

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

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action No.
v.	:	
	:	1:14-CV- _____
RICHARD T. POSEY,	:	
	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”), hereby files this Complaint alleging the following:

Overview

1. This case involves insider trading and tipping of insider information by Defendant Richard T. Posey (“Posey”), the Vice-President of Operations at Carter’s Inc. (“Carter’s” or the “Company”)(NYSE: CRI), an Atlanta-based public issuer and manufacturer of children’s clothing. Posey’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 2006 through at least October 2009, Posey repeatedly traded Carter's stock (primarily in his spouse's brokerage account) while in possession of material nonpublic information and in advance of quarterly earnings announcements.

3. Between April 2009 and at least October 2010, Posey also repeatedly tipped Carter's inside information to Eric M. Martin ("Martin"), the Company's former Vice-President and Director of Investor Relations. In turn, Martin tipped others who traded Carter's stock. Martin's tippees made profits and avoided losses by trading while in possession of the information Martin received from Posey.

4. Posey executed his illegal trades while he and other Carter's employees were subject to well-established blackout periods and preclearance procedures. He took measures to hide his trades by, among other things, failing to obtain the required preclearance of his trades and, in some instances, liquidating his blackout trades before the earnings announcement for a quick profit.

5. Posey's illegal trading and tipping based on material nonpublic information generated profits and losses avoided totaling more than \$49,778.

6. 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 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Jurisdiction and Venue

7. 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), 21(e), and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1] 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.

8. 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].

9. 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.

10. 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 resides in the Northern District of

Georgia.

11. 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

12. Richard T. Posey, 53, resides in Atlanta, Georgia. From July 2002 until his termination in January 2013, Posey served Carter's as its Vice President of Operations in various Carter's brands, divisions, and lines of business.

Relevant Entity

13. Carter's, Inc., an Atlanta-based public issuer, manufactures and markets apparel exclusively for babies and young children. The Company sells clothing under the Carter's and OshKosh brand names 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."

**Posey's Access to Material
Nonpublic Information**

14. For over ten years, Posey served Carter's as its Vice-President of Operations for various Carter's brands and divisions and later for its wholesale sales business.

15. Posey's positions required that he have and use material nonpublic information on a regular basis. His responsibilities included, among other things, attending and participating in weekly, monthly, and quarterly confidential, top-level meetings that included discussions of the Company's business/operations, financial performance, and actual and anticipated financial results.

16. Posey attended weekly conference calls that included, among others, the "Wholesale/Retail Call a/k/a 'Carter's Ops Call,'" "OshKosh Ops Call," and "Excess Inventory Call." Posey received weekly materials for each call that included spreadsheets detailing, among other things, revenue, margin, operations, orders, and shipping information.

17. Posey also attended a monthly "Revenue Call" and a series of related meetings in connection with which he received email correspondence related to the re-estimate process.

18. Some quarterly meetings involved the Disclosure Committee, a cross-functional group including, but not limited to, individuals from finance, operations, HR, planning, and management. Usually headed by the vice president of Finance, the group included Posey, the comptroller, general counsel, other Carter's officers and, a representative from Carter's outside accounting firm. That committee met to review Carter's upcoming SEC filing. Other quarterly meetings addressed the

“Budget & Re-Estimate Process,” which created Carter’s budget and re-estimates against the budget. The re-estimates took place at the end of each quarter, parallel with the quarter close process and preparation for the earnings release.

19. Posey’s work also included providing operations, business, and related financial information to Martin for his quarterly earnings preparation work.

20. Posey and the Operations Department authored the “CRI Weekly Dashboard,” which was a weekly retail sales performance update, and the “Ops Package” consisting of a revenue summary and flash reports (internal reports of critical company operating and financial data) concerning revenue and margin data.

Posey Evades Carter’s Insider Trading and Preclearance Policies

21. For more than three years (2006-2009), Posey repeatedly traded Carter’s stock while in possession of material nonpublic information.

22. Posey’s trading violated Carter’s insider trading policy, as well as a preclearance policy Carter’s implemented with respect to officers, directors, and employees who routinely had access to material nonpublic information.

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

information.

24. The Company's 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."

25. The Company's 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.

26. The Company'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."

27. The Company specifically identified Posey as an employee who must adhere

to the preclearance procedures.

28. Posey signed acknowledgement forms stating that he read and understood the preclearance and insider trading policies.

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

Posey's Insider Trading

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

31. From at least January 2006 through October 2009, while in possession of material nonpublic information, Posey repeatedly traded Carter's stock without preclearance during blackout periods in advance of at least nine earnings announcements and a special announcement.

32. All of Posey's trades produced gains or avoided losses. In some instances, however, Posey purchased shares of Carter's stock based on positive earnings information and liquidated his position within a few days of the purchase, in advance of the announcement, notwithstanding the expected news to be released. He was either seeking a quick profit or trying to avoid detection of his insider trading.

**Trading in Advance of Carter's February 21, 2006
Announcement of Quarterly Financial Results**

33. During the week of January 16, 2006, Posey scheduled and attended meetings covering topics related to Carter's retail segments, including, but not limited to, revenue updates, reforecast, and 2005 initial financials, and a review of discount revenue.

34. Posey learned material nonpublic information during one or more of those meetings.

35. On January 23, 2006, Posey sold 500 shares of Carter's stock.

36. On February 21, 2006, Carter's announced mixed earnings news, with earnings beating consensus expectations but as a result of excluding charges for an acquisition and closure of a facility.

37. On February 22, 2006, the first day of trading after the announcement, Carter's closed at \$63.65 per share, down \$2.75 per share or (-4.14%) from its previous day's close of \$66.40.

38. Posey avoided a loss of \$1,375.

**Trading in Advance of Carter's July 25, 2006
Announcement of Quarterly Financial Results**

39. Between July 13, 2006 and July 21, 2006, Posey prepared reports and attended meetings for Q2 2006 earnings results pertaining to Carter's private

brands sold in Walmart and Target. Before going on vacation the following week, Posey also attended the “2nd quarter disclosure committee meeting,” held on July 21, 2006. In advance of that meeting, Posey received a copy of the draft Form 10Q (Quarterly report) for Q2 2006.

40. Posey learned material nonpublic information regarding Carter’s soon to be announced earnings through the above-referenced reports, meetings, and/or draft filings.

41. On July 20, 2006, while in possession of that material nonpublic information, Posey sold 1,100 shares of Carter’s stock.

42. On July 25, 2006, Carter’s announced that its EPS matched market consensus at \$0.16. On July 26, 2006, the first day of trading after the announcement, Carter’s closed at \$23.40 per share, down \$3.18 per share or (-11.96%) from its previous day’s close of \$26.58.

43. Posey avoided losses of \$3,498.

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

44. As of January 25, 2008, the Company’s fourth quarter preliminary results showed that the Company had “higher losses than planned (Carter’s (\$2.8) and OshKosh (\$0.9).”

45. By February 9, 2008, Posey knew the EPS results for the fourth quarter

2007. As a member of the Disclosure Committee, Posey received the latest draft of Carter's Form 10-K (annual report) for FY 2007.

46. On February 11, 2008, while in possession of material nonpublic information, Posey sold 1,400 shares of Carter's stock in his wife's Schwab account.

47. On February 26, 2008, Carter's announced that its EPS for its fourth quarter 2007 were \$0.45, which fell short of market consensus by \$0.05.

48. 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 of \$22.21.

49. Posey avoided losses of \$7,462.

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

50. From March 18, 2008 through March 21, 2008, Posey attended meetings regarding Carter's projections for March 2008; he also attended meetings regarding earnings forecasts, re-estimate timing, excess Q1 inventory, January and February results, and revenue recognition impact on Q1 2008.

51. On March 24, 2008, while in possession of material nonpublic information, Posey sold 1,890 shares of Carter's stock in his wife's account.

52. On April 22, 2008, Carter's announced mixed news: EPS beat market

consensus by \$0.01 and net income decreased by \$1.8M from the prior year's first quarter. On April 23, 2008, the first day of trading after the release, Carter's closed at \$14.01 per share, down \$1.70 per share or (10.82%) from its previous day's close of \$15.71.

53. Posey avoided losses of \$3,213.

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

54. On Wednesday, June 11, 2008, at 5:55 a.m., Posey received weekly operations materials that included a revenue summary, the second quarter revenue flash, operations summary, and second quarter preliminary sales and margin figures. The revenue summary headline read, in pertinent part: "2nd Quarter flash is \$94.4m, compared to \$91.0m in the e-1."

55. Later that morning after the "Ops" meeting, while in possession of material nonpublic information, Posey purchased 2,250 shares in his spouse's account. The next day, Posey sold those shares.

56. On Wednesday, June 18, 2008, the revenue summary headline of the weekly operations materials remained the same. After the morning "Ops" meeting, Posey learned that the Company received substantial orders from Kohl's and Macy's. That afternoon, he participated in a budget re-estimate review for the 2008 second quarter.

57. On Friday, June 20, 2008, Posey, and others from operations attended a meeting with the Company's President of Operations, the Controller, and Vice-President of Finance, to discuss revenue recognition impact on Q2 2008.

58. The next business day, Monday, June 23, 2008, while in possession of material nonpublic information, Posey purchased 2,400 shares of Carter's stock.

59. On June 25, 2008, at 5:52 a.m., Posey received the weekly operations materials with a revenue summary heading that read, "2nd Quarter flash is \$96.5m, compared to \$91.0m in the e-1 and previous estimates of \$94.4m."

60. That same morning, in the face of positive material nonpublic information, Posey sold the 2,400 shares.

61. On June 26, 2008, Posey continued to prepare for a final second quarter 2008 budget re-estimate update and review, which he organized and scheduled for 8:30 a.m. on Friday, June 27, 2008, the day before the quarter-close. After that meeting, at 11:28 a.m., Posey purchased 2,600 shares.

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

63. Posey gained a net profit of \$5,104.

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

64. After the quarter-close for Q3 2008, Posey was involved a number of quarter-close meetings.

65. On October 1, 2008, Posey received the Carter's Ops Package that included a revenue summary with a headline that read, "3rd Quarter revenue was \$158.6m, \$15.0m higher than the e-2 and \$2.2m higher than Q3 last year." That Friday, October 3, 2008, while in possession of material nonpublic information, Posey purchased 1,000 shares of Carter's stock and an additional 1,550 shares on the next business day, October 6, 2008.

66. On October 21, 2008, Carter's announced that its EPS for its third quarter 2008 was \$0.60, which beat the market consensus by \$0.14. 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.

67. Posey gained \$5,537.

**Trading in Advance of Carter's February 24, 2009
Announcement of Quarterly Financial Results**

68. As early as December 9, 2008, Posey knew that the Company was up 5% in revenue for Q4 2008. On January 7, 2009, Posey received the operations meeting materials, including a revenue summary. The materials covered December 2008

and January 2009; the actual revenue for Q4 2008; the actual margin for Q4 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-3¹ and our last flash."

69. That information did not change by January 14, 2009, when, while in possession of material nonpublic information, Posey purchased 3,000 shares of Carter's stock.

70. On February 24, 2009, Carter's announced that the EPS for its fourth quarter was \$0.49, which beat market consensus by \$0.02. 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.

71. Posey gained \$4,560.

**Trading in Advance of Carter's April 28, 2009
Announcement of Quarterly Financial Results**

72. On March 4, 2009, Posey received weekly operations materials stating, "1Q09 is planned at \$117.4M, or \$2.0M higher than the \$115.4M budget."

73. On March 5, 2009, while in possession of material nonpublic information, Posey purchased 3,140 shares of Carter's stock in his spouse's account.

¹ e-3 refers to a re-estimate of earnings per share.

74. On March 11, 2009, Posey received the weekly operations packet summarizing first quarter revenue, as follows: “1Q09 is planned at \$117.4M, or \$2.0M higher than the \$115.4M budget.” On March 18, 2009, Posey sold 3,140 shares of Carter’s stock.

75. On April 28, 2009, after the market closed, the Company announced that its EPS beat market consensus by a high of \$0.22, but also disclosed a restructuring initiative that involved a number of operations and employment related cutbacks. 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.

76. Posey gained \$10,003 on his sale before the earnings release.

**Trading in Advance of Carter’s July 28, 2009
Announcement of Quarterly Financial Results**

77. By the final week of the second quarter of 2009, Posey knew that the Company expected to beat second quarter 2009 consensus EPS.

78. On June 23, 2009, while in possession of material nonpublic information, Posey purchased 1,300 shares of Carter’s stock and sold it a week later on July 1, 2009.

79. That Monday, July 6, 2009, at 8:05 a.m., Posey told his reports by email “Everyone did a great job micro-managing our month and quarter end. We ended up having a really good quarter, but we also left enough on the table to give us a

nice start to Q3....” Less than two hours later, Posey purchased 1,500 shares of Carter’s stock, and an additional 1,250 shares on Friday, July 10, 2009.

80. In July, before the quarterly release, Posey continued to be involved in meetings and reports pertaining to various issues such as revenue recognition for the second quarter-close process, the preparation for the earnings release, and the 2009 second quarter budget re-estimate.

81. On July 15, 2009, Posey sold the 2,750 shares of Carter’s stock that he bought the previous week.

82. On Sunday evening, July 19, 2009, Posey sent the Vice-President of Finance notes for the Second Quarter 2009 Earnings Call that stated, among other things, “our second quarter results were much better than expected, particularly in our Carter’s retail segment....adjusted earnings per share increased over 100% to \$0.26 per share.”

83. That week, on July 22, 2009, Posey purchased 2,000 shares of Carter’s stock and sold the shares less than 20 minutes later.

84. On July 28, 2009, after the market closed, the Company announced that its EPS beat market consensus EPS by \$0.17. On July 29, 2009, the first day of trading after the announcement, Carter’s closed at \$27.01 per share, up \$0.09 per share (33%) from its previous day’s close of \$26.92.

85. Posey gained \$7,372 on his sales before the earnings release

**Trading in Advance of Carter's October 27, 2009
Announcement of Delayed Third Quarter Financial Results**

86. As early as September 9, 2009, Posey knew that the Company expected to beat third quarter market consensus EPS.

87. By October 4, 2009, after the quarter close, Posey knew Carter's third quarter 2009 EPS was \$0.80 compared to market consensus EPS of \$0.66.

88. On October 5, 2009, while in possession of material nonpublic information, Posey purchased 1,000 shares of Carter's stock and sold it on October 8, 2009.

89. On October 27, 2009, shortly after the market opened, Carter's announced that its third quarter 2009 earnings release would be delayed based on a review of its accounting for margin support provided to its wholesale customers. That day, Carter's closed at \$21.66, down \$6.78 per share (24%), from the previous day's close of \$28.44.

90. Posey's gained \$1,654 on his sale before the earnings release.

Posey's Tipping

91. Eric Martin served as Carter's Vice-President of Investor Relations from March 2003 until his termination on March 24, 2009. During that time, Posey and Martin developed a professional and social relationship that included golf and card games with certain Carter's executives.

92. After Martin left Carter's, he traded Carter's stock in advance of its quarterly earnings releases for the second quarter 2009, first and second quarters 2010, and its special announcements of the delayed third quarter 2009 earnings and of its ultimate restatement.

93. During these quarters, Posey tipped Carter's financial and other material nonpublic information on a regular basis to Martin based on their close friendship.

94. Martin paid for Posey's entertainment expenses, including dinners and golfing, on at least one trip to Las Vegas, thereby giving Posey a material benefit for his tipping in addition to the reputational benefit.

95. At all material times, Posey was aware that Martin shared his tips with consultant clients and others.

**Tipping in Advance of Carter's July 28, 2009
Announcement of Second Quarter Financial Results**

96. From July 20, 2009 through July 23, 2009, Posey texted and called Martin, advising Martin that the Company expected "a blast-out, a big beat" for the second quarter.

97. During July 2009, Martin purchased at least 36,000 shares of Carter's stock based on specific material nonpublic information from Posey.

98. On July 28, 2009, after the market closed, the Company announced that its EPS beat market consensus EPS by \$0.17. On July 29 and 30, 2009, Martin sold

more than 36,000 shares at an average price of \$27.91 per share.

99. Martin reaped ill-gotten gains of approximately \$137,000.

**Tipping in Advance of Carter's October 27, 2009
Announcement of Delayed Third Quarter Financial Results**

100. Before September 9, 2009, Posey advised Martin that the Company expected the third quarter to be what Martin described as a "blow-out" and gave Martin specific earnings and guidance information. From September through October 2009, there were numerous phone calls and text messages between Martin and Posey and emails between Martin and one of his tippees.

101. After text messages and phone calls between Posey and Martin, on September 16, 2009, Martin emailed the tippee that Carter's earnings were on the upside of market consensus EPS by \$0.07 - \$0.12 compared to guidance.

102. On September 30, 2009, Posey and Martin had a seven minute telephone call; that evening, Martin emailed the tippee that CRI "Q3 results at \$0.78 to \$0.82 vs. consensus at \$0.66...."

103. After more text messages and phone calls between Posey and Martin, on October 4, 2009, Martin emailed the tippee, the "latest CRI flash is \$0.80 for the quarter vs. prior note of \$0.70."

104. On or about October 20, 2009, Martin received a text message from Posey, and they met on October 22, 2009. On these dates, Posey told Martin that Carter's

would shortly announce that it would delay its scheduled release of third quarter earnings. Posey also tipped Martin that Carter's would likely have to restate earnings for several prior periods. Posey told Martin to "dump" his stock.

105. On October 23, 2009, Martin sold 35,615 Carter's shares and conveyed Posey's tip to others.

106. On October 27, 2009, Carter's announced that its third quarter 2009 earnings release would be delayed based on a review of its accounting for margin support provided to its wholesale customers. That day, Carter's closed at \$21.66, down \$6.78 per share (24%), from the previous day's close of \$28.44.

107. Martin avoided losses totaling approximately \$250,000; collectively, at least two of his tippers avoided losses of more than \$3 million.

**Tipping in Advance of Carter's July 28, 2010
Announcement of Second Quarter Financial Results**

108. Between June 21, 2010 and July 10, 2010, Posey tipped Martin information on Carter's earnings expectations.

109. On or about July 7, 2010, Martin met Posey at a sports bar called the Elbow Room. At this meeting, Posey told Martin that Carter's expected its financial results for the second quarter of 2010 to meet consensus. Additionally, Posey tipped Martin that Carter's third quarter 2010 guidance was going to be significantly down, due to rising cotton and other costs.

110. While in possession of material nonpublic information, Martin sold approximately 9,100 shares on June 22, 2010 and executed short sales of 10,200 shares on July 16, 20, and 27, 2010.

111. On July 28, 2010, the Company announced that, while it had met consensus EPS for the quarter, its future guidance was negative. Carter's closed at \$23.96 per share, down approximately \$2 from its previous day's close.

112. Based upon the trades covering his short position, Martin realized ill-gotten gains of approximately \$40,000.

COUNT I – FRAUD

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

113. Paragraphs 1 through 112 are hereby re-alleged and are incorporated herein by reference.

114. Between January 2006 and October 2010, Defendant, in the offer and sale of securities described herein, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly and indirectly employed devices, schemes, and artifices to defraud, all as more particularly described above.

115. 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.

116. By reason of the foregoing, Defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77a(q)(1)].

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)]

117. Paragraphs 1 through 112 are hereby re-alleged and are incorporated herein by reference.

118. Between January 2006 and October 2010, Defendant, in the offer and sale of securities described herein, by the use of the means and instruments of transportation or communication in interstate commerce or 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.

119. By reason of the foregoing, the Defendant, 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(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]

120. Paragraphs 1 through 112 are hereby re-alleged and are incorporated herein by reference.

121. Between January 2006 and October 2010, Defendant, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce or by use of the mails, directly and indirectly:

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

122. Defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes, and artifices to defraud, 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.

123. 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(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SEC 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.

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 of all ill-gotten gains and losses avoided with prejudgment interest, to affect the remedial purposes of the federal securities laws.

IV.

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

V.

An order pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] imposing a civil penalty 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:

Respectfully submitted,

/s/ Pat Huddleston

Pat Huddleston

Senior Trial Counsel

Georgia Bar Number 373984

Counsel for Plaintiff

U.S. Securities and Exchange Commission

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Atlanta, Georgia 30326-1234

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **COMPLAINT** was served by filing with the Court's ECF system on this 6 day of March, 2014, which automatically serves the document upon the following:

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/s/Pat Huddleston
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JS44 (Rev. 1/13 NDGA)

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

<p>I. (a) PLAINTIFF(S) Securities and Exchange Commission</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>DEFENDANT(S) Richard T. Posey</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>Fulton</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)</p> <p>Pat Huddleston, U.S. Securities and Exchange Commission 950 East Paces Ferry Road, N.E., Suite 900 Atlanta, Georgia 30326 (404) 842-7616 huddlestonp@sec.gov</p>	<p>ATTORNEYS (IF KNOWN)</p> <p>Richard A. Rice, Jr., Esq. The Rice Law Firm, LLC 10 Piedmont Center, Suite 110 Atlanta, GA 30305</p>

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

<input checked="" type="checkbox"/> 1 U.S. GOVERNMENT PLAINTIFF	<input type="checkbox"/> 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
<input type="checkbox"/> 2 U.S. GOVERNMENT DEFENDANT	<input type="checkbox"/> 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)
(FOR DIVERSITY CASES ONLY)

PLF	DEF		PLF	DEF	
<input type="checkbox"/> 1	<input type="checkbox"/> 1	CITIZEN OF THIS STATE	<input type="checkbox"/> 4	<input type="checkbox"/> 4	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
<input type="checkbox"/> 2	<input type="checkbox"/> 2	CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 5	<input type="checkbox"/> 5	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
<input type="checkbox"/> 3	<input type="checkbox"/> 3	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	<input type="checkbox"/> 6	<input type="checkbox"/> 6	FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 ORIGINAL PROCEEDING	<input type="checkbox"/> 2 REMOVED FROM STATE COURT	<input type="checkbox"/> 3 REMANDED FROM APPELLATE COURT	<input type="checkbox"/> 4 REINSTATED OR REOPENED	<input type="checkbox"/> 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)	<input type="checkbox"/> 6 MULTIDISTRICT LITIGATION	<input type="checkbox"/> 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
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V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder

(IF COMPLEX, CHECK REASON BELOW)

<input type="checkbox"/> 1. Unusually large number of parties.	<input type="checkbox"/> 6. Problems locating or preserving evidence
<input type="checkbox"/> 2. Unusually large number of claims or defenses.	<input type="checkbox"/> 7. Pending parallel investigations or actions by government.
<input type="checkbox"/> 3. Factual issues are exceptionally complex	<input type="checkbox"/> 8. Multiple use of experts.
<input type="checkbox"/> 4. Greater than normal volume of evidence.	<input type="checkbox"/> 9. Need for discovery outside United States boundaries.
<input type="checkbox"/> 5. Extended discovery period is needed.	<input type="checkbox"/> 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (IFP) _____
JUDGE _____	MAG. JUDGE _____ <small>(Referral)</small>	NATURE OF SUIT _____	CAUSE OF ACTION _____

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

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____
 JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

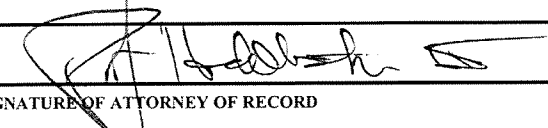
VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE Amy Totenberg DOCKET NO. 1:10-CV-4118

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.


 SIGNATURE OF ATTORNEY OF RECORD

3/6/2014
 DATE