement disclosed a more modest industry growth of approximately 9% per year. Specifically:

[T]he U.S. cheese market had \$19.9 billion of sales in 1998, which are projected to grow to approximately \$29.8 billion in 2008 . . . The U.S. market for natural cheese products had sales of \$11.8 billion in 1998, which are projected to grow to approximately \$18.6 billion in 2008. Production of Italian cheeses, which are natural cheese products accounted for approximately 38% of U.S. cheese produced in 1998, and is projected to increase to 42% of U.S. cheese production in 2008.

(Reg. St. at 20)

49. In a research report dated November 13, 2001, defendant Pacific Growth also reported that the cheese industry's sales growth rate was approximately 9% per year, which is far below the sales growth that Suprema was reporting throughout the Class Period.

50. Suprema made a distinction between its "hard cheese" business and its "soft cheese" business, although it claimed that both of these businesses operated in a "single business segment." (See Reg. St. at F-7) Its "hard cheese" business included the production and sale of parmesan and romano cheese. Its "soft cheese" business included the production and sale of mozzarella, ricotta and provolone cheeses. (Reg. St. at 14) According to the Company, aggregate sales of parmesan and romano cheeses accounted for 37%, 52% and 62% of Suprema's revenue in 1999, 2000 and 2001, respectively, and sales of mozzarella accounted for 48%, 29% and 22% of these years' revenue. (Id.)

51. Suprema's enormous reported growth in revenue during the Class Period came almost entirely from purported increases in sales of hard cheese, i.e., parmesan and romano. According to the Company, hard cheese sales increased from \$65.2 million in fiscal 1999 to

\$144.8 million in fiscal 2000, an increase of 120%. (Id.) Hard cheese sales increased another 80% to \$260.5 million by the end of fiscal year 2001. (Id.) Thus, in just two years, revenues from Suprema's hard cheese business reportedly grew by an astounding 400%, from \$65.2 million as of June 30, 1999, to \$260.5 million as of June 30, 2001. The increase of \$195.3 million in fiscal years 2000 and 2001 represented approximately 80% of the Company's overall reported revenue growth of \$244.0 million during these years. (Id.)

52. As a result of Suprema's astronomical growth, on September 3, 2001, Fortune Magazine named Suprema the 23rd fastest growing small company in America. Similarly, on October 29, 2001, Forbes Magazine ranked Suprema as the 22nd best small company in America, which the Company reported in a press release on October 22, 2001, just days before its Secondary Offering.

53. Concomitant with these increased sales, Suprema reported dramatic increases in its accounts receivable and inventory during the Class Period. In fact, Suprema's accounts receivable grew at a rate that far exceeded Suprema's sales growth and the growth of the industry as a whole. Suprema's accounts receivable allegedly went from \$36.0 million as of the end of fiscal 1999 to \$62.3 million as of the end of fiscal 2000 (an increase of 73%), and then to \$101.8 million as of the end of fiscal 2001 (an additional increase of 63%). (Reg. St. at F-2; 2001 Form 10-K at F-3) Similarly, Suprema claimed that its inventory increased from \$35.9 million at the end of fiscal 1999 to \$51.6 million at the end of fiscal 2000 (an increase of 43%), and then to \$74.5 at the end of fiscal 2001 (and additional increase of 44%). (Id.)

54. The Company attributed its increases in accounts receivable and inventory to "increased sales" volume to its hard cheese customers and the extended payments terms offered to certain of these customers. The Company explained that the "percentage increase of our

accounts receivable was greater than the percentage increase of our revenue primarily as a result of extended payment terms that we grant to certain of our significant customers to which sales increased at a greater rate than our aggregate sales.” (Reg. St. at 18) In its financial statements, Suprema identified these significant customers as A&J Foods Inc. (“A&J”), Tricon Commodities International (“Tricon”), Battaglia and Company (“Battaglia”), Noble J.G. Cheese (“Noble”) and California Goldfield Cheese Traders (“California Goldfield”), which collectively accounted for 64% of the Company’s net sales and 81% of its accounts receivable during fiscal 2001. (Reg. St. at 24)

55. Although Suprema’s accounts receivable grew astronomically throughout the Class Period, both in terms of the amount and duration outstanding, between fiscal 1999 and 2001 the Company did not record *any* charges for uncollectable accounts receivable. (Reg. St. S-2) Also, between 2000 and 2001, despite its increasing amount of accounts receivable, Suprema did not increase its reserve for doubtful accounts. In fact, the accounts receivable reserve as a percent of outstanding receivables dropped significantly throughout the Class Period, from 1.58% in fiscal 1999 to 0.76% in fiscal 2001.

(2) **Suprema Attributed its Class Period Growth to Increased Sales of Cheese That it Manufactured**

56. Throughout the Class Period, Suprema claimed to be in the business of manufacturing and importing gourmet all natural cheese. For example, the Registration Statement stated:

Suprema Specialties, Inc. *manufactures* and markets gourmet all natural Italian cheeses. Our product lines consist primarily of mozzarella, ricotta, parmesan, romano and provolone cheeses, *which we produce domestically*, as well as parmesan and pecorino romano cheeses, *which we import*.

We sell our cheeses through three channels of distribution in the food industry: foodservice, food ingredient and retail. Over 95%

of our revenue is derived from the foodservice channel, where we market and sell our bulk cheeses under the Suprema brand name, as well as under private label, to national and regional foodservice distributors, which in turn sell our cheeses to restaurants, caterers and others. We sell our cheeses to food manufacturers in the food ingredient channel, who use our cheeses as ingredients in prepared foods, such as frozen pizza and various pasta dishes. In the retail distribution channel, we sell our cheeses primarily to supermarket chains, grocery stores, delicatessens and gourmet shops, including Food Town, Shaw's, Giant, King Kullen, Stop 'N Shop and Krogers.

* * *

We *manufacture* and package cheeses at our three facilities located in Manteca, California, Blackfoot, Idaho and Ogdensburg, New York. At our Paterson, New Jersey facility, we shred or grate, and then package, bulk cheeses *that we manufacture or import*.

(Reg. St. at 1 (emphasis added))

57. The Company made clear that it manufactured the majority of the cheese that it sold. Suprema stated that it imported only approximately 25% of its cheese requirements, and produced the other 75% of its cheese domestically:

We domestically produce mozzarella, ricotta, provolone and grated and shredded parmesan and romano cheeses including "lite" and lower fat versions of these products which contain less fat and fewer calories. We also import parmesan and pecorino (sheep's milk) romano cheese for production and resale. Foreign producers, located principally in Europe and South America, supplied us with 25% of our bulk cheese requirements in each of fiscal year 2000 and fiscal year 2001.

(Reg. St. at 22; *see also* 2001 Form 10-K at 1-2)

58. Further stressing the importance of its manufacturing business, the Company stated that "[h]istorically, a majority of our cost of goods sold has consisted of the price we pay for raw milk." (Reg. St. at 14; 2001 Form 10-K at 15) It also emphasized the competitive advantage it reaped from the fact that its manufacturing facilities were located in "key milk shed

regions, allowing us to minimize transportation costs for our raw milk supplies and maintain a low cost infrastructure.” (Reg. St. at 14)

59. In describing the reasons behind the Company’s astronomical growth in net sales in fiscal 2000 and fiscal 2001, Suprema represented as follows:

Net sales for fiscal year ended June 30, 2000 were approximately \$278,482,000 as compared to approximately \$176,281,000 for fiscal year ended June 30, 1999, an increase of approximately \$102,201,000 or 58%. ***This increase reflects an increase primarily in sales volume for our foodservice products manufactured by us***, most of which represented sales to existing customers... (2000 Form 10-K at 15 (emphasis added))

Net sales for the fiscal year ended June 30, 2001 were approximately \$420,363,000, as compared to approximately \$278,482,000 for the fiscal year ended June 30, 2000, an increase of approximately \$141,881,000, or 50.9%. ***This increase reflects an increase primarily in sales volume for food service products manufactured by us***, most of which represented sales to existing customers... (2001 Form 10-K at 17 (emphasis added))

60. Research analysts that covered Suprema, and who were employed by the Underwriter Defendants, also represented that Suprema was in the business of manufacturing and importing cheese. For example, on November 13, 2001, Peter Swan, a research analyst with Pacific Growth, wrote that “Suprema is ***a low cost producer*** able to profitably supply the food service industry,” and described Suprema as having “grown from a small dairy distributor to ***a large manufacturer and importer*** of specialty Italian cheese products.” (Emphasis added) Similarly, on November 14, 2001, Mitchell Pinheiro, a research analyst with Janney Montgomery, wrote that “Suprema derives competitive advantage from operations ***as a low cost producer***, based on strategic locations of plants [in milk producing regions] and ongoing maintenance and investment in its facilities.” (Emphasis added) The report emphasized that Suprema’s “hard cheeses (parmesan, romano) need to be aged a minimum of nine months” and that Suprema “offer[ed] favorable terms to induce customers to take possession of the product

and age the [hard] cheese in their own warehouses.” Roth Capital also highlighted in a research report dated November 12, 2001, that “with considerable excess capacity at [Suprema’s] four production facilities... revenues should increase at a 15-20% annual rate or more... with profit margins expected to improve as the capacity utilization rate increases.”

61. Suprema also repeatedly emphasized that it produced only “all natural” cheese. It reported that “[o]ur cheeses are natural, and do not contain any preservatives, additives, sweeteners, dehydrated fillers or artificial flavorings. Our cheese products are premium quality all natural cheeses that meet or exceed all federal and industry standards for purity, freshness, taste, appearance and texture.” (Reg. St. at 22) Indeed, the Registration Statement went into great detail to describe the various stages that are involved in Suprema’s “all natural” cheese manufacturing process, including the aging process. (Reg. St. at 23)

(3) Suprema and its Senior Management Capitalize on Their Reported Success

62. Suprema took advantage of its reported success in two ways. First, it increased the amount that it borrowed under its long-term revolving credit facility with Fleet Bank N.A. and Sovereign Bank, and second, it raised over \$40 million dollars in the capital markets pursuant to the Secondary Offering.

(a) Suprema Increases Its Debt Under Its Revolving Credit Facility

63. During the Class Period, the Company raised approximately \$48 million in additional capital by increasing its debt pursuant to its Third Amended and Restated Revolving Loan, Guaranty and Security Agreement dated September 23, 1999, as amended from time to time (the “Credit Facility”). Specifically, the Company increased its borrowing from \$30.4 million on June 30, 1999 to \$65.8 million on June 30, 2000; and then to \$99.2 million by June 30, 2001, and \$113.7 million by September 30, 2001. (See 2001 Form 10-K; 2000 Form 10-K; Form 10-Q dated Nov. 14, 2001)

64. Advances under the Credit Facility were limited to 85% of Suprema's eligible accounts receivables plus 60% of its eligible inventory. (See, 2001 Form 10-K at 21) As noted above, during the Class Period, the Company reportedly increased its accounts receivables and inventory by huge amounts, driven almost exclusively by its purported sales to A&J, Tricon, Battaglia, Noble and California Goldfield. Specifically, in its 2001 Form 10-K, Suprema claimed that its accounts receivables were \$101.8 million on June 30, 2001, compared to \$62.3 million on June 30, 2000, an increase of \$39.8 million or 63%. Suprema's inventory reportedly increased to \$74.5 million by June 30, 2001, compared to \$51.6 million on June 30, 2000, an increase of \$22.9 million or 44%.

65. Indeed, as of June 30, 2001, approximately 81% of the Company's accounts receivable was attributable to alleged hard cheese purchases by A&J, Tricon, Battaglia, Noble and California Goldfield. Specifically, according to the 2001 Form 10-K, as of June 30, 2001, the Company had total accounts receivable of \$101,882,264, and these five Companies "represented 20%, 20%, 15%, 13% and 13% of net accounts receivable, respectively." (2001 Form 10-K at F-18)

(b) The Secondary Offering

66. Bolstered by its reported growth in the hard cheese portion of its business, on November 6, 2001, the defendants filed the Registration Statement (Amendment No. 2 to Form S-2 Registration Statement Under the Securities Act of 1933) in connection with the Secondary Offering, in which Suprema would sell 3.5 million shares of common stock to the investing public, and certain selling shareholders would sell an additional 550,000 shares.

67. The Registration Statement was signed by defendants Cocchiola, Venechanos, Acosta, DeSocio, Rutcofsky and Marco Cocchiola. In addition, defendant BDO specifically authorized the use of its unqualified audit opinion, dated August 7, 2001, on the Company's

financial statements for the fiscal years 2000 and 2001 ended June 30, 2000 and 2001, respectively, in the Registration Statement. BDO stated that, in its opinion, “such financial statement schedule presents fairly, in all material respects, the information set forth therein.” (Reg. St. at S-1)

68. The Secondary Offering was underwritten by defendants Janney Montgomery, Pacific Growth and Roth Capital. Beginning on November 8, 2001, the Underwriters sold stock in this offering pursuant to a prospectus dated November 7, 2001 (the “Prospectus”). The offering was priced on November 7, 2001, at \$12.75 per share. The Company and the selling shareholders also granted the underwriters an over-allotment option to purchase an additional 357,000 and 250,000 shares of common stock, respectively, at the same price per share as the public offering price, less an underwriting discount of \$0.89 per share.

69. As detailed below, the Registration Statement and Prospectus stated, among other things, that the Company was in the business of manufacturing and importing cheese and that its consolidated financial statements were presented in conformity with GAAP. Further, the Registration Statement and Prospectus explicitly incorporated by reference the Company’s 2001 Form 10-K.

70. The Secondary Offering was completed on November 14, 2001. The Company sold 3,500,000 shares of common stock for proceeds of \$41.5 million. In addition, the selling shareholders sold stock on the Secondary Offering as follows: (a) defendant Mark Cocchiola sold 193,423 shares, or 31% of his stake in Company, at \$11.86 per share for total proceeds of \$2,293,996, of which \$1,674,872 was pure profit. In addition, he sold 81,577 shares in the overallotment on November 24, 2004, at \$11.86 per share, bringing his total offering proceeds to

\$3,261,499, of which \$2,359,450 was pure profit; (b) defendant Venechanos sold 52,937 shares, or 38% of his stake in Suprema, at \$11.86 per share, for proceeds of \$627,832.

71. Also in connection with the Secondary Offering, each of the Underwriter Defendants initiated coverage on Suprema common stock with a “buy” rating: Janney Montgomery with a report dated November 14, 2001; Pacific Growth with a report dated November 13, 2001; and Roth Capital with a report dated November 12, 2001.

(4) The Truth About Suprema Begins To Emerge

72. On December 21, 2001, just six weeks after the Secondary Offering, Suprema announced that defendant Venechanos and Arthur Christensen, the Company’s controller, had resigned, that the Company had initiated an internal investigation into its prior reported financial results, and that it had instructed its auditors, BDO, to review the Company’s financial records. In response to this announcement, the NASDAQ immediately halted trading of Suprema common stock at \$13 per share, and the SEC commenced an investigation.

73. On December 24, 2001, the NASDAQ announced the “trading halt status” in Suprema was changed to “additional information requested from the company.” The announcement further stated that trading would remain halted until Suprema fully satisfied NASDAQ’s request for additional information. Suprema’s stock never resumed trading on the NASDAQ again.

74. On December 24, 2001, Pacific Growth and Janney Montgomery issued research reports in which they suspended their ratings and estimates on the Company’s stock until a full accounting of the situation was issued by the Company and its auditors.

75. On December 29, 2001, the Bergen Record reported that auditors had been examining the financial records at Suprema since the resignation of Venechanos and

Christensen. According to the article, “Suprema executives declined to comment to reporters or investors until the audit is complete. No estimated date for completion was given....”

76. On January 8, 2002, Suprema issued a press release regarding the internal investigation announced on December 21, 2001. The Company stated that, with the assistance of BDO, it was conducting an inquiry into the Company’s financial records, “focusing on areas management considered most material.” The Company further stated that the inquiry was not yet complete, it was not possible to predict the ultimate results of the inquiry, and the Company had nothing to report. Nevertheless, the Company and its Audit Committee claimed to be firmly committed to completing a thorough, expeditious inquiry.

77. On January 25, 2002, the Company issued a press release announcing that the Company’s Audit Committee “is in the process of retaining Deloitte & Touche LLP to continue the investigation of the Company’s financial statements and records.” According to defendant Cocchiola, the Company was “hopeful the work recently completed by the Company’s independent auditors [BDO], together with the investigation to be conducted by Deloitte & Touche LLP, will help bring closure to this inquiry. We are doing everything we can to bring this matter to a speedy conclusion. I appreciate our shareholders’ patience while the Company works to resolve all issues.”

78. On February 4, 2002, federal authorities executed a search warrant at the Company’s headquarters in Paterson, New Jersey and seized certain financial and manufacturing records. Thereafter, the Company revealed that criminal investigations into the Company’s business dealings were being conducted by the FBI, FDA, SEC and N.J. Department of Agriculture (“NJDOA”).

79. Authorities also embargoed what was supposed to be \$45 million worth of the Company's inventory. As detailed below, it was later determined that this "cheese" inventory was not all natural, gourmet cheese, but rather was mislabeled and adulterated cheese that was ultimately sold for less than \$2 million.

80. On February 18, 2002, BDO resigned as Suprema's independent auditors. In a report filed with the SEC on Form 8-K on February 25, 2002, BDO represented that it resigned for the following reasons: (1) the resignation of Venechanos and Christensen in December 2001; (2) the seizure of financial and corporate records from the Company's headquarters by representatives of government agencies; (3) the uncertainties regarding the outcome of the investigation of the Company's financial records being conducted by the Audit Committee and by Deloitte & Touche, who had been engaged to assist the Audit Committee in the investigation; and (4) the inability of BDO to determine whether (a) the Company had the internal controls necessary to develop reliable financial statements, (b) the Company's prior financial statements – the very ones audited by BDO – contained any material inaccuracies or (c) BDO could continue to rely on the representations of the Company's management.

81. On February 24, 2002, Suprema filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code in the Southern District of New York. At the same time, Suprema announced that Cocchiola had stepped down as CEO and had been replaced by Douglas Hopkins ("Hopkins") of Nightingale & Associates, a crisis management firm hired to guide Suprema through its reorganization. In addition, Suprema announced that its stock would be delisted by NASDAQ as of March 1, 2002.

82. On March 20, 2002, Suprema's bankruptcy was converted from a reorganization under Chapter 11 to a liquidation under Chapter 7, and the Bankruptcy Court appointed Kenneth

Silverman, Esq. as the Liquidation Trustee. Since that time, the Liquidation Trustee has been liquidating assets of Suprema.

83. On January 7, 2004, four individuals, including three Suprema customers, Robert Quattrone (“Quattrone”), Lawrence Fransen (“Fransen”), and George Vieira (“Vieira”), and one Suprema employee, John Van Sickell (“Van Sickell”), with direct knowledge of the facts asserted herein, pled guilty to, among other things, conspiracy to commit securities fraud, bank fraud and mail fraud. In connection with these pleas, these individuals admitted that certain of Suprema’s public statements relating to its financial results and the nature of its business were untrue. These untrue statements were contained in the Registration Statement and in the Prospectus. Specifically, they admitted, among other things, that:

- (i) The vast majority of Suprema’s business did not consist of the manufacturing, processing or sale of gourmet all-natural cheeses.
- (ii) Between 1996 and January 2002, Suprema’s total net sales were overstated by approximately \$700 million, or approximately 60%.
- (iii) Between 1999 and January 2002, Suprema’s inventory was overstated in that it consisted of mislabeled and adulterated cheese; indeed, as of December 31, 2001, Suprema’s inventory, which it carried on its books at more than \$60 million, was in reality worth just \$2 million.
- (iv) Between approximately 1994 and January 2002, Suprema’s sales to Battaglia were overstated by approximately \$130 million.
- (v) Between approximately 1998 and January 2002, Suprema’s sales to West Coast Commodities (“WCC”) were overstated by approximately \$34 million and sales to California Milk Market (“CMM”) were overstated by at least \$1 million.
- (vi) Between approximately 2000 and January 2002, Suprema’s sales to West Coast LNN Enterprises (“LNN”) and Wall Street Cheese LLC (“WSC”) were overstated by approximately \$35 million.

84. In addition, according to a complaint filed by the SEC on January 7, 2004, in connection with settlements with the criminal defendants, their respective companies and Arthur

Christensen, the former controller of Suprema, the Company's accounts receivable were overstated by 30%, 65%, 85% and 87% at the end of fiscal years 1998, 1999, 2000, 2001, respectively.

**B. UNTRUE STATEMENTS AND OMISSIONS OF MATERIAL FACT
CONTAINED IN THE REGISTRATION STATEMENT AND PROSPECTUS**

85. The Registration Statement and the Prospectus each contained numerous untrue statements and omissions of material fact.

86. The Registration Statement and Prospectus stated:

Net sales for fiscal year ended June 30, 2001 were approximately \$420,363,000 as compared to approximately \$278,482,000 for fiscal year ended June 30, 2000, an increase of approximately \$141,881,000 or 50.9%. This increase reflects an increase primarily in sales volume for our foodservice products, most of which represented sales to existing customers...

* * *

Net sales for fiscal year ended June 30, 2000 were approximately \$278,482,000 as compared to approximately \$176,281,000 for fiscal year ended June 30, 1999, an increase of approximately \$102,201,000 or 58%. This increase reflects an increase primarily in sales volume for our foodservice products *manufactured by us*, most of which represented sales to existing customers...

* * *

Our gross margin increased by approximately \$19,404,000, from approximately \$45,549,000 for the fiscal year ended June 30, 2000 to approximately \$64,953,000 for the fiscal year ended June 30, 2001, primarily as a result of the increase in sales volume.

* * *

Our gross margin increased by approximately \$15,620,000, from approximately \$29,929,000 for the fiscal year ended June 30, 1999 to approximately \$45,549,000 for the fiscal year ended June 30, 2000, primarily as a result of the increased sales volume.

(Reg. St. at 14-16; Prospectus at 14-16)

87. These statements were untrue because the Registration Statement and the Prospectus materially overstated Suprema's total net sales for 2000 and 2001. In fact, according to the criminal Information to which Van Sickell, Suprema's former Operations Manager and Assistant to the Executive Vice President, pled guilty, approximately \$700 million of the \$1.2 billion total sales that Suprema reported between November 1996 and January 2002 were transactions that never actually took place. Relatedly, Suprema's increases in net sales were not the result of increases in sales volume of products manufactured by Suprema, but rather the booking of millions of dollars of sales that never actually took place.

88. The Registration Statement and the Prospectus also stated: "We record revenue when our products are shipped to customers." (Reg. St. at 14; Prospectus at 14) This statement was untrue because, as has now been admitted in connection with the guilty pleas entered on January 7, 2004, Suprema recorded revenue from transactions where products (cheese) were never actually shipped.

89. The Registration Statement and the Prospectus stated in the MD&A sections that "[i]n the fiscal years 1999, 2000 and 2001, aggregate sales of parmesan and Romano cheese accounted for 37%, 52% and 62%, respectively of our revenue...." (Reg. St. at 14; Prospectus at 14) This statement was untrue because Suprema's total aggregate sales for fiscal years 1999, 2000 and 2001 were overstated by including sales of cheese that never actually occurred.

90. The Registration Statement and the Prospectus stated that sales to foodservice distributors accounted for 91%, 91% and 97% of Suprema's net sales in 1999, 2000 and 2001, respectively. (Reg. St. at 14; Prospectus at 14) They also stated that A&J, Tricon and Noble accounted for 15%, 13% and 12%, respectively, of net sales in 2000, and A&J, Tricon, Battaglia, Noble and California Goldfield accounted for 17%, 15%, 12%, 10% and 10%, respectively, of

net sales in 2001. (Reg. St. at 24; Prospectus at 24) These statements were untrue because Suprema's total net sales for 1999, 2000 and 2001 were overstated by including sales of cheese that never actually took place. Indeed, as the owner of Battaglia ("Quattrone") admitted in connection with his guilty plea, virtually none of Suprema's sales to Battaglia that Suprema included in its financial results for 2001 actually took place.

91. In its "Risk Factors" section, the Registration Statement and the Prospectus represented that:

We depend on several principle customers, and the loss of one or more of these customers or our inability to collect accounts receivable from our customers could materially adversely affect our business.

An increasing portion of our revenue has been derived from a concentrated customer base. Sales of cheese products to our five largest customers accounted for approximately 64% of our net sales in fiscal year 2001 and 57% of our net sales in fiscal year 2000. Each of these customers represented at least 10% of our annual net sales.

(Reg. St. at 4; Prospectus at 4)

92. These statements were untrue because a substantial portion of the purported sales to Suprema's five largest customers never took place. In addition, as detailed below, the Registration Statement and the Prospectus failed to disclose that all of Suprema's largest customers were also its largest suppliers, and that three of its five largest customers -- A&J, Noble and California Goldfield -- were interrelated companies owned by Jack Gaglio ("Gaglio"), who was alone allegedly responsible for well over 27% and 35% of Suprema's net sales in 2000 and 2001, respectively.

93. The Registration Statement and the Prospectus further stated that A&J, Tricon, Battaglia, Noble and California Goldfield accounted for approximately 20%, 20%, 15%, 13% and 13%, respectively, of Suprema's \$101.8 million in accounts receivable as of June 30, 2001.

(Reg. St. at 24; Prospectus at 24) This statement was untrue because the sales underlying the Company's accounts receivable were materially overstated. Indeed, as Quattrone has admitted, virtually none of the sales to Battaglia in fiscal 2001 ever actually took place, and, as set forth in the SEC complaint, Suprema's accounts receivables were overstated by 65%, 85% and 87% at the end of fiscal years 1999, 2000 and 2001, respectively.

94. The Registration Statement and the Prospectus described the nature of Suprema's business as follows:

Suprema Specialties, Inc. manufactures and markets gourmet all natural Italian cheeses. Our product lines consist primarily of mozzarella, ricotta, parmesan, romano and provolone cheeses, which we produce domestically, as well as parmesan and pecorino romano cheeses, which we import....

We sell our cheeses through all three channels of distribution in the food industry: foodservice, food ingredient and retail. Over 95% of our revenue is derived from the foodservice channel, where we market and sell our bulk cheeses under the Suprema brand name, as well as under private label, to national and regional foodservice distributors, which in turn sell our cheeses to restaurants, hotels, caterers and others....

* * *

We manufacture and package cheeses at our three facilities located in Manteca, California, Blackfoot, Idaho, and Ogdensburg, New York. At our Paterson, New Jersey facility, we shred and grate and then package, bulk cheeses *that we manufacture or import*.

(Reg. St. at 1; Prospectus at 1 (emphasis added))

95. These statements were untrue for the following reasons:

- (i) Suprema fundamentally misstated the nature of its business. Only a small portion of Suprema's business consisted of actually manufacturing, processing or marketing premium, gourmet natural cheese products. The vast majority of Suprema's business consisted of sales that never actually took place.

- (ii) Suprema's cheese was not "all natural." To the extent that Suprema did sell or store "cheese," that cheese was not "all natural," but rather was mislabeled or adulterated, and generally not fit for human consumption.
- (iii) Suprema did not sell the vast majority of its bulk cheeses to national or regional foodservice distributors, who then sold the products to restaurants, hotels, caterers and others. More than 60% of Suprema's reported sales never actually took place.

96. The Registration Statement and the Prospectus also stated in the "risk factors" sections that the Company was subject to extensive government regulation and that "[w]e believe that we are currently in substantial compliance with all material governmental laws and regulations...." (Reg. St. at 7, Prospectus at 7) This statement was untrue because, according to the sworn testimony of John Van Sickell, the senior management of Suprema did not hold such a belief.

97. The Registration Statement and the Prospectus also represented that "[h]istorically, a majority of our cost of goods sold has consisted of the price we pay for raw milk." (Reg. St. 14; Prospectus at 14) This statement was untrue because from at least 1998 through the end of the Class Period, the majority of the Company's recorded cost of goods sold was money that it paid for products that were never shipped.

98. In the "Competitive Strengths" sections of the Registration Statement and the Prospectus, the Company made many representations that its business was the *manufacturing* of cheese. For example, the Registration Statement and the Prospectus emphasize the fact that Suprema's "production facilities are located in key milk shed regions.... By locating in areas where there is an abundant supply of milk at competitive price levels, we are able to minimize transportation costs for our raw milk supplies and maintain a low cost infrastructure." (Reg. St. at 21; Prospectus at 21)

99. Similarly, the Registrations Statement and the Prospectus state: “We Produce High Quality and Consistent Products” and “We Produce a Full Line of Gourmet All Natural Italian Cheeses.” (Reg. St. at 21; Prospectus at 21) They also state that “Our cheeses are natural and do not contain any preservatives, additives, sweeteners, dehydrated fillers or artificial flavorings.” Id. They then go on to include a detailed description of the manufacturing process, (Reg. St. at 22-23; Prospectus at 22-23), and claim that “[b]ecause our current products are positioned as all natural and gourmet, we generally price them at a premium to certain competitive products.” (Reg. St. at 26; Prospectus at 26)

100. Each of these statements was untrue and misleading because the vast majority of Suprema’s business had nothing to do with the manufacturing of cheese and, to the extent that Suprema did sell or store hard cheese, that cheese was not “all natural” or “gourmet,” but rather was mislabeled, adulterated and generally not fit for human consumption.

101. The Registration Statement and the Prospectus also represented that Suprema was in compliance with all of the covenants of its revolving credit facility. (Reg. St. at 18; Prospectus at 18) These representations were untrue because, as detailed below at ¶¶138-140, Suprema had violated its loan covenants by including sales that never took place in its financial results.

102. The Registration Statement and the Prospectus also represented that the Company was in compliance with all government rules and regulations. (Reg. St. at 25; Prospectus at 25) This representation was untrue because Suprema had introduced into the stream of commerce mislabeled and adulterated cheese in violation of applicable governmental rules and regulations.

C. SUPREMA'S MATERIALLY UNTRUE FINANCIAL STATEMENTS

103. The Registration Statement and Prospectus also included Suprema's financial statements, which were materially untrue in so far as Suprema's financial results were materially overstated and were not presented in conformity with GAAP.

104. Generally accepted accounting principles ("GAAP") are recognized by the accounting profession and the SEC as the uniform, principles, rules, conventions and procedures necessary to define accepted accounting practice at a particular time. As set forth in Statement of Financial Accounting Concepts ("SFAC") No. 1, Objectives of Financial Reporting by Business Enterprises, one of the fundamental objectives of financial reporting is that it provide accurate and reliable information concerning an entity's financial performance during the period being presented. Paragraph 42 of SFAC No. 1 states:

Financial reporting should provide information about an enterprise's financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' and creditors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance.

105. The SEC *requires* that public companies file quarterly and annual financial statements that are prepared in conformity with GAAP. SEC Rule 4-01(a) of Regulation S-X states that "[f]inancial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate." 17 C.F.R. §210.4-01(a)(1).

106. Additionally, Section 13 of the Exchange Act, 15 U.S.C. § 78m(b), requires, in part, that companies like Suprema devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: "transactions are recorded as necessary (i) to

permit preparation of financial statements in conformity with [GAAP] or any other criteria applicable to such statements, and (ii) to maintain accountability for assets...”

107. Furthermore, in preparing financial statements, management must take into consideration the fundamental objectives and concepts which GAAP are based, which include:

- (i) The principle that financial reporting should provide information that is useful to present and potential investors and creditors in making rational investment decisions and that information should be comprehensible to those who have a reasonable understanding of business and economic activities (FASB Statement of Concepts No. 1, ¶ 34);
- (ii) The principle of materiality, which provides that the omission or misstatement of an item in a financial report is material if, in light of the surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item (FASB Statement of Concepts No. 2, ¶ 132);
- (iii) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general. (FASB Statement of Concepts No. 1, ¶ 50);
- (iv) The principle that financial reporting should provide information about an enterprise's financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance. (FASB Statement of Concepts No. 1, ¶ 42);
- (v) The principle that financial reporting should be reliable in that it represents what it purports to represent. The notion that information should be reliable as well as relevant is central to accounting. (FASB Statement of Concepts No. 2, ¶¶ 58-59);
- (vi) The principle of completeness, which means that nothing is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions. (FASB Statement of Concepts No. 2, ¶ 80);

- (vii) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent. (FASB Statement of Concepts No. 2, ¶¶ 95, 97); and
- (viii) The principle that contingencies that might result in gains are not reflected in accounts since to do so might be to recognize revenue prior to its realization and that care should be used to avoid misleading investors regarding the likelihood of realization of gain contingencies. (SFAS No. 5, Accounting for Contingencies).

108. Throughout the Class Period, Suprema's financial statements and disclosures made in the Company's annual and quarterly reports filed with the SEC violated GAAP at least in the following respects: (1) they overstated revenue by recognizing revenue from sales that never actually took place; (2) they overstated accounts receivable by including receivables from sales that never actually took place, failed to provide an adequate allowance for doubtful accounts, and failed to disclose uncertainty related to allowances for doubtful accounts; (3) they overstated the Company's inventories; (4) they failed to adequately disclose the nature of the Company's operations; (5) they failed to disclose vulnerability due to certain other concentrations; and (6) they failed to properly disclose the fact that Suprema was in violation of its loan covenants and, as a result, failed to classify the Company's revolving credit debt (the Credit Facility) as a current liability.

(1) Overstated Revenue

109. Clear and longstanding GAAP provisions preclude the recognition of revenue and the recording of related accounts receivable from transactions that have no economic substance. Specifically, SEC Staff Accounting Bulletin No. 101, Revenue Recognition in Financial Statements ("SAB 101"), issued in 1999, which discusses and summarizes, among other things, well established GAAP provisions governing revenue recognition, sets forth the very foundation

for all GAAP provisions on the subject of revenue recognition: “revenue should not be recognized until it is realized or realizable and earned.”

110. In particular, SAB 101, which cites, among others, Statement of Financial Accounting Concepts No. 5, Recognition and Measurement in Financial Statements of Business Enterprises; Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information; Statement of Financial Accounting Standards No. 48 and No. 49; American Institute of Certified Public Accountants (“AICPA”) Accounting Research Bulletin 43, Chapter 1A, APB Opinion No. 10; and AICPA Statement of Position 97-2 (“SOP 97-2”), identifies four criteria that all must be met before revenue is realized or realizable and earned, and therefore may be recognized:

- (i) Persuasive evidence of an arrangement exists;
- (ii) Delivery has occurred or services have been rendered;
- (iii) The seller’s price to the buyer is fixed and determinable, and
- (iv) Collectibility is reasonably assured.

111. Contrary to GAAP, approximately 60% of Suprema’s reported sales in 2000 and 2001 never actually took place. These transactions artificially inflated Suprema’s revenue in violation of these most basic principles of GAAP.

(2) **Overstated Accounts Receivables and Inadequate Allowance for Doubtful Accounts**

112. According to AICPA Accounting Research Bulletin 43, Restatement and Revision of Accounting Research Bulletins (“ARB 43”), Chapter 3: Working Capital, Section A - Current Assets and Current Liabilities, Paragraph 4:

... [T]he term current assets is used to designate cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business ... Thus the term comprehends in general such resources as ... trade accounts, notes,

and acceptances receivable ... if collectible in the ordinary course of business within a year ...

113. Suprema's accounts receivables had been recorded based on sales that had never actually taken place. Therefore, Suprema violated these provisions of GAAP by classifying these amounts as current assets.

114. Additionally, under GAAP, an allowance had to be provided against such receivables to reduce the net receivable to the amount expected to be collected. FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies ("SFAS 5") ¶ 10 requires certain disclosures with respect to loss contingencies. Specifically:

if no accrual is made for a loss contingency because one or both of the conditions in paragraph 8 are not met, or if an exposure to loss exists in excess of the amount accrued pursuant to the provisions of paragraph 8, disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred. The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made. (Emphasis added)

115. SFAS 5 defines a "contingency" as "an existing condition, situation, or set of circumstances involving uncertainty as to possible gain... or loss... to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur," and specifically identifies the collectibility of accounts receivable as an example of a "loss contingency."

116. According to SFAS 5 ¶ 8, an estimated loss from a loss contingency shall be accrued by a charge to income if the following two conditions are met:

- (a) Information available prior to issuance of the financial statements indicates that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements; and
- (b) The amount of loss can be reasonably estimated.

117. In addition, AICPA Statement of Position 94-6, Disclosure of Certain Significant Risks and Uncertainties ("SOP 94-6"), requires that disclosures regarding an estimate should be

made when information is known and available prior to the issuance of the financial statements, indicating that both of the following criteria are met:

(a) It is at least reasonably possible that the estimate of the effect on the financial statements of a condition, situation, or set of circumstances that existed at the date of the financial statements will change in the near term due to one or more future confirming events.

(b) The effect of the change would be material to the financial statements.

118. The disclosure pursuant to SOP 94-6 should indicate the nature of the uncertainty and include an indication that it is at least reasonably possible that a change in the estimate will occur in the near term. It also requires that the disclosure include an estimate of the possible loss or range of loss (or state that such an estimate cannot be made) if the estimate involves a loss contingency covered by SFAS 5.

119. Suprema's accounts receivable were materially overstated based on sales that never took place -- i.e., they were impaired and the amount of loss was estimable. Thus, at the very least, GAAP required disclosure of this potential additional exposure and either an estimate of the range of potential additional loss or a statement to the effect that such an estimate could not be made.

(3) Overstatement of Inventories

120. As with its accounts receivable, ARB 43, Chapter 3, required that Suprema's inventories, which it had classified as a current asset, would have been reasonably expected to be realized in cash or consumed during the normal operating cycle of the business.

121. In addition, ARB 43 Chapter 4 provides the following with respect to the valuation of inventory:

A departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as great as its cost. Where there is evidence that

the utility of goods, in their disposal in the ordinary course of business, will be less than cost, whether due to physical deterioration, obsolescence, changes in price levels, or other causes, the difference should be recognized as a loss of the current period. This is generally accomplished by stating such goods at a lower level commonly designated as *market*.

122. FASB Statement of Financial Accounting Concepts No. 6, Elements of Financial Statements (“CON 6”) is also instructive on valuing inventories. Specifically, CON 6 requires that the recorded amount of assets such as inventory “embody a probable future benefit that involves a capacity ... to contribute directly or indirectly to future net cash inflows ...”

123. A substantial portion of Suprema’s cheese inventory on its books as of year end 2001 consisted of mislabeled and/or adulterated cheese that was essentially worthless. Indeed, John Van Sickell testified that Suprema’s inventory was materially overstated throughout the Class Period.

124. Further, according to a proof of claim filed by the A&J Receiver (discussed below), \$12,000,000 worth of “cheese” that Suprema shipped to A&J from May through August, 2001, was adulterated and not fit for human consumption. The Receiver was forced to sell this cheese for pennies on the dollar. This cheese was necessarily included in Suprema’s inventory as of June 31, 2001. Indeed, in view of the fact that it allegedly took 10 months to age this “cheese” (see Janney Montgomery report, Nov. 14, 2001), it had to have been a part of Suprema’s inventory as of the end of Suprema’s fiscal year 2001. This would have been the case even if Suprema had sold this cheese before it was fully aged.

125. Similarly, the cheese that supposedly comprised the \$45 million in inventory that was seized by governmental authorities on or about February 4, 2002, was similarly adulterated and virtually worthless. Most of this inventory was eventually also sold as animal feed for pennies on the dollar.

126. Because a large portion of Suprema's cheese was not the "all natural" "gourmet" cheese that Suprema claimed to manufacture, that inventory should have been valued accordingly. Suprema's overvaluation of this inventory violated GAAP.

(4) Failure to Adequately Disclose the Nature of the Operations

127. The disclosures required by SOP 94-6, discussed above, "focus primarily on risks and uncertainties that could significantly affect the amounts reported in the financial statements in the near term or the near term functioning of the reporting entity." Such risks and uncertainties "can stem from the nature of an entity's operations." Accordingly, SOP 94-6 ¶ 10, requires the following with respect to a Company's disclosure of the nature of its operations:

Financial statements should include a description of the major products or services the reporting entity sells or provides and its principal markets, including the locations of those markets. *If the entity operates in more than one business, the disclosure should also indicate the relative importance of its operations in each business and the basis for the determination—for example, assets, revenues, or earnings...* Disclosures about the nature of operations need not be quantified; relative importance could be conveyed by use of terms such as predominately, about equally, or major and other. (Emphasis added)

128. As detailed above, Suprema repeatedly held itself out as a manufacturer and importer of cheese. Note 1 to Suprema's 2001 financial reinforced this notion. It stated:

Suprema [and its subsidiaries] manufacture, process and market a variety of premium, gourmet natural Italian cheese products. The Company operates in a single business segment ...

129. Note 1 goes on to provide the relative percentage of sales made to the food service, food service manufacturers, and retail customers. (2001 Form 10-K at F-7) However, it makes no mention of the fact that approximately 60% of Suprema's business consisted of sales that never actually took place. The failure to disclose the truth about the nature of Suprema's business and the associated risks violated GAAP.

(5) Failure to Disclose Certain Other Concentrations

130. SOP 94-6 provides that vulnerability from concentrations arises when an entity is exposed to risk of loss greater than it would have had it mitigated its risk through diversification. According to SOP 94-6, financial statements should disclose concentrations of risk if the following criteria are met:

- (a) The concentration exists at the date of the financial statements;
- (b) The concentration makes the enterprise vulnerable to the risk of a near-term severe impact; and
- (c) It is at least reasonably possible that the events that could cause the severe impact will occur in the near term.

131. If these factors are present, SOP 94-6 requires disclosure of the concentrations described below:

Concentrations in the volume of business transacted with a particular customer, supplier, lender, grantor, or contributor. The potential for the severe impact can result, for example, from total or partial loss of the business relationship.

Concentrations in the available sources of supply of materials, labor, or services, or of licenses or other rights used in the entity's operations. The potential for the severe impact can result, for example, from changes in the availability to the entity of a resource or a right.

132. Pursuant to SOP 94-6 ¶ 24, disclosure of concentrations should include information that is adequate to inform users of the general nature of the risk associated with the concentration.

133. In its 2001 financial statements, Suprema disclosed in Note 12 that its sales to A&J, Tricon, Battaglia, Noble, and California Goldfield represented approximately 17%, 15%, 12%, 10%, and 10%, respectively, of its net sales. It further disclosed that these five major customers comprised 81% of Suprema's net accounts receivable as of June 30, 2001. Similarly, in its 2000 financial statements, the Company disclosed in Note 12 that its sales to three major

customers (which it later disclosed were A&J, Tricon and Noble) represented 15%, 13% and 12% of its net sales, and that five customers (which it later disclosed were A&J, Tricon, Battaglia, Noble and California Goldfield) represented 83% of its accounts receivable. These statements were contained in the Registration Statement and in the Prospectus.

134. These disclosures were untrue because approximately 60% of Suprema's sales never actually took place, including virtually all of its sales to Battaglia.

135. Further, Suprema also failed to disclose that three of these five major customers were all "one in the same" – companies owned and controlled by Gaglio, as detailed below. Thus, instead of five major customers, in reality there were only three. Further, the three entities under the control of Gaglio constituted 37% of net sales for 2001 and 46% of accounts receivable as of June 30, 2001. As such, Suprema's disclosure regarding the concentration of risk among its major customers was materially false and misleading.

136. In addition, Suprema made no disclosure at all regarding concentrations in the volume of business it conducted with a limited number of hard cheese suppliers. In fact, as detailed below, Suprema had approximately the same degree of concentration on the supply side of its hard cheese business as it had on the sales side. Suprema's major hard cheese suppliers included four entities all owned or controlled by Gaglio (Whitehall Specialties Inc. ("Whitehall"), Commodities Distribution ("Commodities"), California Federal Marketing ("Cal Fed") and St. Charles Trading Co., Inc. (St. Charles")), and the remaining two, Noram Commodities ("Noram") and Packing Products Inc. ("Packing Products"), were alter egos of the owners of Tricon and Battaglia, respectively.

137. Suprema also failed to disclose the concentration of risk that existed because its hard cheese suppliers and customers were essentially one in the same. The Company's exposure

to risk was fundamentally heightened because its three largest customers – Gaglio, Zambas and Quattrone – were also the Company’s most significant suppliers, and the loss of any one of these individuals would have materially impacted Suprema’s business. For example, the risk of loss of Jack Gaglio as a “customer” not only meant the loss of approximately 50% of Suprema’s supposed cheese sales during fiscal 2001, but it also likely meant the loss of approximately 50% of Suprema’s purported cheese purchases, a concentration of risk that should have been disclosed to investors.

(6) Failure to Disclose Violations of Loan Covenants

138. FASB Statement of Financial Accounting Standards No. 78, Classification of Obligations that are Callable by the Creditor (“SFAS 78”), and ¶ 7 of ARB 43, Chapter 3A, include the following provisions:

The current liability classification is also intended to include obligations that, by their terms, are due on demand or will be due on demand within one year (or operating cycle, if longer) from the balance sheet date, even though liquidation may not be expected within that period. It is also intended to include long-term obligations that are or will be callable by the creditor either because the debtor’s violation of a provision of the debt agreement at the balance sheet date makes the obligation callable or because the violation, if not cured within a specified grace period, will make the obligation callable. Accordingly, such callable obligations shall be classified as current liabilities unless one of the following conditions is met:

(a) The creditor has waived[] or subsequently lost the right to demand repayment for more than one year (or operating cycle, if longer) from the balance sheet date.

(b) For long-term obligations containing a grace period within which the debtor may cure the violation, it is probable that the violation will be cured within that period, thus preventing the obligation from becoming callable.

139. Throughout the Class Period, Suprema represented in its financial statements that it “was in compliance with the covenants under the Facility agreement.” As detailed below, however, Suprema was in violation of many of its loan covenants. In view of this fact,

Suprema's entire obligation to its creditor banks was callable and, accordingly, the loan balance should have been shown as a current liability on Suprema's June 30, 2001 and June 30, 2000 balance sheets. Instead, Suprema classified the entire loan balance as a non-current or long-term obligation, leading users of the financial statements to believe that this loan would not require repayment from Suprema's current assets within one year. These untrue statements and misclassification of the revolving credit facility as a long-term liability violated GAAP.

140. In addition to the above, the Registration Statement and the Prospectus incorporated by reference the 2001 Form 10-K, which also contained representations about the nature of Suprema's business, its customers and suppliers, its sales and revenue figures, and the like. As set forth in more detail below at paragraphs 287-305, all of these statements were also untrue.

D. THE DEFENDANTS' NEGLIGENCE

141. None of the defendants named in this Count made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and Prospectus were accurate and complete in all material respects. Had they exercised reasonable care, these defendants could have known of the material misstatements and omissions alleged herein.

142. Furthermore, as detailed below, BDO acted negligently in that its audit of Suprema's financial statements violated the following basic principles of GAAS:

- (i) General Standard No. 3, in that BDO failed to exercise due professional care in the performance of its audit and the preparation of its reports;
- (ii) Standard of Field Work No. 1, in that BDO failed to adequately plan and supervise its audit;
- (iii) Standard of Field Work No. 3, in that BDO failed to obtain sufficient competent evidential matter through inspection, observation, inquiries and confirmations to afford a reasonable basis for its opinions;

- (iv) Standard of Reporting No. 1, in that BDO's reports incorrectly stated that Suprema's financial statements were presented in conformity with GAAP;
- (v) Standard of Reporting No. 3, in that Suprema's financial statements omitted or inadequately disclosed material information required by GAAP; and
- (vi) Standard of Reporting No. 4, in that BDO had an insufficient basis for expressing its unqualified opinions, for its audits had not been conducted in accordance with GAAS.

143. BDO also failed to adhere to professional auditing standards in (a) consenting to the inclusion of its audit report dated August 7, 2001 in Suprema's November 2001 Registration Statement and Prospectus, and (b) issuing its comfort letter to Suprema's underwriters of the Secondary Offering.

144. At the time they purchased shares in the Secondary Offering, neither Lead Plaintiff nor any member of the Class knew, or by the reasonable exercise of care could have known, of the material misstatements and omissions alleged herein.

145. In connection with the Secondary Offering and sale of the Suprema common stock, these defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, the United States mails and a national securities exchange.

146. This claim was brought within one year after the discovery of the untrue statements in the Registration Statement and within three years after the Suprema common stock was sold to Class members in connection with the Secondary Offering. Suprema has not made generally available to its shareholders an earnings statement covering a period of at least 12 months beginning after the effective date of the Registration Statement.

147. By reason of the misconduct alleged herein, these defendants violated Section 11 of the Securities Act and are liable to Lead Plaintiff and the members of the Class who acquired

Suprema common stock in the Secondary Offering, each of whom has been damaged as a result of such violations.

COUNT TWO

Against Defendants Cocchiola and Venechanos and the Underwriter Defendants for Violations of Section 12(a)(2) of the Securities Act

148. Lead Plaintiff repeats and realleges each and every allegation above as if set forth fully herein. This Count is brought for violation of Section 12(a)(2) of the Securities Act, 15 U.S.C. §77l(a)(2), against the Officer Defendants and the Underwriter defendants who offered and sold Suprema common stock to the Class in the Secondary Offering by means of the Prospectus. This claim is not based on and does not sound in fraud.

149. Specifically, in connection with the Secondary Offering, defendant Cocchiola sold 347,809 shares and defendant Venechanos sold 52,937 shares.

150. In addition, defendants Cocchiola and Venechanos selected the Underwriter Defendants to underwrite the Secondary Offering and promote Suprema's common stock. Pursuant to the underwriting agreement, Suprema, Cocchiola and Venechanos agreed to sell to the Underwriter Defendants, and the Underwriter Defendants agreed to purchase, a total of 4,050,000 shares of common stock at the public offering price, less an underwriting discount. The Underwriter Defendants then sold these shares to members of the Class as follows: Janney Montgomery sold 1,923,750 shares, Pacific Growth sold 1,518,750 shares, and Roth Capital sold 607,500 shares in the Company's Secondary Offering.

151. Cocchiola and Venechanos substantially participated in the preparation and dissemination of the Prospectus for their own financial benefit. Specifically, Cocchiola realized \$3,261,499 and Venechanos realized \$627,832 as a result of their sales of stock in the Secondary Offering. But for their participation in the Secondary Offering, including their solicitations as set

forth herein, the Secondary Offering could not and would not have been accomplished.

Specifically, Cocchiola and Venechanos:

- (i) Made the decision to conduct the Secondary Offering and to do it at the price set forth in the offering documents. These defendants drafted, revised and approved the Prospectus. These written materials were calculated to create interest in Suprema common stock and were used to sell the stock;
- (ii) Finalized the Prospectus and caused it to become effective; and
- (iii) Conceived and planned the Secondary Offering and orchestrated all activities necessary to affect the sale of these securities to the investing public, by issuing the securities, promoting the securities and supervising their distribution and ultimate sale to the investing public.

152. As set forth more specifically above at ¶¶ 85-102, the Prospectus included untrue statements of material fact and omitted to state material facts necessary in order to make the statements, in light of the circumstances in which they were made, not misleading.

153. Lead Plaintiff and the members of the Class did not know, nor could they have known, of the untruths or omissions contained in the Prospectus.

154. The defendants named herein were obligated to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such statements were true and that there was no omission of material fact required to be stated in order to make the statements contained therein not misleading. None of the defendants named in this Count made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Prospectus were accurate and complete in all material respects.

155. This claim was brought within one year after the discovery of the untrue statements and omissions in the Prospectus and within three years after the Suprema common stock was sold to the Class in connection with the Secondary Offering.

156. By reason of the misconduct alleged herein, the defendants named in this Count violated Section 12(a)(2) of the Securities Act and are liable to Lead Plaintiff and the members of the Class who purchased or acquired Suprema common stock in the Secondary Offering, each of whom has been damaged as a result of such violations.

157. Lead Plaintiff and the members of the Class who purchased Suprema common stock in the Secondary Offering hereby seek rescission of their purchases and hereby tender to the defendants named in this Count the common stock, which Lead Plaintiff and other members of the Class continue to own, in return for the consideration paid for those securities, together with interest thereon.

COUNT THREE

Against Defendants Cocchiola and Venechanos for Violations of Section 15 of the Securities Act

158. Lead Plaintiff repeats and realleges each and every allegation above as if set forth fully herein. This Count is brought pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, on behalf of the members of the Class who purchased Suprema common stock in the Secondary Offering pursuant to the Registration Statement and Prospectus. This claim is not based on and does not sound in fraud.

159. This claim is asserted against defendants Cocchiola and Venechanos, each of whom was a control person of Suprema during the Class Period.

160. For all the reasons set forth above in Counts One and Two above, Suprema is liable to Lead Plaintiff and the members of the Class who purchased Suprema common stock on the Secondary Offering based on the untrue statements and omissions of material fact contained in the Registration Statement and the Prospectus, pursuant to Sections 11 and 12(a)(2) of the

Securities Act, and were damaged thereby. But for the fact that the Company has filed for bankruptcy, it would be named as a defendant in each of Counts One and Two above.

161. Defendants Cocchiola and Venechanos were control persons of Suprema by virtue of, among other things, their positions as senior officers of Suprema, and they were in positions to control and did control the false and misleading statements and omissions contained in the Registration Statement and Prospectus.

162. In fact, during the Class Period, Suprema stated that its management was directly involved in overseeing the Company's key accounts. Specifically, according to the Registration Statement, "[s]enior management is responsible for planning and coordinating our marketing *and maintains a hands-on relationship with select key accounts.*" (Reg. St. at 23 (emphasis added))

163. In addition, the following facts evidence these defendants' control over Suprema.

i. Cocchiola

- (a) Throughout the Class Period, Cocchiola was Suprema's President, Chief Executive Officer and Chairman of the Board of Directors. He became Suprema's President in 1983, and served as the Chairman of the Board and Chief Executive Officer since 1991. On August 27, 2001, Cocchiola also assumed the duties of Executive Vice President, previously held by Paul Lauriero (who passed away), and was "responsible for overseeing the procurement of raw materials for production and the general operations of [Suprema's] facilities." (Reg. St. at 6)
- (b) The Company stated that its success was "largely dependent on the personal efforts of Mark Cocchiola... We believe that his expertise and knowledge of the natural cheese products industry are critical factors in our continued growth and success." (Reg. St. at 5) The Company also stated that: "We depend on our key personnel, including Mark Cocchiola, and the loss of the services of Mr. Cocchiola... could materially adversely affect our business." (Reg. St. at 5)
- (c) In fact, the agreement governing Suprema's Credit Facility (discussed in ¶¶ 63-65 above) stated that the loss of Cocchiola's services would be "an event of default" upon which the lenders

could declare the amount borrowed under the Credit Facility immediately due and payable. (Reg. St. at 5)

- (d) During the Class Period, Cocchiola signed the Registration Statement and each of the Company's annual and quarterly reports filed with the SEC. In addition, Cocchiola was one of Suprema's primary spokespersons who, throughout the Class Period, highlighted the Company's claimed achievements in press releases made in conjunction with announcements of the Company's annual and quarterly financial results.
- (e) That Cocchiola was a control person of Suprema is also reflected in his employment agreement with Suprema that was in effect throughout the Class Period. The employment agreement included a covenant that Cocchiola not compete with Suprema for a one year period following his employment. Furthermore, if certain circumstances, including a "change of control," should occur, Cocchiola would be entitled to a generous severance package equal to the higher of (i) \$1,250,000 or (ii) five times his total compensation.
- (f) Former employees interviewed by Lead Counsel, including supervisors for the accounts receivables and accounts payables departments, indicated that Cocchiola was directly involved in Suprema's business operations. Furthermore, these employees confirmed that Cocchiola and Venechanos did not permit Suprema's employees to have direct contact with BDO.
- (g) As of September 24, 2001, Cocchiola owned 17.5% of Suprema common stock issued and outstanding, and thus he had control over Suprema by virtue of his substantial equity position. Up until the Secondary Offering, Cocchiola was one of Suprema's largest shareholders.

ii. Venechanos

- (a) Throughout the Class Period, Venechanos was Suprema's Chief Financial Officer, a position that he held since April, 1995. Furthermore, Suprema's 2001 Form 10-K and the Registration Statement and Prospectus identified Venechanos as the Company's "Principal Financial and Accounting Officer." (2001 Form 10-K at F-21; Reg. St. at II-4) From September 2001 until the end of the Class Period, Venechanos also sat on Suprema's Board of Directors.
- (b) As Suprema's CFO, Venechanos was responsible for the accounting policies of the Company, as well as the preparation and accuracy of the Company's financial statements. Indeed,

Venechanos signed the Registration Statement, and each of the Company's annual and quarterly reports filed with the SEC during the Class Period.

- (c) Furthermore, former employees interviewed by Lead Counsel, including the supervisors for Suprema's accounts receivables and accounts payables departments, stated that Venechanos was directly involved in virtually all aspects of Suprema's business. These employees also confirmed that Venechanos (and Cocchiola) had all contact with BDO and prohibited Suprema's employees from dealing directly with BDO.
- (d) According to Suprema's accounts receivable supervisor, who worked directly with Venechanos, Venechanos (and Art Christenson) "handled all the bookkeeping." She stated that her role in maintaining the Company's checking account was limited to depositing checks from Suprema's supposed customers into Suprema's bank account, but that Venechanos was personally responsible for reviewing the bank statements and for reconciling the various accounts. The fact that Venechanos was a control person is evidenced by the accounts receivable supervisor, who stated that "when your boss [Venechanos] tells you to stay out of it, you stay out of it."
- (e) The accounts receivable supervisor also said that Venechanos was directly involved in Suprema's hard cheese business, and had direct contacts with some of Suprema's purported hard cheese purchasers.
- (f) Furthermore, according to the person listed as Suprema's "Press Relations" contact on numerous Class Period press releases, and who also helped design Suprema's website and who worked on a number of Suprema's SEC filings, including the 2001 Form 10-K and the 2001 10-Q for the quarter ending November 15, 2001, Venechanos served as Suprema's principal "Information Officer." This person stated that Venechanos controlled all aspects of Suprema's public announcements. In fact, this person said that he only had contact with Venechanos, and that Venechanos provided him with all of the information that he utilized in performing his public relations services for Suprema.
- (g) As of September 24, 2001, Venechanos owned 2.4% of Suprema common stock issued and outstanding, and thus had control by virtue of his substantial equity position. Up until the Secondary Offering, Venechanos was one of Suprema's largest shareholders.

164. Neither Cocchiola nor Venechanos made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and Prospectus were accurate and complete in all material respects. Had they exercised reasonable care, they could have known of the material misstatements and omissions alleged herein.

165. This claim was brought within one year after the discovery of the untrue statements and omissions in the Registration Statement and Prospectus and within three years after the Suprema common stock was sold to the Class in connection with the Secondary Offering.

166. By reason of the misconduct alleged herein, for which Suprema is primarily liable, as set forth above, defendants Cocchiola and Venechanos are jointly and severally liable with and to the same extent as Suprema, pursuant to Section 15 of the Securities.

COUNT FOUR

Against Cocchiola and Venechanos for Violations of Section 10(b) of the Exchange Act

167. Lead Plaintiff repeats and realleges each and every allegation above, as if set forth fully herein. This Count is brought pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5, on behalf of all members of the Class against defendants Cocchiola and Venechanos.

168. Throughout the Class Period, Cocchiola and Venechanos directly and indirectly, by the use of means and instrumentalities of interstate commerce, the United States mails and a national securities exchange, employed devices, schemes and artifices to defraud, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading,

and engaged in acts, practices and a course of business which operated as a fraud and deceit upon Lead Plaintiff and the members of the Class.

A. THE PRIOR PROPOSED COMPLAINT AND THE GUILTY PLEAS

169. On August 25, 2003, Lead Plaintiffs filed a motion for leave to file a proposed Second Amended Complaint. In that proposed complaint, Lead Plaintiffs explained, in detail, how Suprema's net sales, revenues and accounts receivable were materially overstated as a result of a massive fraud, and to the extent Suprema actually shipped or stored any "cheese," that cheese was mislabeled, adulterated and generally not fit for human consumption. More specifically, the proposed complaint laid out a scheme in which the senior management of Suprema and several of its largest customers fraudulently recorded hundreds of millions of dollars worth of circular and fictitious sales of cheese products, which had the effect of artificially inflating Suprema's financial results and, thereby, defrauding investors throughout the Class Period.

170. Thereafter, on January 7, 2004, four individuals pled guilty to, among other things, a conspiracy to commit securities fraud, bank fraud and mail fraud in connection with their dealings with Suprema during the Class Period. These individuals included:

- (i) John Van Sickle, the former Operations Manager and Assistant to the Executive Vice President of Suprema.
- (ii) Robert Quattrone, the principal of Battaglia, Packing Products and Villa D'Este. These entities accounted for a material portion of Suprema's sales, accounts receivable and costs of goods sold throughout the Class Period.
- (iii) George Vieira, the principal of WCC and CMM (defined above). These entities accounted for a material portion of Suprema's sales and accounts receivable throughout the Class Period.
- (iv) Lawrence Fransen, the principal of LNN and WSC (defined above). These entities accounted for a material portion of Suprema's sales and accounts receivable throughout the Class Period.

171. In connection with these guilty pleas, these defendants admitted that from at least 1998 through approximately January 2002, they conspired with Suprema's management to perpetrate a massive fraud at Suprema. Specifically, they collectively admitted that:

- (i) At the direction and with the participation of Suprema's management, they created false invoices and other documents to make it appear as if Suprema had sold and shipped product to certain of its customers, when it had not.
- (ii) Suprema's management recorded these bogus sales in its books and records in order to fraudulently inflate sales and accounts receivable in documents submitted to the SEC and the investing public, thereby making Suprema appear more successful and profitable than it actually was.
- (iii) At the direction and with the participation of Suprema's management, Van Sickle and others relabeled imitation or non-cheese products as premium cheese to make it appear as if Suprema had more valuable inventory than it actually had. At the same time, Suprema's senior management misrepresented the value of Suprema's inventory in documents submitted to the SEC and the investing public.
- (iv) At the direction and with the participation of Suprema's management, Van Sickle and others adulterated Suprema's cheese with various non-cheese ingredients in order to cut Suprema's costs and boost its profits. At the same time, Suprema's management falsely claimed in statements to the SEC and investing public that its cheese products were "all natural" and contained no additives, preservatives or fillers.
- (v) At the direction and with the participation of Suprema's management, these defendants engaged in fraudulent circular paper transactions that resulted in a flow of funds from Suprema to several of its customers, and then back to Suprema. Typically, checks were sent from Suprema to its customers in amounts greater than the corresponding checks that the customers sent back to Suprema. The difference in the checks usually represented the "commission" to the customer for participating in the fraudulent scheme. Funds for the checks sent by Suprema to its customers were drawn on Suprema's line of credit, which increased as Suprema's accounts receivable grew.
- (vi) At times the participants in the fraud shipped through the U.S. mails fraudulent bills of lading together with the false invoices erroneously indicating that the product had been shipped.
- (vii) Between 1996 and January 2002, more than \$1.2 billion in total sales were entered on Suprema's books and records. More than \$700 million of these

sales, or approximately 60%, were fabricated as a result of this fraudulent scheme.

- (viii) In connection with this fraudulent scheme, Suprema's management made false statements to the SEC and the investing public in connection with its purported results of operations, its financial condition and performance, and its business practices. Each of these filings incorporated Suprema's financial statements and contained material misstatements and omissions, as detailed above.
- (ix) The purpose of the scheme was to inflate the amount of money Suprema could borrow from its lenders under the revolving credit facility which was backed by the fraudulent accounts receivable and non-existent inventories.

172. Furthermore, a securities fraud complaint filed by the SEC in connection with settlements entered by these individuals, their companies, and Christensen -- the former controller of Suprema -- sheds further light on the fraud perpetrated at Suprema. Specifically, according to the SEC complaint:

- (i) From at least 1998 through early 2002, Suprema engaged in circular round-tripping transactions that generated fictitious sales revenues. Each round-tripping "circle" in this scheme involved three parties: Suprema, a third-party "customer," and a related "vendor." In most instances, the customer and vendor in these circles shared a common owner. With rare exceptions, no goods were actually sold or purchased, or otherwise changed hands, in these transactions. (SEC Complaint ¶ 25)
- (ii) The circular round-tripping transaction resulted in a continuous flow of checks from Suprema to and from its customers, all of which were purportedly in payment for the fictitious sales. (SEC Complaint ¶ 27)
- (iii) Typically, the checks from Suprema to its customers involved in the fraud were greater than the corresponding checks from the customers to Suprema. This difference in the checks represented a "kick-back" or "commission" to the customer for his participation in the fraudulent scheme. (SEC Complaint ¶ 27)
- (iv) For their participation in the fraudulent scheme to inflate Suprema's publicly-reported revenues, the respondents were paid kick-backs in the following amounts: (a) Quattrone was paid approximately \$1.3 million, (b) Vieira was paid between \$200,000 and \$300,000, and (c) Fransen was paid approximately \$112,000. (SEC Complaint ¶¶ 28-30)

- (v) Quattrone's participation in fictitious sales transactions with Suprema (through Battaglia and Packing Products) resulted in overstatements in Suprema's reported revenue by approximately 5.7%, 7.4%, 8.8%, 11.6% and 10.4% in fiscal years 1998, 1999, 2000, 2001, and the first quarter of 2002, respectively. (SEC Complaint ¶ 36)
- (vi) Vieira's participation in fictitious sales transactions with Suprema (through WCC and CMM) resulted in overstatements in Suprema's reported revenue by approximately 0.025%, 0.016%, 4.5%, 4.0% and 3.19% in fiscal years 1998, 1999, 2000, 2001, and the first quarter of 2002, respectively. (SEC Complaint ¶ 36)
- (vii) Fransen's participation in fictitious sales transactions with Suprema (through LNN and WSC) resulted in overstatements in Suprema's reported revenue by approximately 1.11%, 3.95% and 5.87% in fiscal years 2000, 2001 and the first quarter of 2002, respectively. (SEC Complaint ¶ 36)
- (viii) Collectively, these respondents alone resulted in overstatements in Suprema's reported revenue by approximately 5.75%, 7.41%, 14.25%, 19.51% and 19.48% in fiscal years 1998, 1999, 2000, 2001, and the first quarter of 2002, respectively. (SEC Complaint ¶ 36)
- (ix) Van Sickle and others were also involved the "cutting" or adulteration of Suprema's cheese with inexpensive imitation cheese products, contrary to statements in Suprema's filings with the SEC that the company's cheeses were "all natural" and met applicable federal standards. (SEC Complaint ¶¶ 42-46)

173. Thus, through these guilty pleas and the SEC complaint, there is no longer any doubt that a substantial portion -- approximately 60% -- of Suprema's business was a sham and that Cocchiola, Venechanos and Lauriero (when he was alive), who collectively constituted the "management" of Suprema throughout the Class Period, were integrally involved in this fraud. The guilty pleas to date and the SEC complaint laid out the details relating to approximately \$204 million of Suprema's \$700 million in fraudulent revenues. The remainder of these fraudulent revenues, as well as the plethora of red flags relating to this fraud that were readily apparent to anyone looking at the Company's books and records, are detailed below.

B. ADDITIONAL EVIDENCE OF ROUND-TRIP AND FICTITIOUS SALES BETWEEN SUPREMA AND ITS LARGEST CUSTOMERS

174. Suprema's books and records reviewed by Lead Counsel (including invoices, cancelled checks, check registers, and bills of lading) reveal that throughout the Class Period, Suprema's business consisted largely of circular and fictitious transactions between Suprema and various entities controlled by Gaglio, Paul Zambas ("Zambas"), Quattrone, Vieira and Fransen.

(1) Gaglio: The Gaglio Entities

175. Among the revenue that Suprema recognized from purported sales of hard cheese during fiscal years 2000 and 2001, were sales to three entities: A&J, Noble, and California Goldfield. As set forth below, these entities were all owned or controlled by Jack Gaglio, and are collectively referred to herein as the "Gaglio Entities."

176. Suprema reported in its public filings that sales to the Gaglio Entities accounted for 27% and 37% of Suprema's net sales in 2000 and 2001, respectively:

	Fiscal Year 2000		Fiscal Year 2001	
<u>Customer</u>	<u>Sales (in millions)</u>	<u>% of Total Sales</u>	<u>Sales (in millions)</u>	<u>% of Total Sales</u>
A&J	41.7	15%	71.4	17%
Noble	33.4	12%	42.0	10%
California Goldfield	N/A	N/A	42.0	10%
Total for the "Gaglio Entities"	75.1	27%	155.4	37%

(2001 Form 10-K at F-18)

177. In addition, receivables from the Gaglio Entities comprised a material portion of Suprema's total accounts receivables throughout the Class Period. For example, at year-end

2001, Suprema reported that outstanding receivables from A&J, Noble and California Goldfield accounted for \$46.8 million, or 46%, of Suprema's total accounts receivable.

178. In its financial statements and disclosure documents, Suprema represented that A&J, Noble and California Goldfield were three separate, unrelated entities. For example, in Note 12 of the Company's 2001 financial statements, entitled "Major Customers," Suprema represented that:

During the fiscal year ended June 30, 2000, the Company had sales to A&J Foods, Inc. [and] Noble J.G. Cheese Company representing approximately 15% [and] 12% of net sales, respectively. During the fiscal year ended June 30, 2001, the Company had sales to A&J Foods, Inc... Noble J.G. Cheese Company, and California Goldfield Cheese Traders of approximately 17%... 10%, and 10% of net sales, respectively. At June 30, 2001, these [three] customers represented 20%, 13% and 13% of net accounts receivable, respectively.

179. As detailed herein, this was simply not the case. Furthermore, according to a sworn affidavit from Thomas Egan, Suprema's Senior Vice President throughout the Class Period (the "Egan Affidavit"), defendants Cocchiola and Venechanos dealt directly with Gaglio and each of the Gaglio Entities.

(a) **A&J, Noble and California Goldfield Were One in the Same**

180. Contrary to Suprema's representations, A&J, Noble and California Goldfield were not separate companies, but rather were all alter-egos of a single individual, Jack Gaglio. This fact was not disclosed to investors.

181. Throughout the Class Period, A&J operated out of a building located at 1167-1171 East Foothill Blvd., Upland CA. According to Dunn & Bradstreet ("D&B") reports, A&J was 100% owned by Jack Gaglio and Mathilda McBride, who, according to records obtained from the A&J receivership action, is Gaglio's sister. The officers of A&J Cheese were Jack

Gaglio (Chief Executive Officer/President), Frank (“Nick”) Nicastro (General Manager), and Mathilda McBride (Secretary/Treasurer).

182. According to D&B reports, Noble was owned by Mathilda McBride, and was “related through common principals, management and/or ownership [with] A&J Cheese Co., [of] Upland, CA.” California business records further indicated that Noble was initially started in 1996 as a sole proprietorship by Jack Gaglio and that, during the Class Period, its general partners included Jack Gaglio and Mathilda McBride. D&B records further indicate that the address for Noble was 6021 Etiwanda Avenue, Rancho Cucamonga, CA, with a telephone number of (909) 946-6702. However, California real estate records indicated that, during the Class Period, 6021 Etiwanda Avenue was a single family residence owned by Bruce and Mathilda McBride, Gaglio’s sister, and formerly owned by Jack Gaglio. The national reverse directory indicated that telephone number (909) 946-6702 is actually the telephone number for A&J, and past UCC filings indicate that Noble’s address is 1171 East Foothill Blvd., Upland, CA – the same address as A&J. In addition, Suprema’s business records indicate that it received wire transfers from Noble using an address of 1171 East Foothill Blvd, Upland, CA.

183. California corporate filings indicate that the general partners of California Goldfield are Gaglio and Frank Nicastro, the general manager of A&J. On California Goldfield’s D&B report, its address is listed as 1171 East Foothill Blvd., Upland, CA – the same location as A&J and Noble. However, Suprema’s business records, including invoices and checks received from California Goldfield throughout the Class Period, list its address as 5736 Fox Court, Alto Loma, CA. According to the San Bernardino Tax Assessor’s Office, 5736 Fox Court, Alto Loma, CA is a single family residence that was owned by Frank Nicastro until July 2001, at which time it was sold to Paul and Agnus Morales. Lead Counsel spoke with Agnus

Morales who confirmed that neither she nor her husband had any association with California Goldfield or Jack Gaglio. Despite this fact, Suprema's business records, including checks from California Goldfield, indicate that California Goldfield was located at 5736 Fox Court, Alto Loma, CA through the end of the Class Period.

184. On March 19, 2002, creditors of A&J filed a receivership action in California Superior Court (San Bernardino County), docket number RCV 061874, against A&J. In connection with this action, Douglas P. Wilson, President and CEO of Douglas P. Wilson Companies, was appointed as the receiver for A&J, who is charged with liquidating A&J's assets. Lead Counsel spoke with a director with Douglas P. Wilson Companies, who is a certified public accountant specializing in managing the finances of large operating companies, including the collection of troubled accounts receivables and in providing financial analysis and reporting, and who spent hundreds of hours analyzing and preparing reports on the status of A&J's inventory, accounts receivables and payables (the "A&J Receiver"). The A&J Receiver stated that A&J, Noble and California Goldfield were all "one in the same." Counsel to Suprema's Liquidation Trustee, Kenneth P. Silverman, Esq., who was appointed by the United States Bankruptcy Court for the Southern District of New York to oversee Suprema's liquidation (see ¶¶ 262-269 below), also confirmed this fact.

(b) Suprema's Sales to the Gaglio Entities Were Fictitious

185. Suprema recognized revenue in connection with the alleged shipment of tens of millions of pounds of cheese that was supposedly sold to A&J, Noble and California Goldfield. (See 2000 Form 10-K at F-6; 2001 Form 10-K at F-7 (Suprema's revenue recognition policy throughout the Class Period was that the Company "records revenue when products are shipped.")) However, as particularized below, shipments in the amounts represented by these "sales" to the Gaglio Entities were impossible. Furthermore, to the extent that any cheese was

shipped, much (if not all) of that cheese was mislabeled, adulterated and not fit for human consumption.

i. **The Gaglio Entities Did Not Have the Capacity to Receive and Store the Cheese Reportedly Shipped to Them by Suprema**

186. During fiscal years 2000 and 2001, Suprema reportedly shipped more than \$113 million dollars worth of hard cheese to A&J's facilities at 1171 East Foothill Blvd., Upland CA. However, according to the A&J Receiver, A&J's facilities did not have anywhere near the capacity to handle and store this quantity of cheese, which would have amounted to tens of millions of pounds. Indeed, the A&J Receiver concluded that, at most, 20% of the "cheese" that Suprema supposedly shipped to A&J was ever actually shipped. Furthermore, according to the A&J Receiver and his counsel, the vast majority of A&J's accounts receivable as of March 2002 (\$46 million of \$56 million) were attributable to fictitious sales that A&J made to Suprema through various shell companies and middlemen (as discussed below).

187. With respect to Suprema's purported sales to Noble, invoices to Noble reviewed by Lead Counsel for cheese allegedly sold during the Class Period list 6021 Etiwanda Avenue, Rancho Cucamonga, CA as Noble's "ship to" address. As noted above, this address is a single-family residence in a residential neighborhood with no receiving bays, no warehouse and no facilities to handle shipments of cheese. Thus, it was impossible for Suprema to ship millions of pounds of cheese to that address during the Class Period. (A photograph of 6021 Etiwanda Avenue, Rancho Cucamonga, CA is attached as Exhibit C.)

188. Similarly, Suprema's invoices for hard cheese that it supposedly sold to California Goldfield during the Class Period list 5736 Fox Court, Alta Loma, CA as California Goldfield's "ship to" address. As noted above, 5736 Fox Court, Alta Loma, CA is a single-family residence with no receiving bays, no warehouse and no facilities to handle shipments of cheese. Thus, it

was impossible for Suprema to ship millions of pounds of cheese to that address during the Class Period. (A photograph of 5736 Fox Court, Alta Loma, CA is attached as Exhibit D.) Further, Suprema's business records, including checks from California Goldfield, indicate that 5736 Fox Court, Alto Loma, CA was California Goldfield's address *after* the property was sold to Paul and Agnus Morales. As noted above, Agnus Morales indicated to Lead Counsel that neither she nor her husband had any dealings with California Goldfield. Finally, the SEC complaint confirms California Goldfield was one of the sham companies involved in this fraud. Specifically, from at least 2000 through the first quarter of 2002, Suprema engaged in round-tripping transactions with WSC and LNN as a vendor (discussed below) and "[i]n some instances, California Goldfield rather than LNN assumed the role of a vendor in Suprema's round-tripping transactions with [WSC]."

ii. Cheese That Was Shipped By Suprema Had Been Adulterated

189. To the extent that "cheese" was shipped by Suprema to A&J, that cheese was mislabeled and adulterated. As stated in a proof of claim filed in the Suprema bankruptcy proceeding by the A&J Receiver:

during the period of May through August 2001, A&J received approximately \$12,000,000 in shipments of mislabeled cheese products from [Suprema] (the "Mislabeled Cheese"). These products were labeled to be of a certain type of higher quality cheese. However, laboratory tests conducted by A&J on the Mislabeled Cheese revealed that these shipments from [Suprema] were not of the quality represented by the labels. In fact, the Mislabeled Cheese is far inferior in quality than the labels represented and are thus worthless and unmarketable by A&J.

(Emphasis added)

190. The A&J Receiver attached laboratory tests in support of this claim, as well as invoices demonstrating that this cheese, which had been shipped from Suprema to A&J at 1167 East Foothill Blvd., Upland, CA, was mislabeled, adulterated and worthless.

191. In addition, in connection with his guilty plea, John Van Sickell has now confirmed that Suprema shipped and stored adulterated cheese, as discussed in more detail below at ¶¶ 254-256.

(c) **The A&J Receivership**

192. Soon after Suprema collapsed under the weight of the fraud, A&J also went into receivership. Through the A&J Receivership action, it was revealed that Gaglio, through A&J, had borrowed enormous sums under a revolving credit facility (the “A&J Credit Facility”) with certain banks. On August 28, 2000, the maximum amount A&J could borrow under the A&J Credit Facility was \$42 million. On April 26, 2001, the amount increased to \$50.5 million, and it then jumped to \$60 million by March 2002. By March 18, 2002, A&J had borrowed \$57.1 million under the A&J Credit Facility.

193. Similar to Suprema, the A&J Credit Facility was secured by its accounts receivables and inventory. Specifically, A&J could borrow up to 85% of its eligible accounts receivable and 75% of its inventory. Unknown to the investing public, A&J’s credit facility specifically excluded from the definition of eligible accounts receivable any accounts receivable from Suprema in excess of \$1.0 million (Restated Credit Agreement, dated April 26, 2001).

194. On March 19, 2002, Comerica Bank filed a receivership action against A&J and on March 20, 2002, the court appointed Douglas P. Wilson as the receiver for A&J. According to a representative of the receiver, all of the accounts receivable from Whitehall, Commodities, Cal Fed and St. Charles (discussed below) were deemed “ineligible” because they involved “fictitious transactions” for cheese that was invoiced by A&J but never actually shipped to the alleged purchasers. The A&J Receiver also reduced the value of A&J’s inventory by \$11.5 million because all of the hard cheese that Suprema allegedly shipped to A&J between May and August 2001 was determined to be mislabeled and adulterated.

195. After a detailed investigation, the A&J Receiver concluded that the vast majority of business between Suprema and A&J entailed fictitious transactions that occurred on paper only for the purpose of inflating each company's respective revenue and accounts receivable and, thereby, allowing increased borrowing under their credit facilities.

(2) Gaglio: The Gaglio Sham Cheese Suppliers

196. In addition to Gaglio being the largest purchasers of Suprema's alleged hard cheese – a fact that was not disclosed to investors – the largest supplier of Suprema's hard cheese was also Jack Gaglio. This fact also was not disclosed to investors.

197. Suprema's books and records, including purchase orders, cancelled checks and check registers, reflect that the following companies were Suprema's principal suppliers of hard cheese: Whitehall Specialties Inc. ("Whitehall"), Commodities Distribution ("Commodities"), California Federal Marketing ("Cal Fed") and St. Charles Trading Co., Inc. (St. Charles"). In fact, these companies (the "Gaglio Sham Cheese Suppliers") did not supply any cheese to Suprema, but rather, served only to mask the fictitious nature of Gaglio's alleged sales to Suprema.

(a) Whitehall Specialties, Inc.

198. According to Suprema's books and records, including invoices, cancelled checks and check registers, between May 1, 2001 and December 31, 2001, Suprema sent checks to Whitehall totaling approximately \$60.1 million, supposedly for purchases of hard cheese. For example, during the month of June 2001 alone, Suprema wrote Whitehall checks in the following amounts:

<u>Date of Check</u>	<u>Check Number</u>	<u>Check Amount</u>
6/11/01	74757	593,730.00
6/11/01	74758	622,050.00

<u>Date of Check</u>	<u>Check Number</u>	<u>Check Amount</u>
6/12/01	74808	604,260.00
6/13/01	74834	629,370.00
6/13/01	74835	605,025.00
6/15/01	74851	617,220.00
6/18/01	74864	622,050.00
6/18/01	74865	617,220.00
6/20/01	74906	622,050.00
6/20/01	74907	629,370.00
6/22/01	74925	614,790.00
6/25/01	74927	769,050.00
6/26/01	74934	<u>458,025.00</u>
		\$8,004,210.00

199. In fact, however, Whitehall – a company that was once owned by Jack Gaglio – did not sell or supply Suprema with any cheese. Rather, according to Whitehall’s outside counsel, who represents Whitehall in connection with Suprema’s liquidation proceedings and the criminal investigation that continues against numerous individuals associated with Suprema, in or about late 2000, Jack Gaglio contacted Steven Fawcett, the President of Whitehall and asked him to engage in what Fawcett described as an “invoicing business.” Under this arrangement, Gaglio issued fictitious invoices to Whitehall for cheese that Gaglio was supposedly selling directly to Suprema. Whitehall then issued Suprema fictitious invoices for this same cheese, claiming that the cheese came from Whitehall. Suprema, in turn, wrote checks to Whitehall as payment of the invoices. Once Whitehall received payments from Suprema, it remitted those payments to Gaglio, less a small commission of two cents per pound of cheese that appeared on the invoices.

200. Whitehall added no value with respect to these alleged transactions. No one from Whitehall had any involvement in negotiating the sales or overseeing the alleged shipments, nor did Whitehall ever take possession of the cheese. Counsel for Whitehall indicated that no one from Whitehall ever even laid eyes on this cheese, and that Whitehall had no idea whether any cheese was ever actually shipped to Suprema by Gaglio. In fact, no one from Whitehall ever had contact with anyone at Suprema.

201. Furthermore, Gaglio maintained all of the risk associated with the shipments, and Whitehall was under no obligation to pay Gaglio unless and until it received payments from Suprema. Thus, as a practical matter, Whitehall was paid solely for masking the true identity of Suprema's alleged supplier: Jack Gaglio.

202. Suprema and its senior management, including defendants Cocchiola and Venechanos, knew that the checks that it wrote to Whitehall were payments for transactions that it undertook with Gaglio, not Whitehall, and that these payments were designed to conceal the fact that Gaglio was at both ends of a material portion of its alleged hard cheese transactions, as both buyer and seller. Indeed, according to the Egan Affidavit, Cocchiola and Venechanos were the ones responsible for the transactions with Whitehall. Further, based upon information and belief, on numerous occasions Cocchiola and Venechanos signed the checks to Whitehall. This information and belief is based on a review of the signatures that appear on Suprema's checks to Whitehall compared against the signatures on Forms 5 that Cocchiola and Venechanos filed with the SEC. Specifically, the following checks from Suprema to Whitehall, totaling \$14,345,735.00, were signed by either Cocchiola or Venechanos:

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75446	8/16/01	\$656,100.00	Mark Cocchiola and Steven Venechanos

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75487	8/28/01	\$752,025.00	Steven Venechanos
75488	8/28/01	\$725,760.00	Steven Venechanos
75492	8/29/01	\$769,050.00	Steven Venechanos
75582	9/14/01	\$732,240.00	Steven Venechanos
75595	9/17/01	\$769,050.00	Steven Venechanos
75596	9/17/01	\$727,380.00	Steven Venechanos
75660	9/19/01	\$786,075.00	Mark Cocchiola and Steven Venechanos
75664	9/19/01	\$727,380.00	Mark Cocchiola and Steven Venechanos
75671	9/20/01	\$732,240.00	Steven Venechanos
75675	9/21/01	\$769,050.00	Steven Venechanos
75676	9/21/01	\$752,025.00	Steven Venechanos
75678	9/24/01	\$656,100.00	Mark Cocchiola and Steven Venechanos
75679	9/24/01	\$769,050.00	Mark Cocchiola and Steven Venechanos
75689	9/24/01	\$732,240.00	Mark Cocchiola
75703	9/25/01	\$727,380.00	Steven Venechanos
75811	10/02/01	\$405,200.00	Steven Venechanos
75812	10/02/01	\$475,050.00	Steven Venechanos
75813	10/03/01	\$311,025.00	Steven Venechanos
75850	10/03/01	\$183,060.00	Steven Venechanos
75851	10/04/01	\$183,060.00	Steven Venechanos
75853	10/04/01	\$366,120.00	Steven Venechanos
75963	10/11/01	\$328,050.00	Steven Venechanos
75966	10/12/01	\$311,025.00	Steven Venechanos

203. As discussed in more detail below, the A&J Receiver wrote-off all of A&J's accounts receivable attributable to Whitehall because he determined that all of the transactions between Whitehall, A&J and Suprema were fictitious.

204. Counsel for Whitehall confirmed that no one from BDO or any of the Underwriters ever contacted Whitehall in connection with any audit of Suprema or the Secondary Offering.

(b) Commodities and Cal Fed

205. According to Suprema's books and records, including invoices, cancelled checks and check registers, between May 1, 2001 and December 31, 2001, Suprema supposedly paid Commodities and Cal Fed approximately \$36 million for hard cheese. Like Whitehall, however, Commodities and Cal Fed did not actually sell any cheese to Suprema. Rather, Commodities and Cal Fed acted as middlemen to mask the fact that Jack Gaglio was the supplier of hard cheese allegedly purchased by Suprema.

206. Commodities and Cal Fed were nothing more than mail drops. These companies both claimed 1820 Jensen Beach Blvd., Jensen Beach, Florida, as their address, with Commodities supposedly occupying "Suite 615" and Cal Fed in "Suite 509." Suprema's documents also list these addresses as the locations of these two companies. However, 1820 Jensen Beach Blvd., Jensen Beach, Florida, is the address of "Mailbox Plus," a store front set up to receive mail and other small deliveries, and according to the manager of that facility, "suites" 615 and 509 were actually mailboxes located within that business throughout the Class Period.

207. Suprema wrote checks to Commodities and Cal Fed that were deposited in accounts at Morgan Stanley Dean Witter. The account numbers, which were clearly evident on the back of the cancelled checks, were just one number apart. Checks to Commodities were deposited in account number 126-076082-019 and checks to Cal Fed were deposited in account

number 126-076081-019. These cancelled checks, which were included in Suprema's business records, also reflected the same address for these two companies. For example, during the month of June 2001 alone, Suprema wrote the following checks to Commodities:

<u>Date of Check</u>	<u>Check Number</u>	<u>Check Amount</u>
6/07/01	74751	588,000.00
6/14/01	74839	546,000.00
6/21/01	74912	560,000.00
6/26/01	74936	266,000.00
6/26/01	74932	<u>546,000.00</u>
		\$2,506,000.00

208. Furthermore, during the month of June 2001, Suprema wrote the following checks to Cal Fed:

<u>Date of Check</u>	<u>Check Number</u>	<u>Check Amount</u>
6/01/01	74740	552,500.00
6/07/01	74750	549,250.00
6/15/01	74848	549,250.00
6/22/01	74915	549,250.00
6/26/01	74935	273,000.00
6/26/01	74931	<u>549,250.00</u>
		\$3,022,500.00

209. According to John Carpenter, who was the president of both Commodities and Cal Fed, he was approached by Jack Gaglio sometime in late 1999 or early 2000. Gaglio asked him if he would be willing to allow Commodities and Cal Fed to be used as middlemen for hard cheese sales that Gaglio claimed to be making to Suprema. Carpenter agreed and, thereafter, Gaglio arranged for A&J to invoice these companies for hard cheese that A&J was supposedly selling to Suprema. In turn, Carpenter issued invoices to Suprema in the names of Commodities

and Cal Fed. Suprema then paid these companies, and Carpenter remitted the payments to Gaglio, less a small commission of two cents per pound of cheese that appeared on the invoices.

210. Neither Commodities nor Cal Fed was involved in negotiating transactions between Gaglio and Suprema, or in “brokering” these transactions in any way. Carpenter’s companies did not negotiate the terms of sale, or take possession of the cheese, nor were they involved in or responsible for its delivery. Rather, according to Carpenter, Commodities and Cal Fed served only as an “invoicing business.” When asked why both Commodities and Cal Fed were utilized (as opposed to using only one or the other) to invoice cheese sales from Gaglio to Suprema, Carpenter responded that “two companies can generate more credit than one.”

211. Neither Commodities nor Cal Fed bore any risk in connection with these transactions. Gaglio expected no payment from Carpenter unless Suprema first made payments to Carpenter’s companies, despite the fact that Gaglio had already supposedly shipped the cheese. Indeed, according to Carpenter, Gaglio “killed” all of the invoices that were outstanding at the time Suprema filed for bankruptcy. That is, Gaglio cancelled all of the invoices that he had sent to Carpenter for which they knew Suprema would never remit payment. Thus, Carpenter, like Whitehall, was paid solely for masking the true identity of Suprema’s alleged supplier: Jack Gaglio.

212. As was the case with Whitehall, Suprema and its senior management, including defendants Cocchiola and Venechanos, knew that the checks it wrote to Commodities and Cal Fed were payments for transactions that it undertook with Gaglio, not these companies, and that these payments were designed to conceal the fact that Gaglio was at both ends of a material portion of its alleged hard cheese transactions, as both buyer and seller. Indeed, according to the Egan Affidavit, Cocchiola and Venechanos were the ones responsible for the transactions with

Commodities and Cal Fed. Further, based upon information and belief, on numerous occasions Cocchiola and Venechanos signed the checks to Commodities and Cal Fed. This information and belief is based on a review of the signatures that appear on checks Suprema sent to Commodities and Cal Fed compared against the signatures on Forms 5 that Cocchiola and Venechanos filed with the SEC. Specifically, the following checks from Suprema to Commodities, totaling \$9,253,625, were signed by either Cocchiola or Venechanos:

Commodities

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75321	8/03/01	\$532,000.00	Steven Venechanos
75445	8/16/01	\$574,000.00	Mark Cocchiola and Steven Venechanos
75484	8/28/01	\$560,000.00	Steven Venechanos
75514	9/06/01	\$560,000.00	Steven Venechanos
75571	9/13/01	\$560,000.00	Steven Venechanos
75687	9/24/01	\$546,000.00	Mark Cocchiola
75741	9/27/01	\$266,000.00	Steven Venechanos
75796	9/27/01	\$280,000.00	Steven Venechanos
75859	10/05/01	\$266,000.00	Mark Cocchiola and Steven Venechanos
75957	10/10/01	\$133,000.00	Steven Venechanos
75960	10/11/01	\$147,000.00	Steven Venechanos
75965	10/12/01	\$147,000.00	Steven Venechanos
75972	10/12/01	\$147,000.00	Steven Venechanos
75982	10/15/01	\$147,000.00	Steven Venechanos

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
76002	10/17/01	\$133,000.00	Steven Venechanos
76034	10/17/01	\$133,000.00	Steven Venechanos

Cal Fed

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75319	8/02/01	\$549,250.00	Steven Venechanos
75456	8/17/01	\$549,250.00	Mark Cocchiola and Steven Venechanos
75490	8/29/01	\$550,875.00	Steven Venechanos
75525	9/07/01	\$549,250.00	Mark Cocchiola
75580	9/14/01	\$547,625.00	Steven Venechanos
75673	9/21/01	\$550,875.00	Steven Venechanos
75802	9/28/01	\$274,625.00	Steven Venechanos
75804	10/01/01	\$274,625.00	Steven Venechanos
75861	10/05/01	\$276,250.00	Mark Cocchiola and Steven Venechanos
75971	10/12/01	\$136,500.00	Steven Venechanos
75981	10/15/01	\$136,500.00	Steven Venechanos
75995	10/17/01	\$136,500.00	Steven Venechanos
76033	10/17/01	\$136,500.00	Steven Venechanos

213. As discussed in more detail below, the A&J Receiver wrote-off all of A&J's accounts receivable attributable to Commodities and Cal Fed because he determined that all of the transactions between A&J, Commodities, Cal Fed and Suprema were fictitious.

(c) **St. Charles Trading, Inc.**

214. According to Suprema's business records, including invoices, cancelled checks and check registers, between October 1, 2001 and December 31, 2001, Suprema paid St. Charles approximately \$7.08 million for hard cheese. St. Charles, however, never made any hard cheese sales to Suprema. Rather, like Whitehall, Commodities and Cal Fed, St. Charles served only as a middleman to mask the roundtrip nature of alleged sales between Suprema and Gaglio.

215. According to Kevin Coe, vice president of St. Charles, in or around May 2001, he was approached by Gaglio who asked him to engage in what he also described as an "invoicing business." Coe agreed and, thereafter, Gaglio invoiced St. Charles for cheese that Gaglio allegedly sold directly to Suprema. In turn, St. Charles invoiced and received payments from Suprema and then remitted those payments to Gaglio, less a commission of two-cents for every pound of cheese invoiced. According to Coe, the volume of the business grew substantially over time, far beyond his initial expectations.

216. St. Charles was not involved in "brokering" the cheese to Suprema in any way. St. Charles did not negotiate the terms of sale and had no financial risk in the transactions, because Gaglio did not require payment until after Suprema paid St. Charles. In fact, at the time Suprema filed bankruptcy, Suprema supposedly owed St. Charles approximately \$6.0 million, and St. Charles owed Gaglio a corresponding amount. According to St. Charles, Gaglio cancelled his outstanding invoices to St. Charles because he knew that St. Charles would not receive the money from Suprema.

217. During the period that St. Charles served as a middleman for sales from Gaglio to Suprema, no one from St. Charles had any contact with anyone from Suprema. Gaglio claimed to be delivering the cheese to Suprema directly, and thus St. Charles never came into contact with the cheese.

218. Suprema and its senior management, including defendants Cocchiola and Venechanos, knew that the checks that it wrote to St. Charles were payments for transactions that it undertook with Gaglio, not St. Charles, and that these payments were designed to conceal the fact that Gaglio was at both ends of a material portion of its alleged hard cheese transactions, as both buyer and seller. Indeed, according to the Egan Affidavit, Cocchiola and Venechanos were the ones responsible for the transactions with St. Charles. Further, based upon information and belief, on numerous occasions Cocchiola and Venechanos signed the checks to St. Charles. This information and belief is based on a review of the signatures that appear on Suprema's checks to St. Charles compared against the signatures on Forms 5 that Cocchiola and Venechanos filed with the SEC. Specifically, the following checks from Suprema to St. Charles, totaling \$4,744,275.00, were signed by Cocchiola and Venechanos:

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75486	8/28/01	\$492,075.00	Steven Venechanos
75491	8/29/01	\$588,000.00	Steven Venechanos
75599	9/18/01	\$441,000.00	Mark Cocchiola
75670	9/20/01	\$492,075.00	Steven Venechanos
75688	9/24/01	\$492,075.00	Mark Cocchiola
75702	9/25/01	\$735,000.00	Steven Venechanos
75712	9/26/01	\$735,000.00	Steven Venechanos
75875	10/08/01	\$441,000.00	Mark Cocchiola and Steven Venechanos
75984	10/15/01	\$164,025.00	Steven Venechanos
76026	10/17/01	\$164,025.00	Steven Venechanos

219. According to Coe, Gaglio said that the purpose of involving St. Charles in the transactions, as opposed to him invoicing Suprema directly, was to create the appearance that A&J had more customers than it actually did. By definition, this arrangement also made it appear as if Suprema had more suppliers than it actually did.

220. According to Coe, no one from BDO or any of the Underwriter Defendants ever contacted anyone at St. Charles in connection with any audit of Suprema or the Secondary Offering. Had they done so, St. Charles would have told them exactly what the nature of its relationship with Suprema was, as detailed above.

221. As discussed in more detail below, the Receiver for A&J wrote off all of the transactions between St. Charles, A&J and Suprema because he determined these transactions were fictitious.

(3) Zambas: Tricon and Noram

222. In its public filings throughout the Class Period, Suprema reported that Tricon was one of its largest customers, accounting for approximately 17% or \$71.4 million of Suprema's reported net sales in fiscal 2001 and 13% or \$36.2 million of its reported sales in fiscal 2000. (2001 Form 10-K at F-18) Also, receivables from Tricon made up 20% of the Company's total accounts receivable as of June 30, 2001. Id. Sales to Tricon alone represented approximately 25% of Suprema's total hard cheese sales and approximately 20% of its total growth during the Class Period.

223. Suprema also engaged in fictitious roundtrip sales by purportedly selling cheese to Tricon and then turning around and purchasing cheese from Noram in comparable quantities for roughly the same amounts during the same time period. Specifically, Suprema's business records, including invoices, cancelled checks and check registers for the period May 1, 2001 through December 31, 2001 reveal that Suprema allegedly sold approximately \$46.1 million of

cheese to Tricon, and then purportedly bought back approximately \$40.4 million of cheese from Noram.

(a) Tricon and Noram are One in the Same

224. Canadian public business records indicate that Paul Zambas is the Director and President of both Tricon and Noram. Annual reports filed by both companies indicate that they are both located at 720-1285 West Broadway, Vancouver, British Columbia. However, this address is an office in a commercial office tower in downtown Vancouver occupied by Nancan Electronics Design, Inc. (Photographs of 1285 West Broadway, Vancouver, British Columbia and the nameplate for suite 720 are attached as Exhibit E.)

225. Suprema business records, including checks and invoices, indicate that Tricon's address is 2750-200 Granville Street, Vancouver, British Columbia, and Noram's address is 242-757 West Hastings Street, Vancouver, British Columbia. 2750-200 Granville Street is an office building in downtown Vancouver. 242-757 West Hastings Street is a small gift shop called "Cevik" located within a mall adjacent to 2750-200 Granville Street. The owner of this gift shop indicated that he had been there three years, and before that it was a dress shop.

226. The nameplate on 2750-200 Granville Street indicates that it is the offices of both Tricon and Noram, as well as two other companies, Hanseng Canada, Inc. and Takara Shoji.

227. Public records indicate that the registered agent for both Tricon and Noram is the law firm of La Van & Company, located at 704-1478 W. Hastings St, Vancouver, British Columbia.

228. The checks Tricon used to make payments to Suprema were drafted from checking account number 4661-555 at the Vancouver branch of the Bank of Montreal. Likewise, checks that Suprema wrote to Noram were deposited into this same account, account number

4661-555 at the Vancouver branch of the Bank of Montreal. Suprema retained copies of all of these checks as part of its business records.

(b) Suprema's Sales to Tricon were Fictitious

229. According to Suprema's books and records reviewed by Lead Counsel, including invoices, deposit slips, checks and check registers, during fiscal years 2000 and 2001 Suprema purportedly shipped tens of millions of pounds of cheese to Tricon. The "ship to" address on Suprema's invoices to Tricon was 2750-200 Granville Street, Vancouver, British Columbia. This address also appears on checks that Tricon sent to Suprema as payment for the cheese that Suprema had supposedly shipped.

230. As set forth above, 2750-200 Granville Street is an office within a metropolitan office building located in downtown Vancouver, British Columbia. Thus, it is impossible that Suprema shipped the tens of millions of pounds of cheese that it claimed to have shipped to this address during the Class Period. (Photographs of 200 Granville Street and the nameplate for suite 2750 are attached as Exhibit F.)

(c) Suprema's Purchases from Noram were Fictitious

231. Furthermore, according to Suprema's books and records, Suprema supposedly purchased tens of millions of dollars of hard cheese from Noram at 242-757 West Hastings Street, Vancouver, British Columbia. However, as detailed above, this address is a small gift shop located in a mall in downtown Vancouver. Thus, it is impossible that Noram shipped tens of millions of dollars worth of cheese to Suprema from that address. It is equally impossible that Noram shipped tens of millions of dollars of cheese from 2750-200 Granville Street for the same reasons set forth above.

232. Suprema and its senior management, including defendants Cocchiola and Venechanos, knew that the checks that it wrote to Noram were the return payments for

fraudulent transactions that Surpema undertook with Tricon. In addition, according to the Egan Affidavit, Cocchiola and Venechanos were responsible for the transactions with Tricon and Noram.

233. Further, based upon information and belief, on numerous occasions Cocchiola and Venechanos signed the checks to Noram. This information and belief is based on a review of the signatures that appear on checks Suprema sent to Noram compared against the signatures on Forms 5 that Cocchiola and Venechanos filed with the SEC. Specifically, the following checks from Suprema to Noram, totaling \$6,444,710.00, were signed by either Cocchiola or Venechanos:

Check Number	Date of Check	Check Amount	Signatories
75426	8/15/01	\$666,204.00	Mark Cocchiola
75457	8/17/01	\$891,980.00	Mark Cocchiola and Steven Venechanos
75496	8/30/01	\$662,908.00	Steven Venechanos
75594	9/17/01	\$824,000.00	Steven Venechanos
75658	9/19/01	\$927,000.00	Mark Cocchiola and Steven Venechanos
75691	9/24/01	\$412,000.00	Mark Cocchiola
75701	9/25/01	\$911,550.00	Steven Venechanos
75711	9/26/01	\$618,000.00	Steven Venechanos
75713	9/27/01	\$531,068.00	Steven Venechanos

(4) Quattrone: Battaglia, Packing Products

234. As detailed above, Quattrone has now admitted that he was involved in a massive fraud with Suprema’s “management” to artificially inflate Suprema’s financial results through fictitious sales. Suprema’s books and records contained glaring red flags relating to Quattrone

and his various businesses that would have alerted anyone reviewing those records of this fraud. Specifically, Suprema's books and records reveal the tremendous flow of money from Suprema to Packing Products, and from Battaglia back to Suprema. In fact, as revealed in Suprema's records, during the period May 1, 2001 through December 31, 2001, Suprema wrote more than \$33 million in checks to Packing Products and Battaglia wrote more than \$35 million in checks back to Suprema.

235. According to the Egan Affidavit, Cocchiola and Venechanos were responsible for the transactions with Battaglia and Packing Products. Further, based upon information and belief, on numerous occasions Cocchiola and Venechanos signed the checks to Packing Products. This information and belief is based on a review of the signatures that appear on Suprema's checks to Packing Products compared against the signatures on Forms 5 that Cocchiola and Venechanos filed with the SEC. Specifically, the following checks from Suprema to Packing Products, totaling \$9,158,830.11, were signed by either Cocchiola or Venechanos:

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75325	8/06/01	\$290,533.24	Steven Venechanos
75441	8/16/01	\$791,789.41	Mark Cocchiola and Steven Venechanos
75454	8/20/01	\$787,534.25	Mark Cocchiola and Steven Venechanos
75522	9/07/01	\$787,512.18	Mark Cocchiola
75523	9/07/01	\$77,434.77	Mark Cocchiola
75584	9/17/01	\$250,068.58	Mark Cocchiola and Steven Venechanos
75585	9/17/01	\$789,643.42	Mark Cocchiola and Steven Venechanos

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75659	9/19/01	\$315,862.07	Mark Cocchiola and Steven Venechanos
75662	9/19/01	\$167,057.91	Mark Cocchiola and Steven Venechanos
75668	9/20/01	\$470,525.82	Steven Venechanos
75674	9/21/01	\$791,775.85	Steven Venechanos
75694	9/25/01	\$789,642.10	Steven Venechanos
75708	9/26/01	\$631,719.57	Steven Venechanos
75864	10/08/01	\$471,653.23	Steven Venechanos
75872	10/08/01	\$473,777.03	Mark Cocchiola and Steven Venechanos
75961	10/11/01	\$489,037.85	Steven Venechanos
75983	10/15/01	\$157,941.81	Steven Venechanos
76020	10/17/01	\$313,716.12	Steven Venechanos
76036	10/17/01	\$311,604.90	Steven Venechanos

236. Even a cursory inquiry into Battaglia and Packing Products would have revealed that the two entities are essentially one in the same. As indicated on Suprema's invoices, and in D&B reports, Battaglia is located at 1270 Valley Brooke Ave, Lyndhurst, NJ. Furthermore, D&B reports identify Quattrone as Battaglia's chief executive officer. D&B also lists Battaglia's telephone number as (201) 939-3000.

237. According to D&B reports and Certificate of Incorporation filed with the New Jersey Secretary of State on March 18, 1996, and Annual Reports filed thereafter (up to and including August 15, 2002), Packing Products is also located at 1270 Valley Brooke Ave., Lyndhurst, NJ, the same address as Battaglia. According to Packing Products' Certificate of

Incorporation, Quattrone is the president and sole director of Packing Products. D&B reports identify Packing Products' telephone number as (201) 939-3000, the same number as Battaglia.

238. Despite the fact that the Packing Products' corporate address was 1270 Valley Brooke Ave., Lyndhurst, N.J., the approximately \$33 million in checks that Suprema wrote to Packing Products between May 1, 2001 and December 31, 2001 were mailed to 30 Amy Court, Woodcliff Lake, NJ. Real estate records indicate that this address is a residential property in Bergen County owned by Robert Quattrone.

(5) Vieira: CMM and WCC

239. Similarly, Vieira has admitted that he and his companies were integrally involved in the fraud at Suprema. Suprema's books and records also contain at least one glaring red flag relating to these entities.

240. Suprema's books and records reveal that during the Class Period Suprema wrote millions of dollars of checks to CMM and WCC, in turn, wrote millions of dollars of checks back to Suprema.

241. As indicated on the cancelled checks that were retained in Suprema's books and records, CMM deposited Suprema's checks into an account numbered 125010322 at Bank of the West in Modesto, CA. Suprema's books and records also reveal that the checks that WCC wrote back to Suprema came from the same account, account number 125010322 at Bank of the West in Modesto CA. Thus, like Tricon and Noram (discussed above), the money that Suprema paid to CMM was deposited into the same account from which WCC paid money back to Suprema. Indeed, based upon information and belief, Cocchiola and Venechanos signed the checks to WCC. This information and belief is based on a review of the signatures that appear on Suprema's checks to WCC compared against the signatures on Forms 5 that Cocchiola and Venechanos filed with the SEC.

(6) Fransen: LNN and WSC

242. Finally, Fransen has admitted that he and his companies conspired with Suprema's "management" to perpetrate this fraud. Suprema's business records contained additional red flags related to these companies.

243. Suprema's books and records, including cancelled checks and check registers, throughout the Class Period, reveal that Suprema wrote tens of millions of dollars of checks to LNN and WSC, in turn, wrote tens of millions of dollars in checks back to Suprema. The backs of the checks that Suprema wrote to LNN were stamped "FOR DEPOSIT ONLY WALL STREET CHEESE, LLC." These checks were deposited into an account numbered 420000031880 at Morgan Stanley Dean Witter in Brea, CA. Suprema's books and records also reveal that the checks that WSC wrote to Suprema were from this same account, account number 420000031880 at Morgan Stanley Dean Witter in Brea CA. Thus, like the fictitious circular transactions Suprema had with Tricon and Noram, and with CMM and WCC, the money that Suprema paid to LNN was deposited into the same account from which WSC paid money back to Suprema.

244. Based upon information and belief, Cocchiola and Venechanos signed numerous checks to WSC. The information and belief is based on Lead Counsel's review of the signatures that appear on Suprema's checks to WSC compared against the signatures on Forms 5 that Cocchiola and Venechanos filed with the SEC. Specifically, the following checks from Suprema to LNN, totaling \$3,215,019.00, were signed by either Cocchiola or Venechanos:

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75406	8/14/01	\$356,466.30	Mark Cocchiola and Steven Venechanos
75438	8/16/01	\$356,437.60	Mark Cocchiola and Steven Venechanos

<u>Check Number</u>	<u>Date of Check</u>	<u>Check Amount</u>	<u>Signatories</u>
75448	8/17/01	\$356,396.60	Mark Cocchiola and Steven Venechanos
75572	9/13/01	\$357,290.40	Steven Venechanos
75581	9/14/01	\$359,377.30	Steven Venechanos
75591	9/17/01	\$357,302.70	Steven Venechanos
75598	9/18/01	\$357,269.90	Mark Cocchiola
75657	9/19/01	\$357,249.40	Mark Cocchiola and Steven Venechanos
76014	10/17/01	\$179,629.20	Steven Venechanos
76035	10/17/01	\$177,599.70	Steven Venechanos

245. Furthermore, even a cursory investigation into these companies would have revealed that they were essentially one in the same. According to a Certificate of Incorporation filed with the California Secretary of State, LNN is located at 601 S. Main St., Corona, CA, and Larry Fransen is its agent for service of process. D&B report that indicates Fransen founded WSC in 1997, and that he controlled WSC throughout the Class Period.

(7) Suprema's Accounts Receivable And Accounts Payable

246. In addition to the evidence described above, Interviews conducted with the former supervisors of Suprema's accounts receivable and accounts payable – both of whom were available to Suprema's auditors during the Class Period – confirm that the Company conducted circular sales with entities controlled by Gaglio, Zambas and Quattrone, and that these individuals were responsible not only for the largest portion of Suprema's accounts receivable, but also for the majority of its accounts payable.

247. According to Suprema's accounts receivable supervisor, who was employed by the Company until its demise in or about March 2002 and who reported directly to defendant

Venechanos, Christensen, and Lauriero (when he was alive), the Gaglio Entities, Battaglia and Tricon represented Suprema's highest receivables. She indicated that while she was generally responsible for receivables, she was instructed by Venechanos, Christensen and Lauriero (before his death) not to deal with those companies, even though the accounts were seriously delinquent by tens of millions of dollars. She was instructed only to deal with the "soft cheese and retail" parts of the business. She stated that Venechanos, Christensen and Lauriero dealt with the "hard cheese" accounts personally, and that they, as well as Cocchiola and the Company's auditors, BDO, knew that these accounts were seriously past due. Furthermore, she said that her job was to deposit checks into Suprema's accounts but that Venechanos was responsible for reviewing the bank statements and reconciling the accounts. Additionally, although she was the person in charge of accounts receivable, she indicated that she did not have any direct dealings with BDO, the Company's auditors. Rather, she indicated that the auditors only dealt with Venechanos and Christensen.

248. Suprema's supervisor for accounts payable, who worked with the Company from August 1999 through April 2001 and also reported directly to Venechanos, Christensen and Lauriero, said that in addition to the "hard cheese" companies owing the Company money, Suprema also owed these same "hard cheese" companies millions of dollars. She stated that she was responsible for writing checks on behalf of the Company. According to this accounts payable supervisor, there was an entire category of companies that were routinely paid without invoices, and that oftentimes invoices would "appear" several days after the checks were cut. She said that Lauriero directed her to write these checks in amounts that he would simply write down on a post-it.

249. Based on an examination of the Company's business records, including check registers, invoices, deposit slips, and copies of cancelled checks, Suprema regularly received large, round-numbered checks (rounded to the thousand dollars) from the Gaglio Entities during the Class Period. These checks were purportedly payments for hard cheese sold by Suprema. It appears that Suprema did not invoice the Gaglio Entities for these "sales" prior to receiving the checks. Rather, after receiving the checks, Suprema made up journal entries to add up to exactly the amount of the check received. For example:

- (i) On or about March 1, 2001, Suprema deposited a handwritten check from A&J (check number 60515) in the amount of \$393,000.00. Suprema then recorded the deposit on its ledger as follows:

<u>Customer Name</u>	<u>Checks</u>	<u>Check #</u>	<u>Pmt Date</u>
A&J Foods, Inc.	87,274.61	60515	03/02/01
A&J Foods, Inc.	150,875.00	60515	03/02/01
A&J Foods, Inc.	150,875.00	60515	03/02/01
A&J Foods, Inc.	3,975.39	60515	03/02/01

- (ii) On or about March 2, 2001, Suprema deposited a handwritten check from A&J (check number 60517) in the amount of \$408,000.00. Suprema then recorded the deposit in its ledger as follows:

<u>Customer Name</u>	<u>Checks</u>	<u>Check #</u>	<u>Pmt Date</u>
A&J Foods, Inc.	146,899.61	60517	03/06/01
A&J Foods, Inc.	146,625.00	60517	03/06/01
A&J Foods, Inc.	114,475.39	60517	03/06/01

- (iii) On or about March 2, 2001, Suprema deposited a handwritten check from A&J (check number 60518) in the amount of \$136,000.00. Suprema then recorded the deposit in its ledger as follows:

<u>Customer Name</u>	<u>Checks</u>	<u>Check #</u>	<u>Pmt Date</u>
A&J Foods, Inc.	34,274.61	60518	03/06/01
A&J Foods, Inc.	101,725.39	60518	03/06/01

- (iv) On or about March 9, 2001, Suprema deposited a handwritten check from A&J (check number 60655) in the amount of \$544,000.00. Suprema then recorded the deposit in its ledger as follows:

<u>Customer Name</u>	<u>Checks</u>	<u>Check #</u>	<u>Pmt Date</u>
A&J Foods, Inc.	124,399.61	60655	03/12/01

A&J Foods, Inc.	150,875.00	60655	03/12/01
A&J Foods, Inc.	150,875.00	60655	03/12/01
A&J Foods, Inc.	117,850.39	60655	03/12/01

- (v) On or about March 21, 2001, Suprema deposited a handwritten check from A&J (check number 60676) in the amount of \$260,000.00. Suprema then recorded the deposit in its ledger as follows:

<u>Customer Name</u>	<u>Checks</u>	<u>Check #</u>	<u>Pmt Date</u>
A&J Foods, Inc.	29,626.08	60676	03/21/01
A&J Foods, Inc.	20,949.58	60676	03/21/01
A&J Foods, Inc.	42,237.54	60676	03/21/01
A&J Foods, Inc.	7,079.40	60676	03/21/01
A&J Foods, Inc.	18,604.80	60676	03/21/01
A&J Foods, Inc.	28,685.45	60676	03/21/01
A&J Foods, Inc.	5,233.12	60676	03/21/01
A&J Foods, Inc.	5,220.80	60676	03/21/01
A&J Foods, Inc.	7,825.67	60676	03/21/01
A&J Foods, Inc.	41,806.36	60676	03/21/01
A&J Foods, Inc.	2,623.43	60676	03/21/01
A&J Foods, Inc.	13,145.83	60676	03/21/01
A&J Foods, Inc.	36,961.94	60676	03/21/01

250. A similar pattern of existed for payments from Noble. In some instances, however, rather than issuing a check, Noble wire-transferred large, round-numbered sums (rounded to the thousand dollars) directly into Suprema's bank account. Suprema then created journal entries to make it appear as if Suprema had issued numerous invoices that added up to the amount of the deposits. For example:

- (i) Suprema's bank records indicate that on March 2, 2001, "Noble J.G. Enterprises of 1167 E. Foothill Blvd, Upland CA" (the same address as A&J) transferred \$280,000.00 by wire into Suprema's account. Suprema then recorded this deposit on its ledger as follows:

<u>Customer Name</u>	<u>Checks</u>	<u>Check #</u>	<u>Pmt Date</u>
Noble J.G. Cheese Co.	28,627.50	N/A	03/02/01
Noble J.G. Cheese Co.	150,875.00	N/A	03/02/01
Noble J.G. Cheese Co.	100,497.50	N/A	03/02/01

- (ii) On March 16, 2001, Suprema deposited three handwritten checks from Noble (whose address was listed as 6021 Etiwanda Ave., Rancho Cucamonga, CA – a different address from that reflected on the wire transfer described above): check number 8648 for \$200,000.00, check

number 8649 for \$217,000.00, and check number 8650 for \$200,000.00, totaling \$617,000.00. Suprema recorded these deposits on its ledger as follows:

<u>Customer Name</u>	<u>Checks</u>	<u>Check #</u>	<u>Pmt Date</u>
Noble J.G. Cheese Co.	25,877.50	8648	03/16/01
Noble J.G. Cheese Co.	146,625.00	8648	03/16/01
Noble J.G. Cheese Co.	27,497.50	8648	03/16/01
Noble J.G. Cheese Co.	123,377.50	8649	03/16/01
Noble J.G. Cheese Co.	93,622.50	8649	03/16/01
Noble J.G. Cheese Co.	57,252.50	8650	03/16/01
Noble J.G. Cheese Co.	142,747.50	8650	03/16/01

C. ADDITIONAL EVIDENCE THAT SUPREMA’S CHEESE WAS MISLABELED AND ADULTERATED

251. Suprema’s business operations were subject to extensive regulation by the United States Food and Drug Administration (“FDA”), the United States Department of Agriculture, and other state and local authorities, including the New Jersey Department of Agriculture (“NJDOA”). The laws and regulations governing the manufacturing and marketing of cheese include Section 331 of the Federal Food, Drug, and Cosmetic Act prohibits, which prohibits any of the following:

- (i) The introduction or delivery for introduction into interstate commerce any food . . . that is adulterated or misbranded;
- (ii) The adulteration or misbranding of any food in interstate commerce;
- (iii) The receipt in interstate commerce of any food . . . that is adulterated or misbranded . . .

252. Food is deemed to be “misbranded” when, among other things, it “is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word ‘imitation’ and, immediately thereafter, the name of the food imitated.” 21 U.S.C. § 343(c). New Jersey statutes largely parallel the Federal Act. See N.J.S.A. § 24:5-8 (adulterated food); N.J.S.A. § 24:5-17 (misbranded food). Specifically with respect to cheeses, federal regulations detail the manner in which cheeses can be manufactured, as well as the milkfat content and

moisture content. See 21 C.F.R. § 133.165 (parmesan and reggiano cheese contains not more than 32% of moisture, not less than 32% milkfat, and is cured for not less than 10 months); 21 C.F.R. § 133.155 (requirements for processing and content of mozzarella cheese); 21 C.F.R. § 133.183 (romano cheese).

253. Throughout the Class Period, Suprema claimed that it was “in substantial compliance with all material governmental laws and regulations.” (Reg. St. at 7; 2001 10-K at 7). These claims were materially false and misleading.

254. In connection with his guilty plea on January 7, 2004, Van Sickell testified that he and others, at the direction and with the participation of Suprema’s management, mislabeled and adulterated Suprema’s cheese products. Specifically, Van Sickell testified that he personally switched labels on cheese to make it appear as if Suprema’s cheese was of a higher quality than it actually was, and that he added imitation cheese products and other fillers to Suprema’s cheese products to reduce Suprema’s costs and increase profits:

Q. Between in or about November 1996 and approximately January 2002, did you participate in a scheme to adulterate certain of Suprema’s cheese products to reduce Suprema’s costs and boost its profits?

A. Yes, I did.

Q. During the same time that you worked at Suprema, did you add imitation cheese products and other fillers to certain of Suprema’s grated cheese products?

A. Yes, I did.

Q. Were you instructed to do that by management at Suprema?

A. Yes, I was.

Q. Were employees at Suprema provided with ingredient formulas that set forth the amount of real cheese and the amount of imitation cheese product or non-cheese product as well as other additives to put in cheese?

A. Yes, they were.

255. In addition, according to a proof of claim that was filed in the Suprema Liquidation Proceedings by the receiver for A&J (see ¶ 81 above), Suprema shipped approximately \$12,000,000 worth of cheese to A&J between May 2001 and August 2001. All of this cheese was mislabeled, adulterated and essentially worthless. A representative for the A&J Receiver indicated that they ultimately were forced to sell this cheese as animal feed for pennies on the dollar.

256. Similarly, on February 4, 2002, when federal and state authorities executed search warrants at Suprema's facilities in connection with the criminal investigation of Suprema (as discussed in ¶ 79 above), the Company's cheese inventory, which the Company then valued at approximately \$45 million, was embargoed. That inventory was then tested and, according to counsel for the Liquidation Trustee, the majority of that cheese was adulterated – a mixture of “Allchi,” whey and soy – that he “could not sell to pig farmers for five cents per pound.”

D. LAURIERO'S DEATH AND CHRISTENSEN'S RESIGNATION

257. In its 2001 Form 10-K, Suprema disclosed as a “subsequent event” that Paul Lauriero, the Company's Executive Vice President, had passed away in August 2001. Lauriero had been Van Sickell's immediate supervisor. According to the Company, Lauriero had been primarily responsible for overseeing the procurement of raw materials for production and the general operations of the Company. (2001 Form 10-K at 26) The 2001 Form 10-K reported that “Mark Cocchiola has assumed these responsibilities on an interim basis.”

258. Following Lauriero's death, Christensen, Suprema's former controller, was assigned certain tasks that Lauriero had previously performed. On December 21, 2001 -- just six weeks after the Secondary Offering -- Suprema announced that Christensen had resigned.

259. Upon information and belief, Christensen resigned because he was unwilling to participate in the improper acts that the Officer Defendants had undertaken throughout the Class

Period. This information and belief is based on the transcript of the deposition of defendant Cocchiola conducted by counsel to Suprema's Liquidation Trustee, which purports to quote verbatim from Christensen's resignation letter. The letter was dated December 17, 2001, and was addressed to defendants Cocchiola and Venechanos. According to the transcript, in the letter, Christensen wrote, "Mark and Steve, as we discussed, I am not willing to participate in the tasks that have been assigned to me since Paul's death."

260. The transcript makes clear that the "tasks" Cocchiola and Venechanos tried to assign to Christensen were part of the unlawful roundtrip billing scheme undertaken by the officers of Suprema with Gaglio, Zambas and Quattrone. For example, Cocchiola was asked as follows:

Q: And the task that you had assigned Art Christenson [sic] to do subsequent to Paul Lauriero's death consisted of?

A: I hereby invoke my Fifth Amendment right not to answer the question....

Q: Would they have consisted of any of the transactions [another lawyer] previously questioned you on relative to Whitehall, Cal Federal, Commodity Distribution and the various transfers of money between Suprema and those entities, among others?

A: I hereby invoke my Fifth Amendment right not to answer the question....

(Cocchiola Dep. at 411-13)

261. Upon information and belief, defendant Venechanos was asked similar questions by the Liquidation Trustee during a deposition conducted in connection with the liquidation proceedings. He also responded by invoking his Fifth Amendment right against self-incrimination. (This information and belief is based upon discussions with counsel for the Liquidation Trustee.)

E. STATEMENTS BY SUPREMA'S BANKRUPTCY TRUSTEE

262. On February 26, 2002, just two days after Suprema filed for bankruptcy protection under Chapter 11, the Bankruptcy Court held a hearing to determine whether it should release certain funds for the continued operation of the “soft cheese” portion of Suprema’s business. As indicated by the testimony of Andrew B. Eckstein, Esq., bankruptcy counsel for Suprema, and Douglas Hopkins (“Hopkins”) of Nightingale & Associates, a crisis management firm hired to guide Suprema through its reorganization, after just a few days of reviewing Suprema’s books and records and interviewing Suprema employees, they were able to determine that the vast portion of Suprema’s business was not a “real business.” Moreover, as described below, in just a matter of a few days Mr. Hopkins was able to determine that many of Suprema’s customers were interrelated, which would have triggered a default under Suprema’s Credit Facility.

263. At the hearing, Mr. Eckstein explained that Suprema’s “hard-cheese” business “was run by a very limited group at the Company. It was not a labor intensive business. I think it was more, for lack of a better word, *a paper business, as opposed to the operations that were involved in the manufacturer [sic], processing and distribution of the soft cheese business.*” (Emphasis added).

264. In addition, Hopkins reiterated that Suprema actually consisted of two “largely discreet” operations: the soft-cheese business, which he believed had some viability as a going concern, and the hard-cheese business, which appeared to be a fraud.

265. Hopkins distinguished Suprema’s soft-cheese operation from its hard-cheese operation, stating that the soft-cheese operation “is a *real business*; we know who the customers are; they return the phone calls and make daily remittances of accounts receivable....” (Emphasis added.) The hard-cheese business, on the other hand, was not a “real business.” It accounted for

“roughly \$300 million of business in annual sales that appear to have stopped on or about [January] 24th. There have reportedly been no cash receipts of any of the accounts involved in [the hard-cheese] business. There are roughly a dozen accounts involved in that business. They show outstanding accounts receivable on the books of \$89 million to date, or this past week.”

266. Hopkins explained that the Company was unable to trace its biggest sales to these entities. Specifically, he testified that the Company’s biggest customers “do not return phone calls. They appear in many cases to be interrelated accounts, and the names on the accounts... correspond with the names that were cited on the warrant served by the FBI in the recent investigations that were opened by the Justice Department.”

267. Hopkins noted that various loan agreements the Company had with its creditors contained covenants against concentrations of ownership, and if the “allegations made about joint ownership of several of these companies” was true, that fact would constitute an event of default.

268. Finally, to the extent that Company maintained inventory, testimony at the February 26 bankruptcy hearing revealed that this inventory was adulterated and not fit for human consumption. Hopkins testified that the FDA and NJDOA were investigating whether Suprema had accurately labeled its products. He further admitted that a large portion of the Company’s inventory – what was supposed to be approximately \$45 million worth of finished goods and raw materials – had been embargoed by law enforcement in order for them to determine whether it was adulterated or misbranded. As detailed above, it was later discovered that this “cheese” inventory was nothing more than filler, which was ultimately sold by the Liquidation Trustee as animal feed for pennies on the dollar.

269. After considering this testimony, the Bankruptcy Court refused to release additional funds for the operations of Suprema's soft cheese business. Consequently, on February 27, 2002, Suprema sent home its employees at the processing plant in Paterson, and nearly all of the employees at its manufacturing plants in California, New York and Idaho.

F. FALSE AND MISLEADING STATEMENTS

270. Cocchiola and Venechanos, as directors and/or the most senior officers of Suprema during the Class Period, are liable as direct participants in all of the wrongs complained of herein. Through their positions of control and authority, as well as their stock ownership, Cocchiola and Venechanos were in a position to and did control all of the Company's false and misleading statements and omissions, including the contents of the Forms 10-K, the Forms 10-Q and press releases, as set forth above. In addition, all of these false and misleading statements constitute "group published information," which defendants Cocchiola and Venechanos were responsible for creating.

(1) The 2000 Form 10-K

271. On September 27, 2000 (the first day of the Class Period), Suprema filed its 2000 Form 10-K. The 2000 Form 10-K was signed by defendants Cocchiola and Venechanos. In the 2000 Form 10-K, these defendants made numerous representations about Suprema's business and operations. Specifically, they represented as follows:

[Suprema]... manufactures, processes and markets a variety of premium, gourmet natural cheese products, using fine quality imported and domestic cheeses.

We manufacture, shred, grate, and market all natural Italian variety cheeses under the Suprema DiAvellino ® brand name as well as under private label. Our product lines consist primarily of domestic mozzarella, ricotta and provolone cheeses, grated and shredded parmesan and romano cheeses, and imported parmesan and pecorino romano cheeses, including "lite" versions of certain of these products containing less fat and fewer calories. Our

cheeses do not contain any preservatives, additives, sweeteners, dehydrated fillers or artificial flavorings. We sell our products to customers in all three groups within the cheese industry: foodservice, food ingredient, and retail...

We maintain three primary facilities. We manufacture cheeses at our facilities in Manteca, California and Ogdensburg, New York. At our Paterson, New Jersey facility bulk cheeses manufactured by us or imported primarily from Europe and to a lesser extent, South America, are shredded or grated and then packaged for distribution....

We package and sell our bulk cheeses to national foodservice distributors, which then sell the products to restaurants, hotels, caterers and others....

(2000 Form 10-K at 1-2)

272. These statements were materially false and misleading for the following reasons:

- (i) Suprema fundamentally misstated the nature of its business. As detailed above at ¶¶ 170-245, the vast majority of Suprema's so-called business was comprised principally of nothing more than fictitious and round-trip sales between Suprema and entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen.
- (ii) As set forth above at ¶¶ 189-191 and 251-256, to the extent that Suprema had sold or stored cheese, that cheese was not "all natural," but rather was mislabeled and adulterated and not fit for human consumption.
- (iii) Suprema did not sell the vast majority of its bulk cheeses to national foodservice distributors, who then sold the products to restaurants, hotels, caterers and others. Rather, as detailed above at ¶¶ 175-245, Suprema sold virtually all of its hard cheese to entities controlled by Gaglio, Quattrone Zambas, Vieira and Fransen, who then turned around and sold cheese right back to Suprema. (According to the Registration Statement and Prospectus, "the foodservice channel encompasses all providers of prepared meals including, among others, restaurants, hotels and caterers." (Reg. St. at 20).

273. With respect to the Company's products and customers, the 2000 Form 10-K also represented that:

We sell our cheeses nationally to foodservice industry distributors and food manufacturers, principally in bulk. For the year[] ended

June 30, 2000...sales of cheese products to foodservice distributors accounted for approximately 91%...of our net sales....

* * *

For the fiscal year ended June 30, 2000, A&J Cheese Company, Tricon Commodities International, Inc. and Noble J.G. Cheese Company accounted for approximately 15%, 13%, and 12% of our net sales.

(2000 Form 10-K at 3-4)

274. These statements were materially false and misleading for the following reasons:

- (i) As detailed above at ¶¶ 171-221, the Company failed to disclose that these customers were also its largest suppliers.
- (ii) In fiscal year 2000, the vast majority of Suprema's so-called business was comprised principally of nothing more than fictitious and round-trip sales between Suprema and entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen.
- (iii) As detailed above at ¶¶ 180-184, the Company failed to disclose that A&J and Noble were not separate companies, but were one in the same company owned or controlled by Jack Gaglio.
- (iv) As detailed above at ¶¶ 185-188 and 229-230, with respect to the cheese sales that Suprema reported to have made to A&J, Noble or Tricon, much of that cheese was never actually shipped to or received A&J, Noble or Tricon, as indicated on Suprema's invoices.

275. With respect to the Company's suppliers, the 2000 Form 10-K (at 6) represented that:

Our principal ingredient is raw milk... For the fiscal years ended June 30, 2000 and June 30, 1999, our largest supplier, a milk cooperative, accounted for approximately 14% and 21%, respectively, of all of our purchases.

276. These statements were materially false and misleading because, as set forth above at ¶¶ 170-245, approximately 60% of Suprema's business in fiscal 2000 involved alleged purchases of cheese (not milk) from entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen.

277. With respect to governmental regulation, the 2000 Form 10-K represented that “[w]e believe that we are currently in substantial compliance with all material governmental laws and regulations....” (2000 Form 10-K at 7) This statement was materially false and misleading because, as detailed above at ¶¶ 251-256, in fact the Company had violated numerous laws and regulations by shipping and storing mislabeled and adulterated cheese.

278. With respect to the Company’s net sales and reported growth, the 2000 Form 10-K represented:

Net sales for fiscal year ended June 30, 2000 were approximately \$278,482,000 as compared to approximately \$176,281,000 for fiscal year ended June 30, 1999, an increase of approximately \$102,201,000 or 58%. This increase reflects an increase primarily in sales volume for our foodservice products *manufactured by us*, most of which represented sales to existing customers...” (2000 Form 10-K at 15 (emphasis added))

279. This statement was materially false and misleading because the purported sales to Gaglio, Zambas, Quattrone, Vieira and Fransen accounted for the vast majority of Suprema’s reported sales increase in fiscal 2000. As described above at ¶¶ 175-245, Suprema’s sales to these individuals did not involve cheese that Suprema manufactured, but rather were comprised of little more than fictitious roundtrip sales to inflate Suprema’s financial results, that did not involve the shipment of cheese, and to the extent cheese was shipped, the cheese had been mislabeled and adulterated and was not fit for human consumption.

280. The 2000 Form 10-K also represented that as of June 30, 2000, the Company was in compliance with all of the covenants included in its Credit Facility. (2000 Form 10-K at 18) This representation was materially false and misleading because the Credit Facility contained several covenants that Suprema violated as a result of its fictitious and roundtrip sales. For example:

- (i) According to Section 10.4, Suprema agreed to “continue to engage principally in the businesses of the same general type now conducted by it

....” Suprema breached this covenant by engaging in the fictitious and roundtrip sales, as set forth above.

- (ii) According to Section 8.13, Suprema warranted, among other things, that its accounts receivable were genuine, that there were no facts which impair their validity or collectibility, and that they were created in accordance with law. Similarly, Suprema warranted that each receivable used to calculate the borrowing base was an eligible receivable. Eligible receivables must be “true and correct when created and at all times thereafter.” Specifically excluded from the definition of eligible receivable are: (i) receivables that are not due and payable within sixty (60) days after being created; (ii) ***receivables with respect to which Suprema is or could become liable to the account debtor for goods sold or services rendered by the account debtor to Suprema; and*** (iii) ***receivables for goods not shipped or delivered***. Suprema breached these covenants by improperly including accounts receivable from Gaglio, Quattrone and Zambas in calculating its borrowing base. Such accounts receivable should not have been included because: (i) these customers were provided extended payment terms; (ii) as described above, these customers were also Suprema’s largest suppliers to whom Suprema was liable for goods allegedly sold or services rendered; and (iii) much of the cheese that formed the basis for many of these receivables was never actually shipped.
- (iii) According to Section 9.13, Suprema warranted that its consolidated balance sheet and statements of operations “present fairly in all material respects the consolidated financial condition” of the Company. Suprema breached this provision by improperly including in its financial statements, among other things, sales, costs of sales and accounts receivable from these fictitious and round-trip hard cheese sales.

281. The 2000 Form 10-K also included the Company’s consolidated financial statements, which were prepared by the Officer Defendants and audited by BDO. These financial statements were materially false and misleading because they overstated the Company’s financial results and were not prepared in conformity with GAAP, as above at ¶¶ 103-140.

282. According to the Report of the Independent Certified Public Accountants, dated September 18, 2000, which was included as part of the 2000 Form 10-K, BDO conducted its audit in accordance with GAAS and determined that “the consolidated financial statements [for

the years ended June 30, 2000 and 1999] present fairly, in all material respects, the financial position of [Suprema] as of June 30, 2000 and 1999, and the results of their operations and cash flows for each of the three years in the period ended June 30, 2000, in conformity with generally accepted accounting principles.” These representations were materially false and misleading for the reasons set forth below at ¶¶ 325-423.

(2) Quarterly and Year-End Results for Fiscal 2001

283. On November 14, 2000, February 13, 2001, and May 15, 2001, Suprema announced its financial results for the first, second and third quarters of fiscal year 2001 (ended June 30, 2001), respectively. On or about the date of each announcement the Company filed quarterly reports with the SEC on Form 10-Q, which provided substantially the same information. Each of the Forms 10-Q were signed by Cocchiola and Venechanos.

284. For those quarters, the Company announced increased net sales of 44.9%, 42% and 44%, respectively, which it attributed to an “increase in sales volume for foodservice products *manufactured by the Company...*” (Emphasis added) The Company also stated that those results “should be read in connection with the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended June 30, 2000.” Furthermore, in each of the quarterly reports filed with the SEC during the Class Period, the Company represented that it was in compliance with the covenants under its Credit Facility.

285. These representations were materially false and misleading because:

- (i) As detailed above at ¶¶ 175-245, the net sales figures touted by the Company included round-trip and fictitious transactions between Suprema and entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen.
- (ii) As detailed herein at ¶¶ 170-245 and 366-367, the increase in sales volume was not attributable to increases in sales volume of products manufactured by Suprema.

- (iii) The financial results reported on these dates and the consolidated financial statements and notes that were incorporated by reference overstated the company's financial results and were not prepared in accordance with GAAP, as set forth above at ¶¶ 103-140.
- (iv) As detailed below at ¶¶ 138-139, the Company was not in compliance with its loan covenants.

286. On August 8, 2001, the Company issued a press release announcing the Company's financial results for the fourth quarter and fiscal year ended June 30, 2001. Thereafter, on August 15, 2001, Suprema issued a press release discussing its year end results. In the release, Cocchiola is quoted as stating, "This last quarter represents the 18th consecutive quarter of increased net sales, a record we are all extremely proud of. We firmly believe our strategic direction is sound and should create long-term value for our shareholders." This statement was false and misleading because it led investors to believe that Suprema was prospering when, in fact, the only reason the Company was able to record increased net sales was because, as detailed above, Suprema was engaged in roundtrip and fictitious sales with entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen that inflated the Company's revenue and accounts receivable, but had no economic substance.

(3) The 2001 Form 10-K

287. On September 28, 2001, Suprema filed its fiscal 2001 results with the SEC on Form 10-K. The 2001 Form 10-K was signed by defendants Cocchiola and Venechanos. In the 2001 Form 10-K, these defendants made numerous representations about Suprema's business and operations. Specifically, they represented as follows:

[Suprema and its affiliates] manufacture and market gourmet all natural Italian cheeses. Our product lines consist primarily of mozzarella, ricotta, parmesan, romano and provolone cheeses, which we produce domestically, as well as parmesan and pecorino romano, which we import. Certain of our domestically produced cheeses include "lite" or lower fat versions containing less fat and fewer calories.

We sell our cheeses through three channels of distribution in the food industry: foodservice, food ingredient and retail. Over 95% of our revenue is derived from the foodservice channel, where we market and sell our bulk cheeses under the Suprema brand name, as well as under private label, to national and regional foodservice distributors, which in turn sell our cheeses to restaurants, hotels, caterers and others....

(2001 Form 10-K at 1)

288. These statements were materially false and misleading for the following reasons as set forth in ¶¶ 170-245 above.

289. With respect to its products, the 2001 Form 10-K represented that:

We domestically produce mozzarella, ricotta, provolone and grated and shredded parmesan and romano cheeses including “lite” and lower fat versions of certain of these products which contain less fat and fewer calories. We also import parmesan and pecorino (sheep’s milk) romano cheeses for production and resale. Foreign producers, located principally in Europe and South America, supplied us with 25% of our bulk cheese requirements in each of fiscal year 2000 and fiscal year 2001. Our cheeses are natural, and do not contain any preservatives, additives, sweeteners, dehydrated fillers, or artificial flavorings. Our cheese products are premium quality all natural cheeses that meet or exceed all federal and industry standards for purity, freshness, taste, appearance and texture.

(2001 Form 10-K at 2)

290. This statement was materially false and misleading because, as detailed above at ¶¶ 189-191 and 254-256, and to the extent that Suprema did sell or store hard cheese, that cheese was not “all natural,” but rather was mislabeled and adulterated and was not fit for human consumption.

291. With respect to suppliers, the Form 10-K represents:

Our principal ingredient is raw milk... For our fiscal year 2000 and fiscal year 2001, our three largest suppliers accounted for, in the aggregate, approximately 34% and 36%, respectively, of our product requirements, with one milk supplier accounting for 14% and 12%, respectively, of our requirements.

(2001 Form 10-K at 5)

292. This representation was materially false and misleading because as set forth above at ¶¶ 196-238, approximately 52% of Suprema's business in fiscal 2000 involved alleged purchases of hard cheese (not milk) from entities controlled by Gaglio, Quattrone and Zambas.

293. With respect to customers, the 2001 Form 10-K represents:

We sell our cheeses nationally to foodservice industry distributors and food manufacturers, principally in bulk. For the years ended June 30, 1999, 2000 and 2001, sales of cheese products to foodservice distributors accounted for approximately 91%, 91% and 97%, respectively, of our net sales.

* * *

...For the fiscal year ended June 30, 2000, A&J Foods, Inc., Tricon Commodities International, Inc. and Noble J.G. Cheese Company accounted for 15%, 13% and 12%, respectively, of our net sales. For the fiscal year ended June 30, 2001, Tricon Commodities, A&J Foods, Inc., Battaglia and Company, Noble J.G. Cheese Company and California Goldfield Cheese Traders accounted for approximately 17%, 15%, 12%, 10% and 10%, respectively, of our net sales.

(2001 Form 10-K at 5-6)

294. These statements were materially false and misleading for the following reasons:

- (i) As detailed above at ¶¶ 175-238, the Company failed to disclose that these customers were also its largest suppliers.
- (ii) As detailed above at ¶¶ 170-245, Suprema artificially inflated its sales by approximately 60% in fiscal 2001 by booking fictitious sales that never took place.
- (iii) As detailed above at ¶¶ 170-171 and 234-238, virtually all of the sale to Battaglia were fictitious as set forth in the criminal Information to which Quattrone pled guilty.
- (iv) As detailed above at ¶¶ 186-188 and 229-230, sales to Noble, California Goldfield and Tricon were impossible because the "ship to" addresses included single family homes and office buildings that did not have the capacity to receive the quantities of shipped purportedly shipped.
- (v) As detailed above at ¶ 186, much of the sales to A&J did not take place because its receiving bays was capable of handling approximately 20% of the sales that Suprema supposedly shipped to A&J.

- (vi) As detailed above at ¶¶ 180-184, the Company failed to disclose that A&J, Noble and California Goldfield were essentially the same company controlled by Jack Gaglio, who was responsible for well over 35% of Suprema's net sales and 50% of Suprema's hard cheese sales.

295. With respect to government regulation, the 2001 Form 10-K represented that “[w]e believe that we are currently in substantial compliance with all material governmental laws and regulations....” (2001 Form 10-K at 7) This statement was materially false and misleading because, as detailed above at ¶¶ 254-256, in fact the Company had violated numerous laws and regulations by shipping and storing mislabeled and adulterated cheese.

296. In the MD&A section of the 2001 Form 10-K, management represented as follows:

We manufacture and market gourmet all natural Italian cheeses. Our product lines consist primarily of mozzarella, ricotta, parmesan, romano and provolone cheeses, which we produce domestically, as well as parmesan and pecorino romano, which we import... In the fiscal years 1999, 2000 and 2001, aggregate sales of parmesan and romano cheese, which are classified as “hard” cheese, accounted for 37%, 52% and 62%, respectively, of our revenue....

We sell our cheeses through three channels of distribution in the food industry: foodservice, food ingredient and retail. For fiscal years 1999, 2000 and 2001, sales of our cheeses to foodservice companies accounted for approximately 91%, 91% and 97%, respectively of our revenues....

(2001 Form 10-K at 15)

297. Similarly, the Company represented that “[o]ver 95% of our revenue is derived from the foodservice channel, where we market and sell our bulk cheeses under the Suprema brand name, as well as under private label, to national and regional foodservice distributors, which in turn sell our cheeses to restaurants, hotels, caterers and others.” (2001 Form 10-K at 1)

298. These statements were materially false and misleading for the following reasons:

- (i) Suprema fundamentally misstated the nature of its business. As detailed above at ¶¶ 170-245, the vast majority of Suprema's so-called business was comprised of nothing more than roundtrip and fictitious sales between Suprema and entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen.
- (ii) As set forth above at ¶¶ 189-190 and 254-255, to the extent that Suprema did sell or store hard cheese, that cheese was not "all natural," but rather was adulterated and not fit for human consumption.
- (iii) Suprema did not sell the vast majority of its bulk cheeses to national or regional foodservice distributors, who then sold the products to restaurants, hotels, caterers and others. Rather, as detailed above at ¶¶ 175-245, Suprema "sold" virtually all of its hard cheese to entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen, who then turned around and "sold" cheese right back to Suprema.

299. The 2001 Form 10-K also stated that "[h]istorically, a majority of our cost of goods sold has consisted of the price we pay for raw milk." (2001 Form 10-K at 15) This statement was materially false and misleading because in 2000 and 2001, the majority of the Company's recorded cost of goods sold was the money that it paid to Gaglio, Zambas, Quattrone, Vieira and Fransen, allegedly for purchases of cheese.

300. With respect to its recognition of revenue, the 2001 Form 10-K represented that the Company recorded revenue when its products were shipped to customers. (2001 Form 10-K at 16) This statement was materially false and misleading because, as detailed above at ¶¶ 175-245, a substantial portion of the cheese that was supposedly sold by Suprema to several of its largest customers, which the Company booked as revenue, was never actually shipped to or received by those customers as indicated on Suprema's invoices.

301. With respect to the Company's net sales and growth, the 2001 Form 10-K represented that:

Net sales for the fiscal year ended June 30, 2001 were approximately \$420,363,000, as compared to approximately \$278,482,000 for the fiscal year ended June 30, 2000, an increase of approximately \$141,881,000, or 50.9%. This increase reflects

an increase primarily in sales volume for food service products *manufactured by us*, most of which represent sales to existing customers....

* * *

Net sales for fiscal year ended June 30, 2000 were approximately \$278,482,000 as compared to approximately \$176,281,000 for fiscal year ended June 30, 1999, an increase of approximately \$102,201,000 or 58%. This increase reflects an increase primarily in sales volume for our foodservice products *manufactured by us*, most of which represented sales to existing customers...

(2001 Form 10-K at 17, 18 (emphasis added))

302. This statement was materially false and misleading because the vast majority of the increase in Suprema's net sales during fiscal 2000 and 2001 can be attributed directly to fictitious sales with entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen, involving cheese that was never shipped.

303. With respect to the company's debt, the 2001 Form 10-K also stated that as of June 30, 2001, Suprema was in compliance with the covenants contained in its Credit Facility. This statement was materially false and misleading for the reasons set forth above at ¶ 267.

304. The 2001 Form 10-K included the Company's consolidated financial statements, which were prepared by the Officer Defendants and audited by BDO. These financial statements were materially false and misleading because they overstated the Company's financial results and were not prepared in accordance with GAAP, as set forth above at ¶¶ 103-140.

305. According to the Report of the Independent Certified Public Accountants, dated August 7, 2001, which was included as part of the 2000 Form 10-K, BDO conducted its audit in accordance with generally accepted auditing standards and, the "consolidated financial statements... present fairly, in all material respects, the financial position of [Suprema] as of June 30, 2000 and June 30, 2001, and the results of their operations and their cash flows for each

of the three years in the period ended June 30, 2001, in conformity with accounting principles generally accepted in the United States of America.” These representations were materially false and misleading for the reasons set forth below at ¶¶ 325-423.

(4) The Registration Statement and Prospectus

306. The Registration Statement and Prospectus was materially false and misleading as set forth above at ¶¶ 85-102.

(5) First Quarter 2002 Results

307. On November 14, 2001, Suprema filed its Form 10-Q with the SEC for the first quarter ended September 30, 2001. The Company stated in the 10-Q that the financial statements included therein were presented in conformity with GAAP. The Company reported accounts receivable of \$112,500,553 and net sales of \$142,650,042, which sales represented a 60% increase over sales from the same period one year earlier. All of these statements were materially false and misleading because, in fact, Suprema’s quarterly financial statements did not comply with GAAP and its accounts receivable and sales figures were overstated as a result of circular and fictitious sales to Gaglio, Zambas, Quattrone, Vieira and Fransen, as set forth above.

308. On November 15, 2001, Suprema issued a press release announcing the Company’s financial results for the first quarter ended September 30, 2001. The press release reiterated the financial results previously filed with the SEC on Form 10-Q, as described above, and attributed the increase in net sales to “food service products *manufactured by us.*” (Emphasis added) Cocchiola is quoted in the press release as stating, “our first quarter 2002 proved to be another outstanding growth quarter. Our quarter-by-quarter growth has continued as a result of our employees’ ability to meet and exceed our customers’ demands.” Cocchiola added, “We have strategic goals and objectives in place for 2002 and we are dedicated to achieving them. We will strive to keep our commitment to meeting customers’ needs while

working diligently to continually [sic] improve shareholder value.” These statements were false and misleading because they led investors to believe that Suprema continued to prosper as a result of its cheese manufacturing when, in fact, the only reason the Company was able to continue its astounding growth was by booking circular and fictitious sales to entities controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen, as set forth above.

G. COCCHIOLA AND VENECHANOS ACTED WITH SCIENTER

309. Cocchiola and Venechanos each acted with scienter with respect to these materially false and misleading statements in that they had actual knowledge of their falsity, or acted with reckless disregard for the truth. That these defendants intended to deceive is demonstrated in this case both by circumstantial evidence supporting a strong inference of scienter, as well as the fact that these defendants had the motive and the opportunity to commit fraud.

310. The roundtrip and fictitious sales described above were part of a deliberate scheme to inflate the Company’s sales and accounts receivable. This scheme involved the creation of fictitious invoices to and from companies that never conducted bona fide transactions with Suprema. According to four people who have now pled guilty to this fraud, the people who orchestrated this scheme were the “management” of Suprema. As detailed below, the management of Suprema consisted of Cocchiola and Venechanos.

311. Cocchiola and Venechanos knew, or but for their deliberate recklessness would have known, that Suprema never purchased any cheese from Whitehall, Commodities, Cal Fed, St. Charles, or Packing Products, but that they were issuing checks to these companies for millions of dollars for alleged hard cheese purchases. Indeed, former employees indicated that Venechanos and Lauriero (while he was alive) were directly responsible for dealing with the customers and suppliers in the “hard cheese” portion of Suprema’s business, and, according to

the Registration Statement and Prospectus, Cocchiola assumed all of the responsibilities of Paul Lauriero upon his death in August 2001. (Reg. St. at 27)

312. Similarly, these defendants knew, or but for their deliberate recklessness would have known, that Suprema recorded sales based upon shipments that were never made. Specifically, they knew, or but for their deliberate recklessness would have known, that the alleged shipments to Suprema's "largest customers" at single-family homes and office buildings never actually took place. Nevertheless, they recognized all of these "sales" as revenue in violation of GAAP.

313. The following facts also give rise to a strong inference of scienter:

i. Cocchiola

- (a) At all times relevant to this Complaint, Cocchiola was the President and CEO of Suprema, as well as the Chairman of its Board of Directors. According to the Company's public filings, Suprema's success was "largely dependent on the personal efforts of Mark Cocchiola, our Chairman, President and [CEO]." (Reg. St. at 5) Because Suprema's success was entirely a product of its circular and fictitious sales with Gaglio, Zambas and Quattrone, there is a strong inference that Cocchiola's had knowledge of and was involved in that fraud.
- (b) Similarly, according to the Registration Statement and Prospectus, "[s]enior management is responsible for planning and coordinating our marketing programs and maintains a hands-on relationship with select key accounts." (Reg. St. at 23) Gaglio, Zambas and Quattrone accounted for at least the five largest accounts of Suprema, as detailed above. Thus, there is a strong inference that Cocchiola maintained a hands-on relationship with these accounts and was, therefore, aware of the fraud.
- (c) According to the Registration Statement and Prospectus, Cocchiola assumed all of the responsibilities of Paul Lauriero upon his death in August 2001. (Reg. St. at 27). The Company claimed that Lauriero (and then Cocchiola) "was primarily responsible for overseeing the procurement of raw materials for production and the general operations of [Suprema's] facilities." (Reg. St. at 27). As detailed herein, the "raw material" responsible for the vast majority of Suprema's sales was bulk hard cheese purchased from

Gaglio, Zambas Quattrone, Vieira and Fransen that Suprema then resold to those same individuals. Cocchiola's admitted involvement in this aspect of the business raises a strong inference of scienter.

- (d) When Art Christensen resigned from Suprema on December 17, 2001, he wrote the following in his resignation letter: "Mark and Steve, as we discussed, I am not willing to participate in the tasks that have been assigned to me since Paul's death." (Cocchiola Dep. at 412) Cocchiola then refused to answer the question: "Would [these tasks] have consisted of the transactions... relative to Whitehall, Cal Federal, Commodity Distribution and the various transfers of money between Suprema and those entities, among others?" *Id.* at 413. These facts support a strong inference that Cocchiola and Venechanos knew about the fraud and had assigned Christensen to perpetuate the fraud, a "task" he was unwilling to perform.
- (e) As detailed herein, the roundtrip and fictitious sales between Suprema and Gaglio, Zambas, Quattrone, Vieira and Fransen accounted for more than two-thirds of the Company's revenue and nearly all of its growth. Thus, Cocchiola's misrepresentations and omissions described above involved the Company's core business. This fact, as well as the magnitude of the fraud, involving 60% of the Company's supposed revenue between 1996 and January 2002, support a strong inference of scienter.
- (f) The fact that Van Sickell testified that the scheme to book fictitious sales occurred at the direction of management of Suprema supports a strong inference of scienter.
- (g) The fact that the criminal Informations to which Quattrone, Vieira, Fransen and Van Sickell pled guilty stated that the scheme to inflate Suprema's sales occurred "with the direction of and participation of Suprema management" creates a strong inference of scienter.
- (h) The fact that Egan stated in a sworn affidavit that Cocchiola dealt directly with Gaglio, Quattrone, Zambas, the Gaglio Entities, the Gaglio Sham Cheese Suppliers, Tricon/Noram and Battaglia/Packing Products creates a strong inference of scienter.
- (i) The fact that the scheme to defraud continued after Lauriero passed away in August 2001 supports a strong inference of scienter.
- (j) The fact that the defendants recognized sales to Gaglio, Zambas, Quattrone, Vieira and Fransen in violation of GAAP and their own

revenue recognition policy supports a strong inference of scienter. It is axiomatic that a Company's financial statements are the responsibility of management and are within their direct knowledge and control. Indeed, AU § 110.02 specifically provides that "[m]anagement is responsible for adopting sound accounting policies and for establishing and maintaining internal controls that will, among other things, record, process, summarize, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements.

The entity's transactions and related assets, liabilities, and equity are within the direct knowledge and control of management...

Thus, the fair presentation of financial statements in conformity with [GAAP] is an implicit and integral part of management's responsibility." (Emphasis added)

- (k) The fact that defendant Cocchiola invoked his Fifth Amendment right against self-incrimination when he was asked questions about the roundtrip and fictitious sales described above also raises a strong inference of scienter.
- (l) The fact that a description of Suprema's so-called "brokering" business was completely omitted from the Company's public filings during the Class Period, which statements were prepared and signed by Cocchiola, supports a strong inference of scienter.
- (m) Former employees interviewed by counsel for Lead Plaintiff have confirmed that Cocchiola and Venechanos (and Lauriero when he was alive) controlled all aspects of Suprema's business.
- (n) The fact that much of the cheese that was actually shipped and stored by Suprema was adulterated supports a strong inference of scienter. The only people that could have ordered this adulteration, which consisted of mixing the cheese with fillers such as soy, "All Chi" and whey, were the senior officers of Suprema and particularly Cocchiola and Venechanos, who, by all accounts, ran the day-to-day business of Suprema. Indeed, Van Sickell testified that Suprema's cheese was mislabeled and adulterated at the direction of management.
- (o) The fact that the Company's credit facilities were drawn down to the exact amount allowable based on Suprema's accounts receivable and inventory, which were at the heart of this fraud, supports a strong inference of scienter.
- (p) The fact that Cocchiola and Venechanos instructed Suprema employees not to be involved with the hard cheese portion of

Suprema's business supports a strong inference that they knew about the fraud.

- (q) The fact that Cocchiola and Venechanos did not allow Suprema employees to deal directly with BDO supports a strong inference of scienter.
- (r) The fact that none of the intermediaries that Gaglio used to conceal the true source of Suprema's hard cheese purchases ever spoke to anyone at Suprema further supports a strong inference of scienter. Specifically, Cocchiola knew or recklessly disregarded knew that neither he nor anyone else at Suprema had engaged in bona fide transactions with these entities.
- (s) The fact that Cocchiola personally signed numerous checks to fraudulent cheese suppliers owned or controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen supports a strong inference of scienter.

ii. Venechanos

- (a) At all times relevant to this Complaint, Venechanos was the CFO of Suprema. From September 2001 until the end of the Class Period, he was also on the Board of Directors. As CFO, Venechanos was primarily responsible for the accounting policies of the Company, as well as the preparation and accuracy of the Company's financial statements.
- (b) According to the Registration Statement and Prospectus, "[s]enior management is responsible for planning and coordinating our marketing programs and maintains a hands-on relationship with select key accounts." (Reg. St. at 23) Gaglio, Zambas and Quattrone accounted for at least the five largest accounts of Suprema, as detailed above. Thus, there is a strong inference that Venechanos (as the second highest ranking officer of Suprema) maintained a hands-on relationship with these accounts and was, therefore, aware of the fraud.
- (c) When Art Christensen resigned from Suprema on December 17, 2001, he wrote the following in his resignation letter: "Mark and Steve, as we discussed, I am not willing to participate in the tasks that have been assigned to me since Paul's death." (Cocchiola Dep. at 412) Upon information and belief (as set forth above), Venechanos refused to answer questions about whether these "tasks" involved dealings with the fictitious and roundtrip sales discussed above. These facts support a strong inference that Cocchiola and Venechanos knew about the fraud and had assigned

Christensen to perpetuate the fraud, a “task” he was unwilling to perform.

- (d) As detailed herein, the circular and fictitious sales between Suprema and Gaglio, Zambas, Quattrone, Vieira and Fransen accounted for approximately two-thirds of the Company’s revenue and nearly all of its growth. Thus, Venechanos’s misrepresentations and omissions described above involved the Company’s core business. This fact, as well as the magnitude of the fraud, also supports a strong inference of scienter.
- (e) The fact that Van Sickell testified that the scheme to book fictitious sales occurred at the direction of management of Suprema supports a strong inference of scienter.
- (f) That the criminal Informations to which Quattrone, Vieira, Fransen and Van Sickell pled guilty stated that the scheme to inflate Suprema’s sales occurred “with the direction of and participation of Suprema management” creates a strong inference of scienter.
- (g) The fact that Egan stated in a sworn affidavit that Venechanos dealt directly with Gaglio, Quattrone, Zambas, the Gaglio Entities, the Gaglio Sham Cheese Suppliers, Tricon/Noram and Battaglia/Packing Products creates a strong inference of scienter.
- (h) The fact that the scheme to defraud continued after Lauriero passed away in August 2001 supports a strong inference of scienter.
- (i) The fact that the defendants recognized sales to Gaglio, Zambas and Quattrone in violation of GAAP and their own revenue recognition policy supports a strong inference of scienter. It is axiomatic that a Company’s financial statements are the responsibility of management and are within their direct knowledge and control. This is particularly so of the Company’s CFO, who is primarily responsible for those financial statements. Indeed, AU § 110.02 specifically provides that “[m]anagement is responsible for adopting sound accounting policies and for establishing and maintaining internal controls that will, among other things, record, process, summarize, and report transactions (as well as events and conditions) consistent with management’s assertions embodied in the financial statements. ***The entity’s transactions and related assets, liabilities, and equity are within the direct knowledge and control of management... Thus, the fair presentation of financial statements in conformity with [GAAP] is an implicit and integral part of management’s responsibility.***” (Emphasis added)

- (j) The fact that defendant Venechanos invoked his Fifth Amendment right against self-incrimination when he was asked questions about the roundtrip and fictitious sales described above also raises a strong inference of scienter.
- (k) The fact that a description of Suprema's so-called "brokering" business was completely omitted from the Company's public filings during the Class Period, which statements were prepared and signed by Venechanos, supports a strong inference of scienter.
- (l) Former employees interviewed by counsel for Lead Plaintiff have confirmed that Cocchiola and Venechanos (and Lauriero when he was alive) controlled all aspects of Suprema's business.
- (m) The fact that much of the cheese that was actually shipped and stored by Suprema was adulterated supports a strong inference of scienter. The only people that could have ordered this adulteration, which consisted of mixing the cheese with fillers such as soy, "All Chi" and whey, were the senior officers of Suprema, particularly, Cocchiola and Venechanos.
- (n) The fact that Van Sickell testified that the mislabeling and adulteration of Suprema's cheese occurred at the direction of Suprema's management, supports a strong inference of scienter.
- (o) The fact that the Company's credit facilities were drawn down to the exact amount allowable based on Suprema's accounts receivable and inventory, which were at the heart of this fraud, supports a strong inference of scienter.
- (p) The fact that Cocchiola and Venechanos instructed Suprema employees not to be involved with the hard cheese portion of Suprema's business supports a strong inference that they knew about the fraud. According to the former accounts receivable supervisor, Venechanos and Christensen handled all of the accounts of the so-called hard cheese customers, including A&J, Noble, California Goldfield, Tricon and Battaglia, personally.
- (q) The fact that Cocchiola and Venechanos did not allow Suprema employees to deal directly with BDO supports a strong inference of scienter. According to the accounts receivable supervisor, BDO dealt only with Venechanos and Christensen. She also indicated that Venechanos, as the CFO, exercised a significant degree of control over the Company.
- (r) The fact that none of the intermediaries that Gaglio used to conceal the true source of Suprema's hard cheese purchases ever spoke to anyone at Suprema further supports a strong inference of scienter.

Specifically, Venechanos knew or recklessly disregarded knew that neither he nor anyone else at Suprema had engaged in bona fide transactions with these entities.

- (s) The fact that Venechanos personally signed numerous checks to fraudulent cheese suppliers owned or controlled by Gaglio, Zambas, Quattrone, Vieira and Fransen supports a strong inference of scienter.

314. In addition to these facts, all of which support a strong inference of scienter, these defendants also had the motive and opportunity to commit the instant fraud:

i. Cocchiola.

- (a) As of the filing of the Company's 2001 Form 10-K, defendant Cocchiola was the largest shareholder of Suprema common stock, exercising ownership or control over 1.1 million shares, or approximately 17.4% of Suprema's common stock issued and outstanding.
- (b) As detailed above at ¶ 18, Cocchiola pledged 200,000, or approximately 20%, of those shares on or about September 19, 2001, in order to obtain a personal loan of \$600,000 from Fleet Bank, the same bank that loaned Suprema money under its revolving credit facility.
- (c) Cocchiola sold an additional 347,809 shares, or 31%, of his stock pursuant to the Secondary Offering, realizing proceeds of over \$4.1 million, while the stock was artificially inflated as set forth above.
- (d) These sales were unusual, both in terms of timing and amount, in that the defendants purposefully undertook the Secondary Offering at a time when they knew that the stock was artificially inflated as a result of the fictitious and roundtrip sales described herein, and then defendant Cocchiola chose to sell-off a significant portion of his stake in the Company, as detailed above.

ii. Venechanos.

- (a) As of the filing of the Company's 2001 Form 10-K, defendant Venechanos was one of the largest shareholders of Suprema common stock, exercising ownership or control over 138,000 shares, or approximately 2.4% of Suprema's common stock issued and outstanding.

- (b) Venechanos sold 52,937 shares, or 38%, of his stock pursuant to the Secondary Offering, realizing proceeds of approximately \$628,000, while the stock was artificially inflated as set forth above.
- (c) These sales were unusual, both in terms of timing and amount, in that the defendants purposefully undertook the Secondary Offering at a time when they knew that the stock was artificially inflated as a result of the fictitious and roundtrip sales described herein, and then defendant Venechanos chose to sell-off a significant portion of his stake in the Company, as detailed above.

315. The timing of these insider sales is unusual and suspicious and thus supports a strong inference of scienter. Prior to the Class Period, Cocchiola sold only 50,000 shares of Suprema stock (on August 25, 2000) and Venechanos had no pre-Class Period Suprema stock sales. Thus, sale of Suprema stock by Cocchiola and Venechanos in the Secondary Offering – just six weeks before NASDAQ suspended trading in Suprema stock – is unusual both in terms of timing and amount.

H. FRAUD ON THE MARKET: PRESUMPTION OF RELIANCE

316. At all relevant times, the market for Suprema common stock was an efficient market for the following reasons, among others:

- (i) Suprema common stock met the requirements for listing, and were listed and actively traded on the NASDAQ, a highly efficient market. The average weekly volume during the Class Period was 97,703 shares;
- (ii) As a regulated issuer, Suprema filed periodic public reports with the SEC;
- (iii) Suprema common stock was followed by securities analysts employed each of the Underwriter Defendants who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace;
- (iv) Suprema regularly issued press releases which were carried by national and international newswires. Each of these releases was publicly available and entered the public marketplace; and

- (v) The market price of Suprema common stock reacted rapidly to new information entering the market.
- (vi) As a result, the market for Suprema securities promptly digested current information with respect to Suprema from all publicly-available sources and reflected such information in Suprema's stock price.

317. As a result of the false and misleading statements and omissions alleged herein, the market price of Suprema common stock was artificially inflated. Under such circumstances, the presumption of reliance available under the "fraud on the market" theory applies. The members of the Class either relied upon either the integrity of the market or upon the statements and reports of the defendants in purchasing Suprema stock at artificially inflated prices.

318. As a direct and proximate result of the wrongful conduct by the defendants named in this Count, Lead Plaintiff and the other members of the Class suffered damages in connection with their purchases of Suprema common stock. Had Lead Plaintiff and the other members of the Class known of the material adverse information not disclosed by the defendants named in this Count, or been aware of the truth behind these defendants' material misstatements, they would not have purchased Suprema common stock at artificially inflated prices.

319. This claim was brought within one year after the discovery of this fraud and within three years of the making statements alleged herein to be materially false and misleading.

320. By virtue of the foregoing, Cocchiola and Venechanos violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and are liable to Lead Plaintiff and the members of the Class, each of whom has been damaged as a result of such violations.

COUNT FIVE

Against BDO for Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated There under

321. Lead Plaintiff repeats and realleges each and every allegation above, as if set forth fully herein. This Count is brought pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. §

78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5, on behalf of all members of the Class against defendant BDO.

322. Throughout the Class Period, BDO, directly and indirectly, by use of means and instrumentalities of interstate commerce and of the United States mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Suprema, including its true financial results.

323. BDO made untrue and misleading statements of material fact and omitted to state material facts necessary in order to make its statements not misleading. Specifically, BDO knew or but for their reckless disregard should have known that Suprema had fundamentally misrepresented the nature of its business and that its financial statements for the fiscal years ended June 30, 2001 and June 30, 2000 were materially misstated and were not presented in conformity with GAAP. In addition, BDO's audit of those financial statements was not performed in accordance with GAAS.

324. The specific false and misleading statements for which BDO is charged with liability under Section 10(b) are certain "expertised" statements contained in the Forms 10-K and Registration Statement and Prospectus, including but not limited to Suprema's financial statements and the notes thereto, as well as BDO's unqualified audit reports on the Company's financial statements for the fiscal years ended June 30, 2000 and 2001. As set forth above, BDO stated that it had performed its audits in accordance with GAAS and that, in its opinion:

the consolidated financial statements... present fairly, in all material respects, the financial position of [Suprema and its wholly owned subsidiaries] as of June 30, 2000 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended June 30, 2001, in conformity with [GAAP].

325. These statements were materially false and misleading because, in fact, BDO's audits represented an extreme departure from GAAS and, therefore, it had no reasonable basis to

support its opinion that Suprema's financial statements fairly presented the Company's financial position and results of operations in conformity with GAAP.

326. GAAS are the auditing standards that an auditor must follow in planning, conducting and reporting the results of an audit. "Auditing standards provide a measure of audit quality and the objectives to be achieved in an audit." SAS No. 95, AU § 150.01. GAAS includes the following standards that have been approved and adopted by the AICPA, and all of which were knowingly or recklessly violated by BDO:

- (i) "Due professional care is to be exercised in the performance of the audit and the preparation of the [audit] report." General Standard No. 3, AU § 150.02.
- (ii) "The work [of the audit] is to be adequately planned and assistants, if any, are to be adequately supervised." Standard of Field Work No. 1, AU § 150.02.
- (iii) "A sufficient understanding of internal control is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed." Standard of Field Work No. 2, AU § 150.02.
- (iv) "Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit." Standard of Field Work No. 3, AU § 150.02.
- (v) "The [audit] report shall state whether the financial statements are presented in accordance with [GAAP]." Standard of Reporting No. 1, AU § 150.02.
- (vi) "Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report." Standard of Reporting No. 3, AU § 150.02.

327. BDO acted with scienter in violating these most fundamental principles of GAAS and in expressing its materially false and misleading unqualified audit opinion on Suprema's financial statements in that BDO either had actual knowledge or recklessly disregarded the fact that Suprema's financial statements were materially false and misleading as set forth herein.

Indeed, as detailed below, BDO's audit was so deficient that it amounted to no audit at all and, as a result, BDO had no reasonable basis to issue its unqualified audit opinion upon which it knew investors would rely.

328. Specifically, as more particularly set forth below, BDO knew and recklessly ignored at least the following "red flags":

- (i) That approximately \$700 million, or approximately 60%, of the \$1.2 billion in cheese that Suprema claimed to have manufactured or imported and then sold between 1996 and January 2002 never actually existed;
- (ii) That at least three of Suprema's largest customers, A&J, Noble and California Goldfield, which represented at least 27% and 37% of the Company's revenues in 2000 and 2001, respectively, were all owned or controlled by Jack Gaglio;
- (iii) That none of these Gaglio Entities had anywhere near the capacity to receive and store the quantities of cheese that Suprema supposedly shipped to them during the Class Period, particularly in view of the fact that Suprema claimed to ship this cheese before it was properly aged (discussed below); indeed, the address to which Suprema allegedly shipped cheese sold to Noble and California Goldfield were single family homes in residential neighborhoods with no receiving bays or storage facilities;
- (iv) That at least four of Suprema's largest suppliers of hard cheese, Whitehall, St. Charles, Commodities, and Cal Fed were also arms of Jack Gaglio, whose business with Suprema was solely to mask the true source of Gaglio's hard cheese sales;
- (v) That none of these Gaglio Sham Cheese Suppliers ever shipped any cheese to Suprema, indeed they added absolutely no value to any of the alleged transactions between Gaglio and Suprema;
- (vi) That the "ship to" addresses on Suprema's invoices for sales to California Goldfield did not match the corporate address reflected on its D&B report, which they knew or should have known was the same address utilized by A&J and Noble;
- (vii) That Commodities and Cal Fed operated out of, and supposedly shipped cheese from, two mailboxes at a "Mailboxes Plus;"
- (viii) That Whitehall was in the business of selling imitation cheese; thus raising the additional question of why Suprema, who supposedly only

manufactured “all natural” cheese, would have millions of dollars of purchases from Whitehall in fiscal year 2001;

- (ix) That Tricon, Suprema’s largest customer in 2001, representing 15% of its net sales, and Noram, one of Suprema’s largest suppliers, were both owned and controlled by Paul Zambas;
- (x) That Tricon had nowhere near the capacity to receive and store the quantities of cheese that Suprema supposedly shipped to it during the Class Period, particularly in view of the fact that Suprema claimed to ship this cheese before it was properly aged; indeed, the address that Suprema allegedly shipped this cheese to was an office suite with no receiving bays or storage facilities;
- (xi) That the address for Tricon in Suprema’s business records was not the same address as was recorded in Canadian public records;
- (xii) That the address to which Suprema sent checks to Noram was a gift shop in a mall, and that this address was different from the address indicated on Noram’s corporate filings;
- (xiii) That checks from Tricon came from the same bank account into which Suprema’s checks to Noram were deposited;
- (xiv) That Battaglia, another of Suprema’s largest customers, representing 12% of Suprema’s net sales in 2001, and Packing Products, one of Suprema’s largest suppliers of hard cheese, were both owned and controlled by Robert Quattrone, operating out of the same address in Lyndhurst, New Jersey;
- (xv) That Suprema supposedly received goods and wrote checks to Packing Products at an address that was different from its corporate address as reflected in its corporate filings, and that the former address is a single family home in a residential community belonging to Robert Quattrone;
- (xvi) That Suprema sent tens of million of dollars in checks to CMM and received tens of millions of dollars in checks from WCC, and that both entities were owned and controlled by George Vieira;
- (xvii) That the checks Suprema wrote to CMM were deposited into the same bank account from which WCC wrote millions of dollars in checks back to Suprema;
- (xviii) That Suprema sent tens of millions of dollars in checks to LNN and received tens of millions of dollars in checks from WSC, and that both entities were owned and controlled by Lawrence Fransen;

- (xix) That the checks Suprema wrote to LNN which were stamped “FOR DEPOSIT ONLY WALL STREET CHEESE, LLC” and deposited into the bank account of WSC, the same account from which WSC wrote massive checks back to Suprema;
- (xx) That, according to several former employees of Suprema who were available to BDO during their audits, the Company never paid its bills on time and, consequently, had serious problems retaining haulers and suppliers. For example, the accounts payable supervisor, who was at the company when BDO was conducting its 2000 audit, indicated that Suprema was notorious for not paying its bills on time, and that creditors called all the time to complain about not being paid. She indicated that a large portion of the job of Art Christensen (the controller) was to deal with these calls and to negotiate resolutions;
- (xxi) That Suprema was unable to generate positive cash flows from operations while reporting tremendous earnings and earnings growth;
- (xxii) That Suprema’s accounts receivable increased rapidly throughout the Class Period but the Company recorded no charges for uncollected accounts and its accounts receivable reserve as a percentage of outstanding receivables had decreased during the Class Period;
- (xxiii) That Suprema was reporting unusually rapid growth well in excess of other companies in the cheese industry;
- (xxiv) That Suprema had significant assets based on estimates involving unusually subjective judgments or uncertainties, or that were subject to significant change in the near term;
- (xxv) That Suprema, and particularly the hard cheese portion of the business, was dominated by a small group of senior management, including Cocchiola, Venechanos and Lauriero (when he was alive);
- (xxvi) That these members of senior management had strong motivations to engage in fraud;
- (xxvii) That there were significant discrepancies in Suprema’s accounting records;
- (xxviii) That there were unsupported or unauthorized balances and transactions reflected in Suprema’s books and records;
- (xxix) That there were “unexplained items,” missing documents and implausible responses from management; and
- (xxx) That management denied BDO access to key employees and required unusual delays in the production of information.

329. BDO's failure to investigate these red flags and to undertake even the most basic audit procedures, as detailed below, violated the most fundamental principles of GAAS.

A. BDO VIOLATED GAAS IN THAT IT FAILED TO EXERCISE DUE PROFESSIONAL CARE IN THE PERFORMANCE OF ITS AUDIT

330. AU § 230 sets forth the general requirements with respect to an auditor's obligation to plan and perform his work with due professional care. "Due professional care imposes a responsibility upon [an auditor] to observe the standards of field work and reporting [as set forth above]." AU§ 230.02. Among the requirements of due care is that an auditor exercise "professional skepticism." "Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence." AU § 230.07. In exercising professional skepticism, "[t]he auditor neither assumes that management is dishonest nor assumes unquestioned honesty. In exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest." AU § 230.09.

331. In conducting the audit, the auditor must obtain "reasonable assurance that the financial statements are free from material misstatement, whether caused by error or fraud." AU § 230.10. The auditor's objective is "to obtain sufficient competent evidential matter to provide him or her with a reasonable basis for forming an opinion." AU § 230.11. As required by Statement on Auditing Standards ("SAS") 22, Planning and Supervision, an auditor should consider, among other things, matters relating to the entity's business and the industry in which it operates and conditions that may require extension or modification of audit tests, such as the risk of material error or fraud or the existence of related party transactions. AU § 311.03. Also, "[k]nowledge of the entity's business helps the auditor in identifying areas that may need special

attention..., evaluating the reasonableness of estimates, such as... the allowance for doubtful accounts..., and evaluating the reasonableness of management's representations. AU § 311.06.

332. An auditor is required to “assess audit risk and materiality... in determining the nature, timing and extent of audit procedures and in evaluating the results of those procedures.”

AU § 312.01 In considering audit risk, ***“the auditor should specifically assess the risk of material misstatement of the financial statements due to fraud.”*** AU § 312.16 (emphasis added). If the auditor concludes that there is a heightened risk of material misstatement due to fraud or otherwise, he must take whatever steps are necessary to assure himself that the financial statements are not materially misleading. See generally AU § 312 (requiring an auditor to limit audit risk to a low level, that is, a level appropriate for expressing an opinion on the financial statements). This is true in terms of the number and types of audit procedures he must perform, the time that he must spend on the audit, the number and experience of personnel that must be involved, and the level of supervision that should be employed. AU § 312.17.

333. SAS 56, Analytical Procedures, requires the auditor to use “analytical procedures in the planning and overall review stages of the audit.” AU § 329.01. “Analytical procedures are an important part of the audit process and consist of evaluation of the financial information made by a study of the plausible relationships among both financial and non-financial data.” AU § 329.02. Further, “[p]articular conditions can cause variations in these relationships [and] include, for example, specific unusual transactions or events... business changes... or misstatements.” Id. GAAS specifically warns that “[u]nderstanding financial relationships is essential in planning and evaluating the results of analytical procedures, and generally requires knowledge of the client and the industry... in which the client operates.” AU § 329.03.

334. BDO knowingly or recklessly violated GAAS by failing to exercise due professional care in connection with its audit of Suprema 2000 and 2001 financial statements in that it failed to satisfy the standards of field work and reporting as set forth below.

B. BDO VIOLATED GAAS BY FAILING TO ADEQUATELY PLAN ITS AUDIT AND ASSESS THE NATURE OF SUPREMA’S BUSINESS

335. The first standard of fieldwork requires that “the work is to be adequately planned and assistants, if any, are to properly supervised.” AU § 311.01. Planning the audit involves “developing an overall strategy for the expected conduct and scope of the audit.” AU § 311.03. In devising a plan, the auditor must consider, among other things, matters relating to the entity’s business and the industry in which it operates. AU § 311.03.

336. The auditor should review records relating to the entity, and engage in discussions “with other firm personnel and personnel of the entity.” AU § 311.04. In addition, the auditor is required:

to obtain a level of knowledge of the entity’s business that will enable him to plan and perform his audit in accordance with generally accepted auditing standards. That level of knowledge should enable him to obtain an understanding of the events, transactions, and practices that, in his judgment, may have a significant effect on the financial statements. The level of knowledge customarily possessed by management relating to managing the entity’s business is substantially greater than that which is obtained by the auditor in performing his audit. Knowledge of the entity’s business helps the auditor in: (a) Identifying areas that may need special consideration; (b) Assessing conditions under which accounting data are produced, processed, reviewed, and accumulated within the organization; (c) Evaluating the reasonableness of estimates, such as valuation of inventories, depreciation, allowances for doubtful accounts, and percentage of completion of long-term contracts; (d) Evaluating the reasonableness of management representations; [and] (e) Making judgments about the appropriateness of the accounting principles applied and the adequacy of disclosures. (AU § 311.06)

337. Further:

[t]he auditor should obtain a knowledge of matters that relate to the nature of the entity’s business, its organization, and its operating characteristics. Such matters include, for example, the type of business, types of products and services, capital structure, related parties, locations, and production, distribution, and

compensation methods. The auditor should also consider matters affecting the industry in which the entity operates, such as economic conditions, government regulations, and changes in technology, as they relate to his audit. Other matters, such as accounting practices common to the industry, competitive conditions, and, if available, financial trends and ratios should also be considered by the auditor. (AU § 311.07)

338. Similarly, in connection with obtaining confirmations of accounts receivable and accounts payable, AU § 330.25 provides that “[t]he auditor’s understanding of the client’s arrangements and transactions with third parties is key to determining the information to be confirmed. The auditor should obtain an understanding of the substance of such arrangements and transactions to determine the appropriate information to include on the confirmation request.”

339. BDO failed to adequately plan its audit of Suprema in so far as it failed to gain even the most basic understanding of the Company’s business and failed to consider the plausibility of the Company’s reported operating results in comparison to the industry as a whole.

340. As detailed herein, Suprema’s financial statements and public filings in which those statements were included during the Class Period materially misrepresented the fundamental nature of Suprema’s business. They represented that Suprema was a manufacturer and importer of all-natural Italian cheeses, when, in fact, the vast majority of the Company’s business involved nothing more than fictitious purchases and sales of bulk cheeses to and from a small group of interrelated entities. Even if all of these transactions had actually taken place, which they did not, these circular sales and purchases had nothing to do with the manufacturing, processing or importing of all-natural cheeses. Indeed, these transactions had no economic substance and were undertaken for the sole purpose of inflating the Company’s revenues and accounts receivable. In view of these facts, BDO either was extremely reckless in failing to gain

a fundamental understanding of Suprema's business and its industry, or it knowingly defrauded investors by intentionally allowing Suprema to misrepresent the nature of its business.

341. A comparison of the descriptions of the business included in the Company's 1999 Form 10-K, as compared to the 2000 and 2001 Forms 10-K, as well as the financial statements included in those documents, raises a strong inference that BDO acted with scienter when they permitted the Company to materially misstate the nature of its business.

342. In its 1999 Form 10-K, the Company represented that it purchased "bulk cheese" from "domestic sources." It further disclosed that "[b]ulk cheese is repackaged and sold to food service distributors and food manufacturers under the Suprema DiAvellino® name or on a private label basis or is grated or shredded and packaged by the company and sold to retail customers under the Suprema DiAvellino® name." (1999 Form 10-K at 2) Further, in the section entitled "Suppliers," the Company represented that that it "purchases certain of its cheese requirements from domestic sources." (1999 Form 10-K at 5)

343. However, in its 2000 and 2001 Forms 10-K, the Company purposefully *excluded* similar representations about the Company's alleged purchase and resale of bulk cheeses from "domestic sources." Not coincidentally, this was the exact the portion of the business that was at the heart of the instant fraud. As detailed above, the 2000 Form 10-K described Suprema's business as follows:

Suprema Specialties, Inc. and its wholly owned subsidiaries (hereinafter referred to collectively as "Suprema", "we", "our", and "us",) manufactures, processes and markets a variety of premium, gourmet natural cheese products, using fine quality imported and domestic cheeses.

We manufacture, shred, grate, and market gourmet all natural Italian variety cheeses under the Suprema DiAvellino(R) brand name as well as under private label. Our product lines consist primarily of domestic mozzarella, ricotta and provolone cheeses, grated and shredded parmesan and romano cheeses, and imported parmesan and pecorino romano cheeses, including "lite" versions of certain of these products containing less fat and fewer calories. Our cheeses do

not contain any preservatives, additives, sweeteners, dehydrated fillers or artificial flavorings. We sell our products to customers in all three groups within the cheese industry: foodservice, food ingredient, and retail. We commenced operations in 1983 and currently market and distribute our products nationally.

We maintain three primary facilities. We manufacture cheeses at our facilities in Manteca, California and Ogdensburg, New York. At our Paterson, New Jersey facility, bulk cheeses ***manufactured by us or imported primarily from Europe and to a lesser extent, South America***, are shredded or grated and then packaged for distribution. Our Paterson facility is also our corporate headquarters.

We package and sell our bulk cheeses to national foodservice distributors, which then sell the products to restaurants, hotels, caterers and others....

(2000 Form 10-K at 1-2 (emphasis added))

344. Further, in the section of the 2000 Form 10-K entitled “Suppliers,” the Company represented as follows:

Our principle ingredient is raw milk. We believe that there are numerous alternative sources of supply available for us, including for raw milk which is currently provided by our largest supplier. For the fiscal years ended June 30, 2000... our largest supplier, a milk cooperative, accounted for approximately 14% and 21%, respectively of all of our purchases. We do not usually maintain contracts with suppliers.

We import certain of our bulk cheeses directly from Europe and, to a lesser extent, South America. We purchase cheese supplies in large quantities in order to obtain volume discounts and place orders for imported bulk cheese ~approximately four to six months in advance of anticipated production requirements. For the fiscal years ended June 30, 2000 and June 30, 1999, approximately 25% and 18%, respectively, of our supply requirements were imported. (2000 Form 10-K at 6)

345. Finally, in explaining its astronomical growth, in the MD&A section of the 2000 Form 10-K, management specifically represented that the increase in net sales “reflects an increase primarily in sales volume for foodservice products ***manufactured by us.***” 2000 Form 10-K at 15 (emphasis added).

346. Thus, beginning in 2000, the Company held itself out to be a manufacturer and imported of all natural Italian cheeses. From that point forward, it made ***no mention*** of the fact

the vast majority of its business consisted of sales of bulk cheese that Suprema had purportedly purchased from domestic suppliers, much less that nearly all of those purchases and sales were fictitious circular transactions with companies controlled by five individuals, Gaglio, Zambas, Quattrone, Vieira and Fransen, as detailed above.

347. In 2001, the Company represented as follows:

[Suprema] and its wholly owned subsidiaries manufacture and market gourmet all natural Italian cheeses....

* * *

We domestically produce mozzarella, ricotta, provolone and grated and shredded parmesan and romano cheeses including “lite” and lower versions of certain of these products which contain less fat and fewer calories. We also import parmesan and pecorino (sheep’s milk) romano cheeses for production and resale. Foreign producers, located principally in Europe and South America, supplied us with 25% of our bulk cheese requirements in each of fiscal year 2000 and fiscal year 2001....

(2001 Form 10-K at 1-2)

348. Further, in the section of the 2001 Form 10-K entitled “Production Facilities,” the Company represented that it manufactured soft cheese at its three facilities outside of New Jersey, and that at the Paterson facility, “bulk cheeses *from our three manufacturing facilities, as well as imported bulk cheese*, is shredded or grated, packaged and distributed.” (2001 Form 10-K at 3 (emphasis added)) And in the section entitled “Suppliers,” the Company represented as follows:

Our principal ingredient is raw milk. We have a supplier agreement with Allied Federated Cooperatives, Inc. that runs through 2017, which provides that, subject to specified minimum amounts, we will purchase from them all of our milk requirements used in the manufacture of cheese products at our Ogdensburg, New York facility. We are also dependent on a limited number of other suppliers for all of our requirements of raw materials, primarily milk used in the manufacture of cheese at our Manteca, California facility. We believe that there are numerous alternative sources of supply available to us, including for raw milk which is currently provided by our suppliers. For our fiscal year 2000 and fiscal year 2001, our three largest suppliers accounted for, in the aggregate, approximately 34%

and 36%, respectively, of our product requirements, with one milk supplier accounting for 14% and 12%, respectively, of our requirements. Other than our agreement with Allied Federated Cooperatives Inc., we generally purchase raw milk from dairy cooperatives and other dairy vendors under one-year purchase agreements.

Our purchase of bulk cheese are [sic] made pursuant to purchase orders placed in the ordinary course of business. We import certain of our bulk cheeses directly from Europe and, to a lesser extent, South America. We purchase cheese supplies in large quantities in order to obtain volume discounts and place orders for imported bulk cheese approximately four to six months in advance of anticipated production requirements. For fiscal years ended June 30, 1999, 2000, and 2001, approximately 18%, 25% and 25%, respectively, of our supply requirements were imported.

(2001 Form 10-K at 4-5)

349. Similarly, in the MD&A section of the 2001 Form 10-K, management emphasized that “[h]istorically, a majority of our costs of goods sold has consisted of the price we pay for milk.” (2001 Form 10-K at 15) Further, they stated that the astronomical growth in sales that the Company had experienced in 2001 once again “reflects an increase primarily in sales volume for food services products *manufactured by us*, most of which represented sales to existing customers....” (2001 Form 10-K at 17 (emphasis added))

350. Thus, in 2001, the Company persisted with its misrepresentations that it was a manufacturer and importer of all natural Italian cheeses. Nowhere did it disclose the material fact that approximately two-thirds of its revenue and nearly all of its growth and accounts receivable were attributable to the alleged sale of bulk cheese that Suprema had purchased from “domestic suppliers,” much less that all of those purchases and sales were fictitious circular transactions with five individuals, Gaglio, Zambas, Quattrone, Vieira and Fransen, as detailed above.

351. BDO was the Company’s auditor from at least 1998 until it collapsed at the end of 2001. Thus, BDO knew the Company had dramatically changed the way it described its

business from 1999 to 2000 to omit any reference to its domestic purchases of bulk cheeses. At the same time, even a cursory review of Suprema's check register, vendor invoices and purchasing records would have revealed that these very purchases comprised the vast majority of the cheese that was supposedly sold to its largest customers. Indeed, as detailed above, these purchases and sales accounted for approximately two-thirds of the Company's revenue in 2001 and nearly all of its reported growth in sales and accounts receivable. If this aspect of the business, which previously was described by the defendants as a "brokering business," but has now been revealed to be a total sham, were legitimate, there would have been no reason to exclude an accurate description of it in the Company's public filings.

352. Under GAAS, BDO was obligated to review the information contained in the documents that contained the audited financial statements (such as the description of the business and MD&A sections contained in the Forms 10-K and Suprema's Registration Statement and Prospectus), and to consider whether that information was materially inconsistent with information appearing in the financial statements. BDO had audited Suprema's financial statements and knew or but for their reckless disregard should have known the true nature of Suprema's operations. See SAS No. 8, Other Information in Documents Containing Audited Financial Statements. Had BDO satisfied these obligations, it would have known that the 2000 and 2001 financial statements and related public filings did not adequately represent Suprema's business and were, therefore, materially false and misleading.

C. BDO VIOLATED GAAS BY FAILING TO OBTAIN REASONABLE ASSURANCE THAT THE FINANCIAL STATEMENTS WERE FREE FROM MATERIAL MISSTATEMENT CAUSED BY FRAUD

353. As noted above, auditors are *required* "to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud." AU § 110.02; AU § 316.01. AU § 316.09 provides that

“[a]lthough fraud is usually concealed, *the presence of risk factors or other conditions may alert the auditor to the possibility that fraud may exist. For example, a document may be missing... or an analytical relationship may not make sense....*” (Emphasis added) Therefore, auditors are **required** to “specifically assess the risk of material misstatement of the financial statements due to fraud and should consider that assessment in designing the audit procedures to be performed...” AU § 316.12.

354. In making this assessment, auditors are **required** to thoroughly investigate “fraud risk factors” – that is, “red flags” – that are apparent from the financial statements themselves or from the characteristics of the company. These red flags are specifically described in AU § 316.17. In addition, GAAS emphasizes that “fraud risk factors may be identified while performing procedures..., during engagement planning or while obtaining an understanding of an entity’s internal control, or while conducting fieldwork.” AU § 316.25. That section then goes on to list additional “red flags” relating to (a) “discrepancies in accounting records,” (b) “conflicting or missing evidential matter,” and (c) “problematic or unusual relationships between the auditor and client” that an auditor **must** thoroughly investigate if he is going to represent that he conducted his audit in compliance with GAAS.

355. BDO knowingly or recklessly failed to adequately address the possibility of fraud in conducting its audit of Suprema. Had it done so, it would have increased its professional skepticism and extended its audit procedures in response to the many glaring red flags, detailed below, that were readily apparent at the Company. At the very least, it would have increased its focus on material transactions and relationships, for example by thoroughly investigating the very limited number of customers and suppliers that represented the entirety of the hard cheese business; it would have undertaken extended procedures to corroborate the representations of

management, including conducting interviews of those employees responsible for the Company's internal accounting, as well as its major customers and suppliers; and it would have thoroughly investigated the possibility of related party transactions and the sources of financial resources supporting the Company's transactions, accounts receivable and the like. See AU § 316.25-.29.

356. In sum, had BDO conducted any adequate audit procedures, as required by GAAS, it would have discovered that Suprema's hard cheese business, which represented the vast majority of its reported revenues and nearly all of its reported growth, was a fiction concocted by the Officer Defendants and their co-conspirators for the sole purpose of artificially inflating the Company's revenues and accounts receivable.

D. FRAUD RISK FACTORS IGNORED BY BDO

(1) Suprema Was Unable to Generate Cash Flows From Operations While Reporting Earnings and Earnings Growth

357. AU § 316.16 and .17 provide the auditors with specific risk factors to be considered in assessing the risk of material misstatement due to fraud. In Suprema's case, the most obvious and glaring indicator was its ongoing "inability to generate positive cash flows from operations while reporting earnings and earnings growth." Id.

358. As set forth above, Suprema repeatedly reported astronomical growth in net sales, gross margin, and net earnings, yet it did not generate sufficient working capital to fund its operations. Indeed, the Company's financial statements indicate that the Company's cash flows from operations were negative and were getting dramatically worse over time, having decreased from negative \$7.7 million in 1999 to negative \$32.6 million in fiscal 2000, and then to negative \$37 million for fiscal 2001. Thus, for the three years ended June 30, 2001, the Company

generated combined net earnings of more than \$19 million while, inexplicably, accumulating more than \$77 million in operating cash flow deficits. (2001 Form 10-K at F-6)

359. This condition represented a highly unusual relationship between profitability and operating cash flow (i.e., as profitability grew, operating cash flow declined). Thus, it should have heightened BDO's skepticism and caused them to focus their efforts more keenly on the Company's hard cheese business, which represented the vast majority of the Company's revenues and nearly all of its growth in revenue and accounts receivable. A comparison of the growing discrepancy between Suprema's net earnings and its negative cash flow from operations shows the following:

	(000's of dollars)		
	<u>1999</u>	<u>2000</u>	<u>2001</u>
Net earnings	\$4,208	\$6,385	\$8,874
Cash flow (deficit) from operations	(7,704)	(32,649)	(36,958)
Difference	(11,912)	(39,034)	(45,832)

360. The Company's operating cash flow deficits were being funded by borrowings on its revolving credit facility. Moreover, the amounts that Suprema could draw down on its credit facility were directly tied to its accounts receivable and inventory and, in fact, Suprema did draw down the maximum amount possible based on its alleged accounts receivable and inventory.

361. In addition to its borrowing, the Company was forced to go to the market for even more capital in November of 2001.

362. In sum, Suprema's sales, earnings and cash flows simply did not add up, and BDO – as the independent public auditors entrusted to express an opinion on the reliability of Suprema's financial statements – should have taken the appropriate steps to ascertain how this could be the case. Even a cursory investigation into, among other things, the Company's

purchases, sales, inventory (which was basically worthless), accounts receivable (which had risen to over \$100,000,000, or nearly one-quarter of the Company's net sales, by year-end June 30, 2001), or allowance for doubtful accounts (which was woefully inadequate) would have revealed the truth about Suprema's alleged hard cheese business, as set forth herein. At a minimum, BDO should have focused critically on the unusual and disproportionate increase in accounts receivable, which were increasing at a rate significantly greater than the increase in sales and which were concentrated in five customers. Had they done so they would have discovered the instant fraud.

(2) **Suprema Reported Unusually Rapid Growth and Profitability as Compared to Other Companies in the Cheese Industry**

363. AU § 316.17(c) provides another specific risk factor indicating the possible existence of fraud that was clearly present. Suprema had reported that “[u]nusually rapid growth or profitability, especially compared with that of other companies in the same industry,” which is another basic indicator of possible fraud.

364. Suprema reported astronomical growth in net sales throughout the Class Period: 58% and 51% in 2000 and 2001, respectively. By contrast, the industry grew by approximately 9%, as indicated by defendant Pacific Growth in an analyst report dated November 13, 2001. BDO knew that Suprema's growth far exceeded the market in which Suprema operated in so far as Suprema disclosed in a registration statement and prospectus filed with the SEC on August 25, 2000, that:

According to the most recently published cheese industry report prepared by 1999 Business Trend Analysts, sales of natural cheese products by United States manufacturers increased from \$10.2 billion in 1993 to \$12.3 billion in 1999, and are projected to reach approximately \$18.5 billion by the year 2008.

(Registration Statement dated Aug. 25, 2000 at 3) Furthermore, in the Registration Statement and Prospectus filed in connection with the Secondary Offering, Suprema disclosed that:

The U.S. cheese market had \$19.9 billion of sales in 1998, which are projected to grow to approximately \$29.8 billion in 2008 . . . The U.S. market for natural cheese products had sales of \$11.8 billion in 1998, which are projected to grow to approximately \$18.6 billion in 2008. Production of Italian cheeses, which are natural cheese products accounted for approximately 38% of U.S. cheese produced in 1998, and is projected to increase to 42% of U.S. cheese production in 2008.

365. This astounding contrast between Suprema's astronomical growth and the cheese industry's more modest growth should have heightened BDO's level of skepticism and caused the auditors to look behind the Company's reported numbers (and beyond management's implausible representations) to critically assess independent audit evidence and determine exactly how Suprema was able to grow by such leaps and bounds as compared to the cheese industry generally. Had they done so, they would have discovered that the Company's secret was that it was engaged in fictitious circular transactions with interrelated entities.

i. Suprema's Reported Growth Was Virtually Impossible

366. BDO also knew that Suprema had not increased its labor force sufficiently to explain the increase in cheese production that the Company claimed. Specifically, Suprema reported that it had 270 full-time employees as of August 30, 2000, of which 232 were engaged in cheese production. (2000 Form 10-K at 8) Despite the astronomical 50% revenue growth between fiscal 2000 and 2001, Suprema reported that it had 286 full-time employees as of September 24, 2001, of which 242 were engaged in cheese production. (2001 Form 10-K at 8)

367. BDO also knew that Suprema had not increased the utilization of its production facilities, which would have been necessary to support the Company's reported increase in cheese production. For example, Suprema reported in fiscal 2000 that its plants in Manteca, CA and Ogdensburg, NY were operating at 80% capacity and its operations at Paterson, NJ were at 63% capacity. (2000 Form 10-K at 5) In fiscal 2001, Suprema reported that its plants in Manteca, CA and Ogdensburg, NY remained at 80% capacity, and that its operation in Patterson,

NJ had grown just 3% to 67% of capacity. (2001 Form 10-K at 3) In December 2000, Suprema acquired a plant in Blackfoot Idaho, but that plant, which was operating at only 20% of capacity, was considerably smaller (37,000 square feet) than its facilities in Manteca, CA or Ogdensburg, NJ (110,000 and 72,000 square feet, respectively), and had been operating under Suprema's control for only 6-7 months in fiscal 2001.

(3) **Suprema Had Significant Assets That Were Based on Estimates Involving Unusually Subjective Judgments or Uncertainties, or That Were Subject to Potential Significant Change in the Near Term**

368. GAAS also required auditors to consider, as another fraud risk factor, whether a company has "[a]ssets, liabilities, revenues, or expenses based on significant estimates that involve unusually subjective judgments or uncertainties, or that are subject to potential significant change in the near term in a manner that may have a financially disruptive effect on the entity – such as the ultimate collectibility of receivables... or significant deferral of costs." AU § 316.17(c).

369. Suprema's accounts receivables skyrocketed to over \$100 million (or approximately one-quarter of its total net sales and more than double the Company's total shareholders' equity) by the end of fiscal 2001. These receivables were almost entirely attributable to the hard cheese business, as set forth above. Moreover, Suprema claimed that it granted its largest customers extended payment terms, which had the effect of increasing their receivables and, thus, the amount Suprema could borrow on its credit facility.

370. The existence and collectibility (valuation) of these receivables was paramount to the overall fairness of Suprema's financial statements and their conformity to GAAP, as well as the Company's viability as a going concern. Indeed, when the Government ultimately executed search warrants and the receivables from these same entities "mysteriously disappeared," Suprema collapsed like the house of cards that it was.

371. In view of the materiality of the receivables to Suprema's financial statements taken as a whole and the concentration of the vast majority of the Company's receivables in a very small number of Suprema's largest "customers" – i.e., Gaglio, Quattrone and Zambas represented approximately 80% of Suprema's receivables by year-end 2001 – BDO had an obligation to obtain a full understanding of their credit-worthiness and their ability to repay the amounts due. AU §§ 326.01, 326.13, 326.21, 326.25. Confirmation of the balances alone would **not** have been sufficient to establish the customers' ability to pay. Had BDO obtained sufficient competent evidential matter (such as audited financial statements) and conducted an appropriate analysis – indeed, had they conducted simple D&B searches – they would have discovered the interrelationships among the entities, their inability to pay, and that much of Suprema's business was nothing more than a sham.

372. Despite Suprema's total sales of \$875.1 million in 1999, 2000 and 2001, and total accounts receivable of \$200.1 million during these same three years, the Company did not record **any** charge to its accounts receivable reserve for an uncollected accounts receivable during the Class Period. This, on its face, should have caused BDO to extend its audit procedures to test the legitimacy of the accounts receivable because it is essentially unheard of that any company could have reported such enormous sales and accounts receivable without incurring **any** uncollected receivables over a three year period.

373. Furthermore, Suprema's allowance for doubtful accounts at June 30, 2001, represented less than 1% of the outstanding receivables. It had also remained unchanged from fiscal 2000 in spite of a 63% increase in the outstanding receivables. Indeed, Suprema disclosed in its 2001 Form 10-K, the allowance for doubtful accounts as a percentage of accounts receivable dropped from 1.98% in 1998 to 0.76% in 2001.

	1998	1999	2000	2001
Net A/R	23.739 mil	36.007 mil	62.386 mil	101.882 mil
Allowance	470,000	570,000	770,000	770,000
Percentage (derived from the A/R and allowance numbers)	1.98%	1.58%	1.23%	0.76%

374. This fact alone should have led BDO to treat the adequacy of the allowance as a specifically identified risk. The relationship of the allowance to the receivables was, on its face, highly unreasonable, and the receivables represented that Company's most significant asset. The facts that the receivables were concentrated in such a small number of customers and that accounts were either past due or had been granted extended payment terms further exacerbated these valuation risks. Thus, BDO should have extended and focused its audit procedures to establish the financial capability of Suprema's major customers through independent sources, which necessarily would have included obtaining an understanding of those customers' businesses. Had they done so, they would have discovered this fraud.

(4) The Characteristics and Influence of Management Presented a Glaring Red Flag

375. AU § 316.16 also includes among the risk factors that an auditor must consider "management's characteristics and influence over the control environment." AU 316.16(a). "These pertain to management's abilities, pressures, style, and attitude relating to internal control and the financial reporting process." *Id.* It then goes on to list specific fraud indicators relating to a Company's management and controls, many of which were present at Suprema, but wholly ignored by BDO. For example, Suprema's management was dominated by a very small number of people who had extraordinary motivation to commit fraud.

376. Suprema, and Particularly the Suprema's Alleged Hard Cheese Business Was Dominated by a Small Group of Individuals. Auditors must investigate the possibility of fraud when there is “[d]omination of management by a single person or small group without compensating controls such as effective oversight by the board of directors or audit committee.” AU 316.16(a). Here, Suprema’s business, and particularly the hard cheese portion of the business, was completely dominated by a very small number of people, specifically, the Officer Defendants. In fact, as detailed above, senior managers at the Company such as the accounts receivable supervisor were ordered to keep away from the hard cheese business (and related accounts receivable) and to focus only on sales of soft cheeses. Moreover, the accounts receivable and accounts payable supervisors were not permitted to have direct contact with BDO. As the accounting personnel with the most direct knowledge in these key audit areas, BDO should have communicated freely with them. Their inability to do so was yet another red flag to the possibility of fraud and further demonstrates that BDO’s audit amounted to no audit at all. This restriction of access to key accounting personnel also represented a material limitation of the scope of the audit that should have led to a qualification of the audit report. See AU § 333.14.

377. Management Had a Motivation to Engage in Fraud, Such as Bonuses or other Incentives Tied to Aggressive Operating Targets. AU § 316.17(a) lists as another fraud risk factor the existence of “[a] motivation for management to engages in fraudulent financial reporting.” It then goes further to list specific red flags such as: (a) where “[a] significant portion of management’s compensation [is] represented by bonuses, stock options, or other incentives, the value of which is contingent upon the entity achieving unduly aggressive targets for operating results, financial position, or cash flow;” and (b) where there is “[a]n excessive

interest by management in maintaining or increasing the entity's stock price or earnings trend through the use of unusually aggressive accounting practices." Each of these red flags was present at Suprema:

- (i) As detailed above, each of the senior officers, including Cocchiola and Lauriero (when he was alive), who were the founders of the Company, received significant bonuses as a result of the Company's astronomical revenue growth, nearly all of which was tied to alleged sales of hard cheese to Gaglio, Zambas, Quattrone, Vieira and Fransen.
- (ii) Furthermore, the Company repeatedly touted its growth in sales and earnings, as well as the fact that its stock price was increasing. Indeed, according to the accounts payable supervisor, defendants Venechanos and Cocchiola were obsessed about the Company's stock price. Venechanos was always checking the price and reporting its performance to Cocchiola. Had BDO spoken to this or other employees, they would have discovered this fact.
- (iii) As detailed above, each of the Officer Defendants received significant stock options, making their financial success and net worth dependent on the Company's stock price. This fact is exacerbated by the fact that in September 2001, defendant Cocchiola pledged 200,000 shares of his Suprema stock to secure a personal loan from Fleet National Bank. In view of these facts, BDO knew or but for their reckless disregard would have known that Cocchiola had an excessive personal interest in maintaining the Company's stock price.
- (iv) The only way that the company was able to support its stock price was through its astronomical growth in sales in the hard cheese business.

(5) **Significant Discrepancies in the Accounting Records and Unsupported or Unauthorized Balances or Transactions**

378. In addition to the fraud indicators set forth above, had BDO conducted adequate audit procedures on Suprema, it would have been aware of many additional red flags, which are specifically highlighted by GAAS in AU § 316.25. First, there were significant "[d]iscrepancies in the accounting records" and significant "[u]nsupported or unauthorized balances or transactions." AU § 316.25. As noted by the accounts payable supervisor (discussed above), senior officers of the Company (particularly Lauriero when he was alive) routinely asked her to

write large checks to Suprema's "suppliers" without supporting invoices. Indeed, she indicated that there was an entire category of companies that were routinely paid without supporting invoices. She believed those companies were companies from which Suprema purchased cheese. Oftentimes, an invoice would appear two or three days later; however, there were occasions when no supporting invoice would be provided to her. She also indicated that Ann Cocchiola (Cocchiola's wife) also wrote out a significant number of checks by hand, which is substantiated by the numerous handwritten checks in Suprema's books and records.

379. Furthermore, the accounts payable supervisor (discussed above) indicated that she was instructed by Lauriero, Christensen and Venechanos not to give the auditors any documents (invoices, etc.) unless she got permission from one of them. Oftentimes, the auditors would request an invoice, and no such invoice would exist. She would then speak to Lauriero, Venechanos or Christensen and an invoice would "magically" appear the following day.

380. The fact that invoices were not immediately available and then would "magically" appear days later should have alerted BDO to the potential fraud and the need to extend its procedures and its level of skepticism. Had BDO simply insisted on direct contact and communication with the payables supervisor (in connection with the 2000 audit), or her successor (in connection with the 2001 audit), and the accounts receivable supervisor, as would normally be expected, they would have discovered these facts. To the extent that BDO was denied unfettered access to key accounting personnel at the Company, that fact was another red flag specifically identified by GAAS and specifically ignored by BDO.

(6) **Unexplained Items, Missing Documents and Implausible Responses from Management**

381. Another red flag that would have arisen during the audit was the fact that there was significant "[c]onflicting or missing evidential matter," including "[s]ignificant unexplained

items or reconciliations,” “missing documents,” and “[i]nconsistent, vague, or implausible responses from management or employees arising from inquiries or analytic procedures.” AU § 316.25. Indeed, according to the accounts payable and accounts receivable supervisors, they did not have any dealings with the auditors. Thus, to the extent there were unexplained items, BDO would have been forced to rely solely on the representations of senior management and documents that were not timely produced (see discussion infra).

382. As detailed below, specific fraud indicators were present at Suprema at least with respect to the Company’s increased sales volume, the fact that the Company’s most significant customers had accounts that were seriously past due, and the fact that the Company sent out payments in connection with its alleged hard cheese sales without corresponding invoices.

(a) **Increased Sales Volume**

383. SAS 56, AU § 329.04-.05, required BDO to analytically review and compare the Company’s reported net sales in 2000 and 2001 to expectations developed independently by BDO based on Suprema’s business and the industry in which it operated. Suprema’s management attributed its astronomical growth of over 50% in each of 2000 and 2001 to increases in net sales to its existing customers. Specifically, in the section of its 2001 Form 10-K entitled Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”), the Company represented as follows:

This increase reflects an increase primarily in the sales volume for food service products ***manufactured by us, most of which represented sales to existing customers***, partially offset by the lower average selling price for cheese to our customers, as a result of the lower average CME Block Cheddar Market. (2001 Form 10-K at 17 (emphasis added))

384. This explanation was false – as detailed herein, the increase was attributable almost exclusively to fictitious sales of bulk cheese that Suprema claimed to have purchased from domestic suppliers, not cheese that was manufactured by Suprema. Furthermore, this

explanation fails to explain why or how these few existing customers were able to increase their purchases by over 50% for two years in a row in direct conflict with industry norms. A more logical explanation would have been a significant increase in Suprema's market share (that is, growth in the number of its customers), but this was not the case.

385. BDO knew, based on the Company's disclosure of its major customers in Note 12 to its 2001 financial statements, that five customers comprised 64% of the Company's total sales. It also knew or recklessly disregarded that, despite management's representations, the vast majority of cheese that these customers were purchasing was *not* manufactured by Suprema. The logical audit response to these conditions would have been to thoroughly investigate these major customers to understand the nature and reasonableness of these alleged sales by gaining an understanding of these major customers' operations from independent sources. Indeed, this would have gone hand-in-hand with the need to verify these customers' ability to repay the material receivables balances.

386. In fact, given the multitude of fraud risk factors present at the Company, the implausibility of management's explanation of the Company's dramatic increase in revenues, and BDO's inability to corroborate managements' representations, BDO should have undertaken additional procedures necessary to reduce the risk of misstatement to a low level (see, AU § 312) that would have uncovered this fraud or, if it was unable to obtain sufficient, competent evidential matter, to either issue a qualified audit opinion based on the various scope limitations or to withdraw from the audit. (AU § 316.36)

(b) Seriously Past Due Accounts and Growth of Accounts Receivable

387. According to the supervisor of accounts receivable, all of Suprema's significant hard cheese customers had accounts that were seriously past due, and BDO was aware of that fact. Relatedly, the Company experienced dramatic growth in 2000 and 2001 in its accounts

receivable. (See 2000 Form 10-K at F-2; 2001 Form 10-K at F-2) Management attempted to explain these facts by stating that its significant customers had “extended payment terms.” (See 2001 10-K at 20) These extended payment terms were supposedly given to “significant customers to which sales increased at a greater rate than [Suprema’s] aggregate sales.” These significant customers were the five entities controlled by Gaglio, Zambas and Quattrone. According to Janney Montgomery, Suprema offered the extended payment terms because it took 10 months for Suprema’s hard cheese to age, and that the Company shipped its hard cheese before it was fully aged. (Janney Montgomery report, Nov. 14, 2001 “the company will offer favorable terms to induce customers to take possession of the product and to age the cheese in their own warehouses.”)

388. BDO should have recognized that the Company’s explanation made absolutely no sense. If the Company was truly shipping cheese to food distributors, who were then selling it to restaurants, caterers and the like (as it claimed in its public filings, see 2001 Form 10-K at 1), those distributors would not be willing to purchase and warehouse unusable cheese. Nor would the alleged end-users be willing to take on thousands of pounds of cheese months before it was suitable for consumption. It simply would make no economic sense.

389. Indeed, as detailed herein, none of Suprema’s alleged customers for hard cheese had adequate facilities to store the enormous quantities of cheese they were supposedly purchasing (see discussion at ¶¶ 66-119). Nor did Suprema maintain anywhere near the amount of inventory that it would have had to have if it was aging its own cheese for 10 months (see 2001 Form 10-K at F-8 (company claimed to have approximately \$49 million of “finished goods” in inventory, nowhere near 10 months worth of cheese, which would have been worth approximately \$350 million)).

390. Thus, management's representations about its past due accounts, accounts receivable and lack of inventory were implausible, and had BDO looked behind those representations, it would have discovered the instant fraud. Its failure to do so is particularly egregious in view of the fact that the Company's ability to borrow against its credit facility was directly tied to its accounts receivable and inventory (see discussion supra at ¶¶ 53-55).

(c) **Missing Invoices**

391. Suprema's accounts payable supervisor indicated that certain invoices relating to the Company's alleged transactions in the hard cheese business did not exist, and that they would "magically" be produced by senior management of Suprema after payments had already been made. Indeed, this employee could recall at least one occasion when the auditors were told that an invoice had been misfiled and could not be found. Had the auditors simply made inquiry of this employee and her successor, as they were obligated to do in view of their position as key accounting personnel, they would have become aware of this obvious red flag.

(7) **Denial of Access and Unusual Delays in Providing Requested Information**

392. Had BDO conducted an audit in accordance with GAAS, it would have recognized "[p]roblematic or unusual relationships between the auditor and client," including the denial of "access to records, facilities, certain employees, customers, vendors, or others from whom audit evidence might be sought," and that there were "unusual delays by the entity in providing requested information." AU § 316.25

393. As detailed above, BDO was denied access to critical accounting personnel, the supervisors for accounts payable and accounts receivable. These employees would have provided a plethora of information had they been asked, as described in detail above.

394. Furthermore, according to the plant supervisor at the Ogdensburg facility, he never saw BDO at the Ogdensburg facility, and if they had been there, he would have known.

Had they visited this facility (which Suprema claimed manufactured only soft cheese), or spoken to employees at this facility, they would have learned, once again, that Suprema never paid its bills on time and, as a result, had significant problems with its haulers and suppliers in connection with its soft cheese business.

395. BDO also failed to make any inquiry of Suprema's largest suppliers. As detailed above, approximately two-thirds of the Company's payables were made to a total of six entities. In order to satisfy GAAS with respect to the existence of potential related parties (see discussion below), and to determine the adequacy of Suprema's disclosures as to concentrations of risk (see discussion below), BDO should have taken steps to determine the ownership and affiliations of these entities, as well as the nature of their dealings with Suprema. Had BDO made any inquiry of these entities, or conducted any independent investigation into these entities, they would have discovered that four of them were nothing more than "invoicing business" for Jack Gaglio, Suprema's largest single customer, utilized solely to conceal the true source of Suprema's alleged cheese purchases. It would have also discovered that the remaining two alleged suppliers, Noram and Packing Products, were nothing more than alter-egos of Tricon and Battaglia, Suprema's second and third largest customers. In fact, as noted above, the two suppliers whose representatives would speak with Lead Counsel, Whitehall and St. Charles, both indicated that neither BDO nor any of the Underwriters ever contacted them in connection with any audit of Suprema or the Secondary Offering.

E. BDO VIOLATED GAAS BY FAILING TO INVESTIGATE RELATED PARTY TRANSACTIONS

396. SAS 45, Related Parties, requires the auditor to perform procedures "to identify related party relationships and transactions and to satisfy himself concerning the required financial statement accounting and disclosure." AU § 334.01. Indeed, auditors must conduct

procedures aimed at uncovering related party transactions “even if the auditor has no reason to suspect that related party transactions or control relationships exist.” AU § 334.04.

397. AU § 334.06 specifically warns that “auditors should... be aware of the possibility that transactions with related parties may have been motivated solely, or in large measure, by conditions similar to the following: (a) lack of sufficient working capital or credit to continue to the business; (b) an urgent desire for a continued favorable earnings record in the hope of supporting the price of the company’s stock; (c) an overly optimistic earnings forecast; [and] (d) dependence on a single or relatively few products, customers, or transactions for the continuing success of the venture....” Each of these risk factors was glaringly obvious at Suprema, as detailed above.

398. According to AU § 334.07, “[d]etermining the existence of [relationships] requires the application of specific audit procedures...” AU § 334.08 includes the following procedures for identifying the existence of previously undetermined relationships: “(e) ***Review the extent and nature of business transacted with major customers, suppliers, borrowers, and lenders for indications of previously undisclosed relationships***... [and] (g) Review accounting records for large, unusual, or nonrecurring transactions or balances, paying particular attention to transactions recognized at or near the end of the reporting period....” (Emphasis added) AU § 334.09 then provides that: “[a]fter identifying related party transactions, the auditor should apply the procedures he considers necessary to obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements. The procedures should be directed toward obtaining and evaluating sufficient competent evidential matter and should extend beyond inquiry of management.”

399. Moreover, AU § 334.10 provides as follows:

When necessary to fully understand a particular transaction, the following procedures, which might not otherwise be deemed necessary to comply with generally accepted auditing standards, should be considered:

- (a) Confirm transaction amount and terms, including guarantees and other significant data, with the other party or parties to the transaction.
- (b) Inspect evidence in possession of the other party or parties to the transaction.
- (c) Confirm or discuss significant information with intermediaries, such as banks, guarantors, agents, or attorneys, to obtain a better understanding of the transaction.
- (d) ***Refer to financial publications, trade journals, credit agencies, and other information sources when there is reason to believe that unfamiliar customers, suppliers, or other business enterprises with which material amounts of business have been transacted may lack substance.***
- (e) ***With respect to material uncollected balances, guarantees, and other obligations, obtain information about the financial capability of the other party or parties to the transaction. Such information may be obtained from audited financial statements, unaudited financial statements, income tax returns, and reports issued by regulatory agencies, taxing authorities, financial publications, or credit agencies. The auditor should decide on the degree of assurance required and the extent to which available information provides such assurance.***

(Emphasis added)

400. Suprema transacted a significant concentration of its sales and purchases with a handful of customers and suppliers. In view of this fact and the additional red flags set forth above, BDO was obligated to undertake these critical audit procedures to ensure there were no undisclosed related party transactions. Had it done so, it would have been alerted to the fact that there were greater concentrations among customers than had previously been disclosed by Suprema and that these major, interrelated customers were in fact controlled by the same people as Suprema's major suppliers, a fact that was never disclosed. Indeed, simple reviews of D&B reports and direct contact with these various entities would have revealed that the vast majority of Suprema's hard cheese business was nothing more than a sham.

401. Even though Lead Counsel has not uncovered any evidence that any of these entities were “related” to Suprema, the knowledge that the major customers and suppliers were related to one another and that such relationships and concentrations of risk had not been disclosed or made known to BDO would have raised significant doubts as to the true nature of such dealings, the motivations of Suprema management, the reliability of management’s representations, and the fairness of Suprema’s financial statements in conformity with GAAP. BDO’s failure to undertake *any* investigation with respect to these interrelated parties was, at the very least, reckless.

F. BDO VIOLATED GAAS BY FAILING TO OBTAIN SUFFICIENT COMPETENT EVIDENTIAL MATTER

402. SAS 31, Evidential Matter (as amended by SAS 48 and SAS 80), states: “Most of the independent auditor’s work in forming his or her opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements.” AU § 326.02. SAS 31 further indicates: “The independent auditor’s direct personal knowledge, obtained through physical examination, observation, computation, and inspection, is more persuasive than information obtained indirectly.” AU § 326.21(c). Additionally, SAS 19, Client Representations, states that representations from management “are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit.” AU § 333.02. In the absence of sufficient competent evidential matter, “an opinion on financial statements would not be warranted.” *Id.*

403. Here, BDO failed to obtain sufficient competent evidential matter at least with respect to related parties, Suprema’s concentration of risk, its sales and accounts receivable, and inventory, and its ability to continue as a “going concern.”

(1) Concentration of Risk

404. AICPA Statement of Position 94-6, Disclosure of Certain Significant Risks and Uncertainties (“SOP 94-6”), requires an entity to disclose, among other things, *concentrations in the volume of business transacted with a particular customer or supplier, concentrations in revenue from particular products*, and concentrations in the available sources of supply of materials.

405. Notes 11 and 12 to Suprema’s 2000 financial statements and note 12 to its 2001 financial statements disclosed that Suprema had a concentration of business with essentially five major customers: A&J, Tricon, Battaglia, Noble and California Goldfield. However, these notes to Suprema’s financial statements did not disclose:

- (i) That three of those customers were alter egos of one man: Jack Gaglio;
- (ii) That there was a significant concentration in the volume of business it conducted with a handful of major suppliers in the alleged hard cheese business;
- (iii) That these customers and suppliers were related to one another; or
- (iv) That a significant concentration of its business revolved around purchases and sales of domestic bulk hard cheese.

406. On their face, Suprema’s invoices and check registers revealed that it purchased hundreds of thousands of pounds of bulk hard cheese from a total of six suppliers (the four Gaglio Sham Cheese Suppliers, Packing Products and Noram), and that it then resold that bulk cheese to five customers (the three Gaglio Entities, Battaglia and Tricon) to generate approximately two-thirds of its revenues and nearly all of its growth. Suprema’s documents also reveal that Suprema wrote checks to LNN and CMM, which were deposited into the accounts of WSC and WCC, respectively, and from these same accounts WSC and WCC wrote checks back to Suprema. Thus, assuming for the sake of argument that these transactions had actually

occurred, which they did not, had BDO conducted the appropriate audit procedures necessary to identify related parties and to determine Suprema's compliance with SOP 94-6, it would have known that Suprema had materially misstated its concentrations of risk relating to its customers, and that it had completely omitted any disclosure with respect to its concentrations of risk relating to its suppliers and what has since been described by the defendants as Suprema's "hard cheese brokering business."

(2) Sales and Accounts Receivable

407. SAS 31, Evidential Matter (as amended by SAS 48 and SAS 80), states: "Most of the independent auditor's work in forming his or her opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements." AU § 326.02. "Assertions about valuation ... address whether asset, liability, equity, revenue, and expense components have been included in the financial statements at appropriate amounts ... management asserts that trade accounts receivable included in the balance sheet are stated at net realizable value. AU § 326.07. The evidential matter obtained should be sufficient for the auditor to form conclusions concerning the validity of the individual assertions embodied in the components of financial statements. AU § 326.13.

408. One of the principle reasons for Suprema's negative cash flows from operations in spite of its increasing profitability was Suprema's accelerating increase in its accounts receivable balances. In fact, accounts receivable were increasing even faster than net sales. Net sales rose by 51% in 2001 compared to 2000 while accounts receivable as of June 30, 2001 were 63% higher than at June 30, 2000.

409. Moreover, as of June 30, 2001, accounts receivable represented approximately 89 day's of sales. The fact that Suprema's average receivable balance represented almost three month's of sales activity should have alerted BDO to the specific audit risk with respect to the

valuation of these assets. Based on Suprema's disclosure of its major customers, BDO knew that the accounts receivable were concentrated with only a handful of customers, and the Company had asserted that these major customers had been granted extended payment terms, as discussed above. Given the materiality of accounts receivable, which were over \$100 million as of June 30, 2001 compared to the Company's total shareholders' equity of only \$42.8 million and net earnings of \$8.8 million, it was incumbent on BDO to gather sufficient evidence to ascertain the validity of management's assertion as to the valuation of its accounts receivable which were required to be reported at net realizable value.

410. The mere fact that the Company's allowance for doubtful accounts had remained exactly the same at June 30, 2001 and 2000 in spite of a 63% increase in outstanding balances should have raised significant doubt as to the adequacy of such allowance. Such allowance represented less than 1% of the outstanding receivables. Because of the relative materiality and importance of the receivables valuation assertion, the audit evidence should have been obtained from independent sources outside the Company.

411. Had BDO obtained credit reports, D&B reports and audited financial statements of the entities comprising Suprema's major customers, it would have learned that such entities lacked the economic substance to repay the outstanding receivable balances. Had BDO performed the audit procedures required by GAAS related to the accounts receivable, it would also have determined that the sales which had been recorded resulting in the receivables were without substance and fictitious. Further, BDO would have learned of the relationships among the major customers which had not been disclosed by Suprema which should then have led to an extension of audit procedures to determine the true nature of these transactions.

(3) Inventory

412. BDO failed to obtain sufficient competent evidential matter with respect to the Company's inventory. AU § 326 provides illustrations as to the obligations of an auditor in testing a Company's inventory. Included among the steps that an auditor ought to take in this regard are the following: (a) "observing physical inventory counts;" (b) "comparing inventories with a current sales catalogue and subsequent sales and delivery reports;" (c) "using the work of specialists to corroborate the nature of specialized products" (d) "analytically comparing the relationship of inventory balances to recent purchasing, production, and sales activity;" (e) "examining an analysis of inventory turnover;" (f) "analytically comparing the relationship of inventory balances to anticipated sales volume;" (g) "touring the plant;" and (h) "inquiring of production and sales personnel concerning possible excess or obsolete inventory items."

413. Furthermore, AU § 336 provides that during an audit, "an auditor may encounter complex or subjective matters potentially material to the financial statements. Such matters may... require using the work of a specialist to obtain competent evidential matter." AU § 336.06. AU § 336.07 provides examples of the types of matters for which it is appropriate for an auditor to use a specialist, including valuation of inventory and "determination of physical characteristics relating to quantity on hand or condition...."

414. The employment of all of these techniques was more than warranted here. As detailed above, Suprema's inventory had increased dramatically over time based solely on increased sales to its existing customers (see ¶¶ 45-50). Further, the amounts that Suprema could draw down on its credit facility were directly tied to its inventory, and that facility was drawn down to the maximum allowable extent (see ¶¶ 52-55). Finally, it supposedly took 10 months to properly age Suprema's hard cheese inventory, yet the Company had no where near 10 months worth of inventory, or approximately \$350 million worth of cheese (see ¶ 48). In order for BDO

to properly assess Suprema's financial statements, it would have had to conduct a detailed analysis of the quality and value of Suprema's inventory on hand, as well as its inventory turn-over and the relationship of inventory balances to recent purchasing, production, and sales activity. Had BDO conducted these analyses, it would have discovered that approximately 60% of Suprema's business was pure fiction and that Suprema had not shipped the quantities of hard cheese that it claimed to have shipped during the Class Period (see ¶¶ 62-119). It also would have discovered that, with respect to the hard cheese that it did ship and store, much of that cheese was adulterated and not fit for human consumption (see ¶¶ 125-130).

(4) Going Concern Assessment

415. SAS 59 states that the auditor has a responsibility to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable time, not to exceed one year from the date of the financial statements being audited. The auditor's evaluation is based on his knowledge of relevant conditions and events that exist at or have occurred prior to the completion of fieldwork. AU § 341.02. BDO's audit report for fiscal years 2000 and 2001 did not contain any adverse opinion or a disclaimer of opinion nor qualification or modification as to audit scope, accounting principles, or uncertainties, including the ability of Suprema to continue as a going concern. Nevertheless, within one year after the "clean" audit report was issued, the Company filed for bankruptcy. Had BDO's audit procedures been carried out in accordance with GAAS, it would have determined that Suprema's accounts receivable were substantially overstated, along with the sales transactions which gave rise to such receivables, and the required adjustments to write down the receivables and reduce sales would have had a material adverse impact on Suprema's shareholders' equity, net current assets, and net earnings. These findings would have also led BDO to determine the undisclosed violations of Suprema's revolving Credit Facility loan covenants and the need to reclassify the entire

\$113.7 million obligation (as of September 30, 2001) as a current liability. Collectively, all of these adverse changes in Suprema's reported results and financial condition would have given rise to significant uncertainty as to the Company's ability to continue as a going concern.

G. BDO VIOLATED GAAS BY FAILING TO TAKE INTO ACCOUNT SUPREMA'S WEAK INTERNAL CONTROLS

416. SAS 55 requires the auditor to obtain an understanding of internal control sufficient to plan the audit by performing procedures to understand the design of controls relevant to an audit of financial statements, and whether they have been placed in operation. AU § 319.02. After obtaining this understanding, the auditor assesses control risk for the assertions embodied in the account balance, transaction class, and disclosure components of the financial statements. AU § 319.03. The auditor uses the knowledge provided by the understanding of internal control and the assessed level of control risk in determining the nature, timing, and extent of substantive tests for financial statement assertions. AU § 319.05.

417. BDO's audit report on Suprema's 2001 financial statements was dated August 7, 2001 and was included in the Company's Annual Report on Form 10-K filed on September 28, 2001. BDO's audit report dated August 7, 2001 was reissued and included in the Company's amended registration statement on Form S-2 filed on November 6, 2001. Although BDO did not audit any periods subsequent to June 30, 2001, it was engaged on or about December 21, 2001 (approximately six weeks after reissuing its audit report on 2001) to assist the Company in investigating its prior reported financial results.

418. On February 18, 2002, BDO resigned as the independent auditor for Suprema citing as the reason for its resignation, among other things, BDO's inability to determine whether (a) the Company has the internal controls necessary to develop reliable financial statements, (b) the Company's prior financial statements contained any material inaccuracies, or (c) BDO could

continue to rely on the representations of the Company's management. Because BDO's investigation was of the Company's prior reported results (upon which BDO had issued an unqualified audit report), and because of the short period of time that had elapsed between the issuance of its audit report and the subsequent investigation, BDO's publicly stated reasons for resigning amount to an admission that it had failed to obtain the required understanding of Suprema's internal controls during the course of originally conducting its audits of such prior periods. Further, BDO's admission that it was no longer in a position to determine whether such prior financial statements contained material inaccuracies was, in substance, a modification of such previously issued report amounting to a disclaimer of its previously issued audit opinion.

419. In sum, as Suprema's long-time auditor, BDO had unfettered access to Suprema's books and records throughout the audit period, and it certainly had knowledge of the requirements of GAAS, as detailed above. Had BDO conducted its audits in accordance with GAAS, it would have reacted to the numerous, obvious "red flags" set forth above and, in so doing, would have discovered the truth about Suprema's operations. Instead, BDO ignored those red flags and knowingly or recklessly failed to employ even the most basic procedures designed to detect fraud or to ensure that the financial statements were free from material misstatement. Thus, in effect, BDO abandoned its role as "independent auditor" and, in the process, knowingly or recklessly issued an unqualified audit opinion on Suprema's materially false and misleading financial statements, which had the effect of artificially inflating Suprema's stock price. From all of these facts, there is a strong inference that BDO acted with scienter.

420. For the same reasons set forth above at ¶¶ 316-320, the fraud-on-the-market doctrine is applicable to this Count. As a result of the false and misleading statements and omissions alleged herein, the market price of Suprema common stock was artificially inflated.

Lead Plaintiff and the members of the Class relied upon either the integrity of the market or upon the statements and reports of BDO in purchasing Suprema stock at those artificially inflated prices.

421. As a direct and proximate result of the BDO's conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their purchases of Suprema common stock. Had Lead Plaintiff and the other members of the Class known of the material adverse information not disclosed by BDO, or been aware of the truth behind BDO's material misstatements, they would not have purchased Suprema common stock at artificially inflated prices.

422. This claim was brought within one year after the discovery of this fraud and within three years of the making statements alleged herein to be materially false and misleading.

423. By virtue of the foregoing, BDO has violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and is liable to Lead Plaintiff and the members of the Class, each of whom has been damaged as a result of such violation.

COUNT SIX

Violations of Section 20 of the Exchange Act

424. Lead Plaintiff repeats and realleges each and every of allegation above, as if set forth fully herein. This Count is brought pursuant to Section 20 of the Exchange Act, 15 U.S.C. § 78t(a), on behalf of all members of the Class against defendants Cocchiola and Venechanos.

425. For all the reasons set forth above in Count Four above, Suprema is liable to Lead Plaintiff and the members of the Class who purchased Suprema common stock based on the materially false and misleading statements and omissions set forth above, pursuant to 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated

thereunder. But for the fact that the Company has filed for bankruptcy, it would be named as a defendant in Count Four.

426. Throughout the Class Period, defendants Cocchiola and Venechanos were controlling persons of Suprema within the meaning of Section 20(a) of the Exchange Act, as particularly set forth in Count Three above, and culpable participants in Suprema's fraud, as more particularly set forth in Count Four above.

427. As a result of Suprema's false and misleading statements and omissions alleged herein, the market price of Suprema common stock was artificially inflated. Under such circumstances, the presumption of reliance available under the "fraud on the market" theory applies, as more particularly set forth in Count Four above. The members of the Class relied upon either the integrity of the market or upon the statements and reports of the defendants in purchasing Suprema stock at artificially inflated prices.

428. As a direct and proximate result of the wrongful conduct by Suprema, Lead Plaintiff and the other members of the Class suffered damages in connection with their purchases of Suprema common stock. Had Lead Plaintiff and the other members of the Class known of the material adverse information not disclosed by Suprema, or been aware of the truth behind its material misstatements, they would not have purchased Suprema common stock at artificially inflated prices.

429. This claim was brought within one year after the discovery of this fraud and within three years of the making statements alleged herein to be materially false and misleading.

430. By virtue of the foregoing, Cocchiola and Venechanos are liable pursuant to Section 20(a) of the Exchange Act to Lead Plaintiff and the members of the Class, each of whom has been damaged as a result of Suprema's underlying violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

1. Declaring this action to be a proper class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;
2. Awarding Lead Plaintiff and the Class compensatory damages and/or rescission;
3. Awarding Lead Plaintiff and the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees and other costs;
4. Awarding extraordinary, equitable and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict the defendants' assets to assure Lead Plaintiff has an effective remedy, and any appropriate state law remedies; and
5. Awarding such other relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Lead Plaintiff hereby demands a trial by jury in this action of all issues so triable.

Dated: January 30, 2004

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