IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	**Civil Action No.**
v.	:	
ERIC M. MARTIN,	:	**JURY TRIAL DEMANDED**
Defendant,	:	
and	:	
ROBIN A. MARTIN,	:	
Relief Defendant	:	

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This case involves repeated incidents of insider trading by Defendant Eric M. Martin ("Martin"), the Director and later, Vice-President, of Investor Relations at Carter's, Inc. ("Carter's" or the "Company") (NYSE: CRI), an Atlanta-based

public issuer and manufacturer of children's clothing. Martin's position gave him extensive access to the Company's confidential financial and other material nonpublic information, including advance knowledge of, among other things, quarterly earnings.

2. From January 2007 through March 2009, Martin repeatedly traded Carter's stock while in possession of material nonpublic information and in advance of quarterly earnings announcements.

3. Martin executed his illegal trades while he and other Carter's employees were subject to well-established blackout periods and preclearance procedures on trading in Carter's securities. He took measures to hide his trades by, among other things, failing to obtain the required preclearance of his trades.

4. Overall, Martin executed at least 37 trades while in possession of material non-public information, primarily in the accounts of his spouse, Relief Defendant Robin Martin, and in their joint accounts. As the result of his trading, he and his wife recognized gains and avoided losses in excess of $170,000.

5. Defendant has engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities

Act") [15 U.S.C. § 77a(q)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rules 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Jurisdiction and Venue

6. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Defendant from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

7. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Defendant, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

9. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the

Northern District of Georgia. Defendant and Relief Defendant reside in the Northern District of Georgia.

10. Defendant, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

The Defendant

11. Eric M. Martin, 42, resides in Roswell, Georgia. From March 5, 2003, until his termination on March 24, 2009, Martin served Carter's as its Director and later, Vice President, of Investor Relations.

The Relief Defendant

12. Robin A. Martin, 44, resides in Roswell, Georgia. She is Martin's wife and a homemaker.

Relevant Entity

13. Carter's, Inc., an Atlanta-based public issuer, manufactures and markets in the U.S. apparel exclusively for babies and young children. The Company sells clothing under the *Carter's* and *OshKosh* brand names as well as private label apparel through its own stores and other retailers. Since October 2003, Carter's

common stock has been registered with the Commission under Section 12(b) of the Exchange Act and listed on the NYSE under the symbol "CRI."

Martin's Access to Material,
Nonpublic Information

14. Between 2003 and 2009, Martin served Carter's as its Director and, later, Vice-President of Investor Relations. Martin reported directly to Carter's Chief Financial Officer (the "CFO").

15. Martin's responsibilities included speaking with investors and market analysts and, for twenty-four quarters, preparing Carter's senior management for Carter's quarterly earnings calls through a series of earnings preparation meetings with the Chief Executive Officer (the "CEO"), the CFO and other senior management.

16. Martin's responsibilities required that he have and use material, nonpublic information on a regular basis and that he be privy to confidential top-level discussions of the Company's financial performance, business/operations and related issues.

17. Martin's earnings preparation work routinely required him to identify and anticipate key questions expected to be asked by market analysts at each quarterly earnings call.

18. Martin's work also entailed developing the current quarter's "hot topics" for the earnings preparation meetings with members of the senior management by, among other things, talking with market analysts who followed Carter's; reviewing previous earnings call scripts; conducting regular meetings with the top executives of a number of the Company's departments, including, but not limited to finance, operations and retail; and, gathering information from their departments.

Martin's Evades Carter's Insider Trading and Preclearance Policies

19. Over a more than two-year period (2007-2009), Martin repeatedly traded while in possession of material nonpublic information regarding Carter's. His trading violated Carter's insider trading policy, as well as a preclearance policy Carter's implemented with respect to officers, directors and employees like Martin who routinely had access to material, nonpublic information.

20. The insider trading policy prohibited employees from trading in the Company's securities during blackout periods surrounding earnings announcements, and from trading while in the possession of material, nonpublic

information. The policy also outlined the types of nonpublic information that the Company deemed material including "[f]inancial information (i.e., projections of future earnings or losses, or other earnings guidance)" and "[e]arnings that are inconsistent with consensus expectations of the investment community."

21. The insider trading policy also defined the blackout period: "all directors, officers or other employees, and their family members, are prohibited from trading in the Company's securities during the period beginning twenty-eight calendar days prior to the close of each of the Company's fiscal quarters and fiscal year and ending after the second business day following the Company's issuance of its quarterly or annual earnings release."

22. Carter's preclearance policy incorporated the insider trading policy by reference and stated within its first paragraph, "[t]his document describes additional procedures that apply to directors, executive officers and those non-executive employees *who regularly become aware of earnings information or other material, nonpublic information about the Company."* (Emphasis added). The preclearance policy provided: "No Company insider may engage in any transaction in the Company's securities … at any time without first obtaining preclearance of the transaction from the Chief Financial Officer."

23. Martin signed acknowledgement forms stating that he read and understood both policies. In fact, Martin worked with the head of Carter's Human Relations Department to develop and administer these policies, which were linked to the Investor Relations section of the Company's intranet.

24. Martin knew that both policies applied to him. He also knew that he did not obtain preclearance for his repeated trades during blackout periods.

Martin's Insider Trading

25. Martin possessed financial and other material nonpublic information about Carter's on a regular basis because his job required it.

26. From at least January 2007 through March 20, 2009 when his employment was terminated, while in possession of material, nonpublic information, Martin repeatedly traded Carter's stock without preclearance during blackout periods in advance of at least eight earnings announcements.

27. Not all of Martin's trades ultimately produced gains or avoided losses. In some instances, the material nonpublic information Martin possessed at the time he executed his trades subsequently changed, was amended or Martin simply miscalculated the market's reaction.

Profitable Trading On Unambiguous News

Trading in Advance of Carter's February 26, 2008 Announcement of Quarterly Financial Results

28. By at least January 25, 2008, Martin knew the preliminary results for the fourth quarter 2007 because on January 25th, Carter's controller sent Martin and others spreadsheets reflecting the fourth quarter preliminary results. The spreadsheets showed that the Company had "higher losses than planned (Carter's ($2.8) and OshKosh ($0.9)" and that actual EPS would only meet the market consensus EPS of $0.50.

29. This news was viewed as negative. Carter's had a history of beating analyst targets. Out of 12 straight quarters, from the first quarter 2006 through the fourth quarter 2008, Carter's quarterly earnings results beat market consensus EPS 9 times and were in-line twice.

30. Two business days later, on Tuesday, January 29, 2008, Martin sold 5,000 shares of Carter's stock. Two days after that, Martin sold an additional 2,000 shares of Carter's stock.

31. On February 26, 2008, after the market closed, Carter's announced that its EPS for its fourth quarter 2007, which ended December 29, 2007, was $0.45,

which fell short of market consensus by $0.05. On February 27, 2008, the first day of trading after the announcement, Carter's closed at $16.88 per share, down $5.33 per share or (24%) from its previous day's close.

32. Based on the February 27 closing price, Martin avoided losses on the 7,000 shares he sold totaling approximately $37,000.

Trading in Advance of Carter's July 22, 2008 Announcement of Quarterly Financial Results

33. By June 25, 2008, Martin knew that actual second quarter 2008 revenues had increased over estimates by at least $5.5 million. On June 25, 2008, Martin received the routine revenue summary and the weekly operations materials which he normally reviewed. The revenue summary headline read, in pertinent part, "2nd Quarter flash is $96.5m, compared to $91.0m in the e-1 and previous estimates of $94.4m."

34. Three business days later, on Monday, June 30, 2008, at 10:41 a.m., Martin purchased 25,000 shares of Carter's stock. Martin purchased the 25,000 shares of Carter's stock thirteen minutes after Martin had emailed certain executives, "[w]e had our first earnings prep session this morning...."

35. On July 22, 2008, after the market closed, Carter's announced that the EPS for its second quarter, ending June 28, 2008, were $0.10, which beat market consensus by $0.09.

36. On July 23, 2008, the first day of trading after the announcement, Carter's closed at $15.92 per share, up $0.66 per share or 4.33% from its previous day's close.

37. Based on the July 23rd closing price, Martin's profit on the 25,000 shares he bought was $16,500.

Trades in Advance of Carter's October 21, 2008
Announcement of Quarterly Financial Results

38. Martin's trading during September and October 2008 reflects a pattern of buying or selling based on the positive and negative nature of the latest information as it became available to him.

39. Initially, the news was negative. Martin's electronic calendar shows a "Business Review Meeting" scheduled on September 8, 2008, from 11:00 a.m. to 5:00 p.m., and on September 9, 2009, a "Business Review Update" from 9:00 a.m. to 2:00 p.m. Then, at 2:22 p.m. on September 9th, Martin received Carter's

Weekly Business Update which included a recap of retail results for the week, month, quarter and year for, among other things, gross margin and sales revenue.

40. The quarterly update showed that as of the week ending September 6, 2008, revenue was approximately $83,344,100, compared to the prior year, third quarter 2007 revenue of $86,343,900, resulting in a (2.9%) variance.

41. An hour later, at 3:30 p.m., Martin sold 11,347 shares of Carter's stock.

42. Then, still later, Martin sold 7,500 shares of Carter's stock and in another account sold 4,000 shares.

43. A few days later, the news swung to the positive and Martin began buying Carter's shares. On Friday, September 12, 2008, Martin had a scheduled Business Update meeting from 8:00 a.m. to 10:00 a.m. These meetings typically addressed the financial performance of each business segment of the Company on a current basis. Upon information and belief, the financial information discussed at these meetings reflected improved financial performance.

44. At 11:58 a.m. on September 12th, Martin bought 4,000 shares of Carter's stock. Less than an hour later, at 12:48 p.m., Martin bought another 1,000 shares.

45. By September 22, 2008, with four days left to the third quarter close, the CEO, CFO and other members of the finance department would have known the

preliminary third quarter results, as shown by Carter's Preliminary Review, dated as of September 22, 2008, were $0.07 above market consensus.

46. On September 23, Martin bought 5,000 shares and on September 23, 2008, he bought 10,000 more shares of Carter's stock.

47. By 12:23 p.m. on October 1, Martin bought 2,800 shares of Carter's stock in two separate accounts.

48. On October 21, 2008, after the market closed, Carter's announced that its EPS for its third quarter 2008, ended September 27, 2008, was $0.60, which beat the market consensus by $0.14.

49. On October 22, 2008, the first day of trading after the announcement, Carter's closed at $18.74 per share, up $2.26 per share or 13.71% from its previous day's close.

50. Based on the October 22nd closing price, Martin's gain on the Carter's stock he purchased exceeded $70,000.

Trading in Advance of Carter's July 24, 2007 Announcement of Quarterly Financial Results

51. On June 11, 2007, Martin received weekly operations materials for the Company's business segments. These materials included a preliminary

consolidated sales and margin analysis for the quarter that reflected customer accommodations effecting sales by ($552,000). Later, a business update dated June 12, 2007 stated, among other things, that OshKosh is "underperforming at wholesale and retail" and Carter's wholesale is "not great" and retail is "sluggish." An attached second quarter P&L showed diluted EPS of $0.11 (27%) unfavorable compared to the same quarter in 2006 at $0.15.

52. On June 12, 2007, Martin sold 21,484 shares of Carter's stock across four accounts.

53. On July 24, 2007 during the quarterly earnings call, the Company's news was mixed. It disclosed an adjusted second quarter EPS of $0.13, beating market consensus EPS by two cents. Carter's also announced negative news about its diluted EPS of ($2.48) stating that it included charges related to the impairment of OshKosh intangible assets as a result of continued negative trends and profitability of the OshKosh wholesale and retail segments as well as the costs related to the closure of a major distribution facility.

54. On July 25, 2007, the first day of trading after the announcement, Carter's share price closed at $22.75, a decrease of $2.12 (8.52%) from its previous day's close.

55. Martin avoided losses of $45,546 by selling in advance of the announcement.

Unprofitable Trading

56. On several occasions, Martin traded based on information that later changed, was amended or had an opposite effect on the market than Martin had anticipated. Although this trading on material nonpublic information was illegal, Martin guessed wrong as to its impact, or changed his positions prematurely, and did not profit.

57. On January 11, 2007, Martin did not avoid losses when he sold 3,700 shares in-line with information he received during his earnings prep work and exposure that he had to top level discussions about accommodations (margin support provided to wholesale customers).

58. On January 2, 2007, Martin received the weekly operations materials and the weekly retail business recaps which reported, among other performance indicators, that sales were down for the week and for the quarter and that gross margin had also decreased for the quarter. Martin also subsequently attended an earnings prep meeting in the second week of January. The purpose of the meeting was to review the year-end numbers and the forecast for the next week.

59. On January 11, 2007, Martin sold 3,700 shares based on this apparently negative information. As it turned out, the Company announced a one cent shortfall of EPS based on the cost of closing of a major distribution center and the cost of a stock repurchase program but the market's reaction was a 3.74% increase in value per share.

October 2007

60. In October 2007, Martin also sold on apparently negative information, but did not benefit because the stock rose when the information was made public.

61. On October 8, 2007, during a blackout period, Martin sold 15,000 shares held in two accounts.

62. By October 8, 2007, approximately two weeks before the earnings call, Martin's routine access would have made him aware of the preliminary results for the third quarter. Martin would also have been aware of a planned write down of the OshKosh business because it would necessarily generate questions for his earnings prep work. Martin received the usual daily sales and weekly business

updates, operations reports and seasonal margin models throughout the week prior to his trading as he continued to prepare for the earnings call.

63. The Company's October 23, 2007 announcement contained mixed news with EPS beating market consensus by two cents but showed a nine-month period loss due to income adjustments for impairment of intangible asset charges of approximately $154.9 million for the Company's OshKosh brand.

64. On October 24, 2007, the first day of trading after the announcement, Carter's closed at $20.10 a share, up 8.47% from the previous day's close. Because the price rose, Martin's sale of stock did not avoid any losses.

January 2009

65. On Monday, January 5, 2009, Martin received the weekly operations report with detailed sales, marketing, and inventory and revenue information showing on a consolidated basis that 4th quarter sales were up by 85% compared to the sales plan for Carter's top brands.

66. Two days later, Martin received the January 7, 2009 operations meeting materials that included the revenue summary for December 2008 and January

2009; the actual revenue for 4Q 2008; the actual margin for 4Q 2008 and December and an operations summary. The revenue summary's headline read in pertinent part: "4th Quarter revenue was $138.8m (internal), $0.4m higher than the e-3 and our last flash."

67. That Friday, January 9, 2009, Martin purchased 12,000 shares and then he continued to buy 12,000 more shares the following Tuesday and Wednesday.

68. Approximately, two weeks later, the internal information began to turn negative. On January 21, 2009, Martin emailed the CFO an update on his earnings prep work wherein he stated, among other things, "[t]he business update meetings are very helpful... I can see tough spots we need to work through for the next earnings call but overall we will have a great story." In reference to Carter's top retailers, Martin pointed out some "sticky" topics such as, "[m]argin decline to continue in 2009. Looks like we are dropping $11M in [gross margin]. This is going to take some of the zip out of our great news." Martin noted that he expected the Controller to send him the "latest cut at Q4, 2008 and 2009 so [he] can find the troubled spots to complete the key questions for our earnings call."

69. On January 22, 2009, Martin received the earnings information from the Controller and the 4Q 2008 preliminary results from the Vice President of Finance.

The preliminary Q4 2008 EPS was $0.48 compared to the fourth quarter plan of $.50 but the preliminary results beat market consensus at $0.47.

70. Martin continued to conduct and coordinate earnings prep work meetings with the CFO and Vice President of Finance through Friday, January 23, 2009. Then, on the next two business days, January 26 and 27, 2009, Martin sold 27,000 shares and bought 3,000 shares of Carter's stock.

71. On February 24, 2009, after the market closed, Carter's announced that the EPS for its fourth quarter, ending December 27, 2008, was $0.49, which beat market consensus of $0.47 by $0.02.

72. On February 25, 2009, the first day of trading after the announcement, Carter's shares closed 10.54% higher than the previous day's close.

73. Ultimately, Carter's results were viewed as a positive and the price rose, but because Martin had sold his shares when negative information came to his attention, he did not profit.

March 2009

74. During March 2009, Martin's trades were in-line with the material, nonpublic information that Martin was aware of at the time he executed them, but did not yield any profits for Martin.

75. From March 6, 2009 through March 20, 2009, Martin bought a total of 6,000 shares of Carter's stock.

76. Martin during that period had received repeated, positive, weekly revenue summaries.

77. For example, on March 11, 2009, Martin received the weekly "ops" pack that summarized first quarter revenue: "1Q09 is planned at $117.4M, or $2.0M higher than the $115.4M budget." The next morning, on March 12, 2009, Martin purchased 1,000 shares of Carter's stock. On March 13, he bought another 1,000 shares.

78. On March 18, 2009, Martin received another weekly "ops" pack that reported the same revenue summary as the previous week showing the first quarter revenue projected at $2.0M higher than budget.

79. Two days later, on March 20, 2009, Martin bought a total of 3,000 shares of Carter's stock in two accounts.

80. On April 28, 2009, after the market closed, the Company announced good news that its EPS beat market consensus EPS by a high of $0.22, but it disclosed its restructuring initiative that involved a number of operation and employment related cutbacks.

81. On April 29, 2009, the first day of trading after the announcement, Carter's closed at $21.07 per share, down $2.13 per share (9.18%) from its previous day's close. Although Martin's purchase transactions produced no gains, they were in line with the Company's good news at that time.

Martin's Trading

82. As a result of Defendant's illicit trading described above, Martin avoided losses and gained profits in the total amount of $170,094, of which $157,526 was the result of his trading in the accounts of the Relief Defendant.

83. Relief Defendant Robin Martin was unjustly enriched by the trading Martin conducted in her accounts.

COUNT I—FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

84. Paragraphs 1 through 83 are hereby re-alleged and are incorporated herein by reference.

85. Between January 2007 and March 2009, Defendant, in the offer and sale of securities described herein, by the use of the means and instrumentalities of

interstate commerce and by use of the mails, directly and indirectly employed devices, schemes, and artifices to defraud, all as more particularly described above.

86. Defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

87. By reason of the foregoing, Defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77a(q)].

COUNT II—FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

88. Paragraphs 1 through 83 are hereby re-alleged and are incorporated herein by reference.

89. Between January 2007 and March 2009, Defendant, in the offer and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

90. By reason of the foregoing, the Defendant Martin, directly and indirectly, has violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III—FRAUD

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

91. Paragraphs 1 through 83 are hereby re-alleged and are incorporated herein by reference.

92. Between January 2007 and March 2009, Defendant, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

93. Defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

94. By reason of the foregoing, Defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendant committed the violations alleged herein and that the relief defendant was unjustly enriched.

II.

A permanent injunction enjoining Defendant, his agents, servants, employees, and attorneys from violating, directly or indirectly, Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III.

An order requiring the disgorgement by Defendant and Relief Defendant of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 21(d)(2) of the Exchange Act imposing an officer and director bar against Defendant.

V.

An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] imposing civil penalties against Defendant.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action of all issues so triable.

Dated: August 22, 2012

Respectfully submitted,

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