UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **WALDEN W. O'DELL,** **Defendant.**	**CIVIL ACTION NO.** **COMPLAINT**

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

SUMMARY

1. This action seeks an order, pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), requiring Walden W. O'Dell, former chief executive officer ("CEO") of Diebold, Incorporated ("Diebold"), to reimburse Diebold for bonuses and other incentive-based and equity-based compensation, received during the 12-month period following the issuance of Diebold's financial statements contained in its annual report for fiscal year 2003, which was filed with the Commission on March 2, 2004. Diebold was required to restate its financial statements for that fiscal year, as well as other subsequent reporting periods, as a result of misconduct. Diebold restated those financial statements on September 30, 2008.

2. O'Dell was Diebold's chief executive officer from 1999 through December 12, 2005. During the 12-month period following the issuance of Diebold's 2003 Form 10-K, which contained the company's annual financial statements for that fiscal year, O'Dell received from the company $470,016 in cash bonuses, 30,000 shares of Diebold stock, and stock options for an additional 85,000 shares of stock. Pursuant to Section 304 of the Sarbanes-Oxley Act, O'Dell is

required to reimburse Diebold for these bonuses and incentive-based and equity-based compensation.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to Section 3(b) of the Sarbanes-Oxley Act [15 U.S.C. § 7202(b)] and Sections 21 and 27 of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78u and 78aa].

4. Venue is proper in this district because certain of the acts, practices, and courses of business alleged in this Complaint occurred within this judicial district.

DEFENDANT

5. Walden O'Dell, age 64, is a resident of Ohio. He was the CEO and Chairman of Diebold from 1999 to 2005. He is currently retired.

RELATED ENTITY

6. Diebold is an Ohio corporation headquartered in North Canton, Ohio. Diebold manufactures and sells ATMs, bank security systems, and electronic voting machines. Diebold's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and is listed on the New York Stock Exchange.

FACTS

7. In 2003, and other years, Diebold engaged in fraudulent accounting practices in order to inflate earnings to meet forecasts. These fraudulent accounting practices included (i) improper use of "bill and hold" accounting; (ii) manipulating reserves and accruals; (iii) improperly delaying and capitalizing expenses; (iv) use of cookie jar reserves; and (v) writing up the value of used inventory.

8. As a result of these practices, Diebold filed annual, quarterly, and current reports with the Commission, and issued press releases, that contained material misstatements and

omissions concerning the company's financial performance. To correct the recent misstatements, on September 30, 2008, Diebold restated its financial statements for the years 2003 through 2006, and the first quarter of 2007, in its Form 10-K for 2007.

Fraudulent Revenue Recognition -- F-Term Orders

9. In 2003, and other years, Diebold prematurely recognized revenue on many of the transactions it called "F-term" orders. Diebold recognized revenue on F-term orders, or Factory orders, when it shipped products from its factory to a Diebold warehouse. Under generally accepted accounting principles ("GAAP"), normally a product must be shipped to the customer or services must be rendered before revenue can be recognized.

10. With a "bill and hold" transaction, however, revenue can be recognized on the sale of products prior to delivery to a customer if the "bill and hold" criteria are met. The criteria for a bill and hold transaction include: (i) the buyer, not the seller, requests that the transaction be on a bill and hold basis; (ii) the buyer has a substantial business purpose for ordering on a bill and hold basis; (iii) there is a fixed delivery schedule that is reasonable and consistent with the buyer's business purpose; (iv) the seller does not retain any specific performance obligations such that the earnings process is incomplete; and (v) the products are ready for shipment.

11. Diebold prematurely recognized revenue on certain F-term orders by improperly using bill and hold accounting. A significant number of Diebold's F-term orders failed to satisfy the stringent bill and hold criteria.

12. Under GAAP, to use bill and hold accounting, the customer, not Diebold, must request that the transaction be on a bill and hold basis, and the customer must have a substantial business purpose for ordering on a bill and hold basis. Many of Diebold's F-term orders failed to satisfy these criteria.

13. With many F-term orders, Diebold asked customers to sign Diebold's form contract -- its standard Memorandum of Agreement ("MOA") -- which contained a boilerplate clause stating that the customer had requested Diebold to hold items for the customer's convenience. Diebold then recognized revenue when the company shipped the products from its factory to its warehouse in accordance with a "ship to warehouse" date contained in the MOA. Notwithstanding the language in the MOA, Diebold's accounting was not in accordance with GAAP because generally Diebold's customers had not requested that the transaction be on a bill and hold basis.

14. In addition, certain F-term orders also failed to meet other bill and hold criteria. For example, to recognize revenue on a bill and hold basis, there must be a fixed delivery schedule, the seller must not retain any specific performance obligations such that the earnings process is incomplete, and the products must be complete and ready for shipment.

15. Many of Diebold's F-term contracts failed to meet these criteria. For instance, these transactions generally did not have fixed delivery schedules. Moreover, in certain instances when Diebold recognized revenue on ATMs shipped from its factory to its warehouse, the ATMs were not complete because software had not yet been installed and/or quality testing had not yet been performed. In addition, on certain occasions, Diebold recognized revenue on a bill and hold basis on certain products and services for which bill and hold accounting is never appropriate, including software orders and professional services.

16. The bill and hold criteria are well established. Many of the F-term orders failed to satisfy the criteria for bill and hold accounting. As a result of fraud and other misconduct, Diebold prematurely recognized revenue on those transactions.

17. In 2008, Diebold restated its financial statements for the reporting periods from 2003 through the first quarter of 2007, and announced that going forward it would recognize revenue upon customer acceptance of goods or services. In its restatement, Diebold retroactively applied this new revenue recognition policy which, for 2003, resulted in a decrease of the company's earnings before taxes of $29.5 million. Diebold's premature recognition of revenue on certain F-term orders resulted in revenue and earnings misstatements in each of Diebold's quarterly and annual financial statements from 2003 through the first quarter of 2007.

Manipulating Reserves and Accruals

Under-accrued Liabilities

18. Under GAAP, an issuer is required to accrue for anticipated liabilities. In 2003, and other years, Diebold inflated earnings by failing to accrue for known liabilities. For example, Diebold knew that the liability account for the company's Long Term Incentive Plan ("LTIP") -- an employee benefit plan intended to reward long term company performance -- was under-accrued for much of 2003.

19. To accrue for the LTIP in 2003 without negatively impacting earnings, Diebold offset the liability by improperly reducing other accounts, including an unreconciled accounts payable account and an unreconciled deferred revenue account. In 2003 alone, Diebold's manipulation of these accounts had the effect of improperly under-accruing Diebold's liabilities, and overstating Diebold's reported pre-tax earnings by at least $16 million.

20. From at least 2002 through 2005, as a result of fraud and other misconduct, Diebold failed to properly accrue for other liabilities, including its North American sales commission accrual (commissions to be paid to sales personnel) and its team incentive accrual (incentive pay to be paid to service personnel). In 2005, Diebold restated its financial statements to correct errors in certain accounts for the years 2002 to 2004 and the first quarter of 2005,

including the North American sales commission accrual account. In a letter to the audit committee, a Diebold officer acknowledged that this account was underaccrued because "[an accounting manager] felt that given the need to meet forecast, these [commission accrual] adjustments should be deferred until a later date."

Manipulating Reserves

21. Under GAAP, a liability should be released upon the occurrence of a specified event or when the estimate should be revised in response to new information. Moreover, maintaining general or excess reserves (i.e., cookie jar reserves) are expressly prohibited under GAAP.

22. In 2003, and later, Diebold manipulated certain reserves in order to manage earnings. For example, to meet internal forecasts, a Diebold accounting manager improperly reduced the Master Purchase Agreement accrual (a liability account established for payment of customer rebates) to inflate net income in the fourth quarter of 2003. There was no legitimate accounting basis for this entry. Indeed, this and other improper entries were subsequently reversed in later quarters.

23. Diebold also used cookie jar reserves to manage earnings. For example, in 2003, Diebold established a $4.5 million corporate obsolescence and excess inventory account. This corporate inventory account was a cookie jar reserve that had no legitimate accounting basis.

Improperly Delaying and Capitalizing Expenses

Division 35

24. In 2003, and subsequent years, Diebold failed to recognize certain expenses as incurred, and instead improperly deferred these expenses or spread the expenses over several reporting periods, which artificially increased net income in several fiscal years. For example, Diebold engaged in improper expense deferrals in the "Division 35" account.

25. Division 35 was a finished goods inventory account. In 2003, and subsequent years, Diebold knew the value of the account was overstated. Nevertheless, Diebold improperly failed to reconcile the account until 2005. In 2003, the overstatement of the Division 35 account inflated Diebold's earnings by $4.3 million.

The Oracle Project

26. In 2002, Diebold began a project, which is still ongoing, to replace many of its older internal software systems with Oracle software. Under GAAP, capitalization of a software asset requires companies to properly capture internal and external costs involved with the various stages of software development. Consequently, Diebold was permitted to capitalize certain costs associated with the Oracle project. However, in 2003, and subsequent years, Diebold improperly capitalized information technology costs that should have been expensed in the periods they were incurred.

27. In certain quarters when Diebold's earnings were short of forecast, Diebold made top-level entries to fraudulently capitalize additional expenses to the Oracle project. These improper "additions," which often were round numbers, had the effect of materially reducing reported expenses, and thus increasing reported earnings. In 2003, Diebold's improper capitalization of expenses to the Oracle project increased Diebold's pre-tax earnings by $.5 million.

Used Equipment Write-Ups

28. Under GAAP, used equipment inventory should be valued at the lower of cost or market. In 2003, and subsequent years, Diebold improperly "wrote-up" the value of certain used inventory, such as used ATMs. These "write-ups" had the effect of reducing cost of goods sold and thus inflating earnings. The company used these "write-ups" in order to meet forecasts.

29. For example, in the fourth quarter of 2003, Diebold improperly wrote up the value of parts contained in some used ATMs by $650,000. Tellingly, these parts were never removed from the ATMs, and the ATMs were later scrapped.

30. These used equipment "write-ups," which were listed on several "opportunity lists," had no legitimate accounting basis and were used improperly to inflate Diebold's earnings.

Diebold's 2008 Restatement

31. As result of Diebold's improper, and in many instances fraudulent, accounting practices from at least 2002 to 2007, the financial statements that Diebold incorporated into its periodic filings and other materials disseminated to the investing public were materially false and misleading. Diebold's improper accounting practices materially inflated the company's reported pre-tax earnings in 2003, and other years. To correct the more recent misstatements, on September 30, 2008, Diebold restated its financial statements for the years 2003 through 2006, and the first quarter of 2007, in its Form 10-K for 2007.

O'Dell Received Bonuses and Other Incentive-Based and Equity-Based Compensation

32. During the 12-month period following the issuance of Diebold's 2003 Form 10-K on March 2, 2004, which contained the company's annual financial statements for 2003, O'Dell received from Diebold $470,016 in cash bonuses, 30,000 shares of Diebold stock, and stock options for 85,000 shares of Diebold stock. These were the last bonuses, stock awards, and stock options that O'Dell received from Diebold before resigning from the company on December 12, 2005.

33. O'Dell has never reimbursed Diebold for any portion of these bonuses, stock awards, or stock options.

CLAIM FOR RELIEF

Failure to Reimburse
Violations of Section 304 of the Sarbanes-Oxley Act [15 U.S.C. § 7243]

34. Paragraphs 1 through 33 are realleged and incorporated by reference.

35. On March 2, 2004, Diebold issued its 2003 Form 10-K, which contained the company's annual financial statements for that fiscal year. Diebold was required to restate those financial statements due to material noncompliance of the issuer, as a result of misconduct, with financial reporting requirements under the federal securities laws.

36. Defendant, who was Diebold's chief executive officer, has failed to reimburse Diebold for bonuses and other incentive-based or equity-based compensation he received from Diebold during the 12-month period following the issuance of Diebold's 2003 Form 10-K, which contained the company's annual financial statements for that fiscal year.

37. As a result of the conduct described above, Defendant violated Section 304 of the Sarbanes-Oxley Act, 15 U.S.C. § 7243.

PRAYER FOR RELIEF

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

A. Ordering Defendant to reimburse Diebold for bonuses and other incentive-based and equity-based compensation he received from Diebold, pursuant to Section 304 of the Sarbanes-Oxley Act, 15 U.S.C. § 7243; and

B. Granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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