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3:03-CV-01785 SECURITIES V. KLINGER

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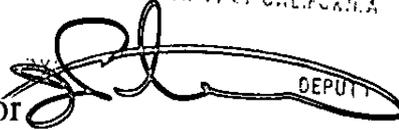
ORIGINAL

1 Thomas A. Zaccaro, Cal. Bar No. 183241  
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FILED

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA



5 Attorneys for Plaintiff  
6 Securities and Exchange Commission  
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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 KRIS KLINGER,

16 Defendant.

Case No.

03CV 1785-J(JMA)

COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS

17 Plaintiff Securities and Exchange Commission ("Commission") alleges as  
18 follows:

19 **JURISDICTION AND VENUE**

20 1. This Court has jurisdiction over this action pursuant to  
21 Sections 21(d)(1), 21A(a), 21(e) and 27 of the Securities Exchange Act of 1934  
22 ("Exchange Act"), 15 U.S.C. §§ 78(u)(d)(1), 78u-1(a), 78u(e) & 78aa. Defendant  
23 has, directly or indirectly, made use of the means or instrumentalities of interstate  
24 commerce, of the mails, or of the facilities of a national securities exchange in  
25 connection with the transactions, acts, practices and courses of business alleged in  
26 this Complaint.

27 2. Venue is proper in this district pursuant to Section 27 of the  
28 Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts,



1 practices and courses of conduct constituting violations of the federal securities  
2 laws occurred within this district.

3 **SUMMARY**

4 3. This case involves unlawful insider trading in the securities of  
5 Crossman Communities, Inc. ("Crossman"). During January 2002, Defendant Kris  
6 Klinger ("Klinger"), in the course of his duties as a senior loan officer at a bank,  
7 learned about the pending acquisition of Crossman by Beazer Homes USA Inc.  
8 ("Beazer"). Based on this non-public information, Klinger purchased shares of  
9 Crossman. Shortly after the acquisition was publicly announced, Klinger sold his  
10 Crossman stock at a profit.

11 4. By virtue of the conduct described in this Complaint, Klinger, directly  
12 and indirectly, engaged in acts, practices and courses of business in violation of  
13 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder,  
14 17 C.F.R. § 240.10b-5.

15 5. The Commission brings this action for an order permanently  
16 restraining and enjoining the Defendant, ordering disgorgement of unlawful  
17 profits, and imposing civil penalties.

18 **THE DEFENDANT**

19 6. Klinger, age 48, is a resident of Oceanside, California. Until March  
20 2003, Klinger was a vice-president and senior loan officer at a branch of  
21 Washington Mutual, Inc. located in Carlsbad, California.

22 **OTHER RELEVANT ENTITIES**

23 7. Crossman was a home building company based in Indianapolis,  
24 Indiana. Before Beazer acquired Crossman, Crossman's securities were registered  
25 with the Commission and traded on the Nasdaq National Market System under the  
26 symbol "CROS."

27 8. Beazer is a home building company headquartered in Atlanta,  
28 Georgia. Beazer's securities are registered with the Commission and its stock

1 trades on the New York Stock Exchange under the symbol "BZH."

2 **THE FRAUDULENT SCHEME**

3 9. In December 2001, Crossman and Beazer began confidential  
4 discussions about a potential acquisition of Crossman by Beazer for cash and  
5 stock. In January 2002, in the course of those discussions, Beazer's chief financial  
6 officer ("CFO") contacted its lender, Washington Mutual. In his capacity as a  
7 senior loan officer at Washington Mutual, Klinger spoke with Beazer's CFO and  
8 learned about the proposed acquisition and its anticipated time frame. On January  
9 28, 2002, based on his knowledge of the pending acquisition, Klinger bought 700  
10 shares of Crossman stock.

11 10. Klinger received the confidential information about Beazer's  
12 acquisition of Crossman in the course of his duties as the Washington Mutual  
13 employee with primary responsibility for the Beazer account. Klinger knew that  
14 Washington Mutual had a policy prohibiting its employees from using confidential  
15 information for personal benefit. By purchasing Crossman stock for his own  
16 benefit based on information about the acquisition before it became public,  
17 Klinger misappropriated confidential information in violation of his duty to  
18 Washington Mutual.

19 11. On January 30, 2002, Crossman and Beazer issued a joint public  
20 announcement that Beazer would purchase Crossman. The market's reaction to  
21 the announcement was extremely positive. Crossman stock rose \$14.25 per share,  
22 an increase of about 47 percent from the previous day's close. On January 31,  
23 2002, the day after the acquisition was publicly announced, Klinger sold all 700 of  
24 his shares, generating trading profits of \$9,135.

25 //

26 //

27 //

28



1 **II.**

2 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
3 permanently enjoining defendant Klinger and his officers, agents, servants,  
4 employees and attorneys, and those persons in active concert or participation with  
5 any of them, who receive actual notice of the order by personal service or  
6 otherwise, and each of them, from violating Section 10(b) of the Exchange Act,  
7 and Rule 10b-5 thereunder.

8 **III.**

9 Order defendant Klinger to disgorge all ill-gotten gains from his illegal  
10 conduct, together with prejudgment interest thereon.

11 **IV.**

12 Order defendant Klinger to pay civil penalties under Section 21A(a) of the  
13 Exchange Act, 15 U.S.C. § 78u-1(a).

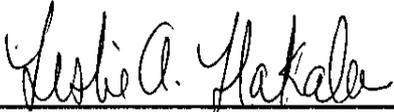
14 **V.**

15 Retain jurisdiction of this action in accordance with the principles of equity  
16 and the Federal Rules of Civil Procedure in order to implement and carry out the  
17 terms of all orders and decrees that may be entered, or to entertain any suitable  
18 application or motion for additional relief within the jurisdiction of this Court.

19 **VI.**

20 Grant such other and further relief as this Court may determine to be just  
21 and necessary.

22  
23 DATED: September 5, 2003

24   
25 Leslie A. Hakala  
26 Attorney for Plaintiff  
27 Securities and Exchange Commission  
28

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

## Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should completed the form as follows:

I.(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place the "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.  
(rev. 07/89)

ORIGINAL

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS

KRIS KLINGER -8 PM 1:33  
03 SEP

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

SAN DIEGO COUNTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Leslie A. Hakala 323-965-3998  
SEC/Pacific Regional Office  
5670 Wilshire Blvd., 11th Floor  
Los Angeles, CA 90036-3648

ATTORNEYS (IF KNOWN)  
David W. W... 323-965-3998  
107 Avenida Miramar, Suite A  
San Clemente, CA 92672

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

The Complaint alleges violations of the federal securities laws. 15 U.S.C. § 78j(b) and 17 C.F.R § 240.10b-5 thereunder

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 490 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 473 Will/Intest 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Reps	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Other	<input type="checkbox"/> 862 Black Long (923)	<input checked="" type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suit	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>LABOR</b>	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(e))	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property				

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE September 5, 2003

SIGNATURE OF ATTORNEY OF RECORD

*Leslie A. Hakala*