

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

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	
v.	:	1:13-CV-_____-_____
	:	
Mark Megalli,	:	
	:	
Defendant	:	
	:	
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COMPLAINT

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

Overview

1. On at least four occasions between September 2009 and July 2010, Mark Megalli (“Megalli”), traded shares of Carter’s, Inc. (“Carter’s”) (NYSE: CRI), an Atlanta-based public issuer and clothing marketer, based on material non-public information. Megalli executed these trades on behalf of Level Global

Investors, L.P. (“Level Global”), a now-defunct investment adviser, generating profits and/or losses avoided of approximately \$3 million.

2. Megalli received the material non-public information from Eric Martin, a former Carter’s employee. Martin received the information from Richard Posey, who was Carter’s Vice President of Operations (“Posey” or “Carter’s VP”).

3. In every instance of trading tipping described below, Megalli knew or should have known that the material non-public information he received was communicated in breach of a duty of trust or confidence that a Carter’s insider owed Carter’s.

4. By the conduct described herein Megalli violated Section 17(a) of the Securities Act of 1933 (the “Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rules 10b-5(a) and 10b-5(c) thereunder.

Jurisdiction and Venue

5. 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.

6. 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), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa].

7. Defendant, directly and indirectly, made use of the mails, the means and instruments of transportation and communication interstate commerce, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

8. Venue is proper because 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. Carter's principal place of business lies within this district and the tipping of material, non-public information to Megalli occurred within this district.

9. 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

10. Mark Megalli, 41, resides in New York City. Between 2003 and July 2009, Megalli was a registered representative of several broker dealer firms. Between August 2009 and approximately November 2011, he was associated with Level Global.

Issuer

11. Carter's, Inc., an Atlanta-based public issuer, is the self-proclaimed "largest branded marketer in the U.S. of 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.

Related Persons and Entity

12. Eric M. Martin ("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. On December 18, 2012, Martin pled guilty to Count One of an eleven-count indictment charging him

with tipping others to material non-public information while employed at Carter's. He is awaiting sentencing. On September 11, 2013, an Order of Permanent Injunction and Officer and Director Bar was entered as to Martin in the U.S. District Court for the Northern District of Georgia based upon his trading and tipping of Carter's inside information.

13. Level Global was an unregistered investment adviser located in Greenwich, Connecticut and New York, New York that managed hedge funds with approximately \$4 billion worth of assets in 2010.

**Megalli Joins Level Global and
Engages Eric Martin as a Consultant**

14. On August 10, 2009, Megalli joined Level Global as head of its consumer sector. On September 14, 2009, Megalli, on behalf of Level Global, entered into a consulting agreement with a firm owned by Martin, a former Carter's executive. The consulting agreement provided for an initial six month term and a payment of \$50,000.

15. Beginning on the same day the consulting agreement was executed, Martin began providing Megalli with material non-public information regarding Carter's anticipated financial results and Megalli began directing and causing Level Global to trade on that information.

16. Martin was no longer employed by Carter's when the consulting agreement was executed, and received the material non-public information about Carter's from Posey. Posey provided the information to Martin in exchange for reputational benefit, i.e. to show that Posey was a source of valuable information, to further their friendship, and in expectation of future business contacts and benefits.

17. Based upon the nature, repeated instances, specificity and timing of the information he received from Martin, Megalli knew or had reason to know that Martin was receiving it improperly from a Carter's insider and that the insider was receiving some benefit from leaking the information to Martin.

18. Megalli's trading in Carter's stock on behalf of Adviser took place in advance of at least four earnings related releases and/or announcements, including Carter's October 27, 2009 delayed earnings announcement related to an accounting investigation, which later was the subject of a Commission enforcement action.

**Trading before Carter's October 27, 2009 Announcement
of a Delayed Earnings Release Pending
Investigation into Its Accounting Practices**

19. Between September 14 and 17, 2009, Megalli directed the purchase of 350,000 shares of Carter's stock on behalf of Adviser, at a cumulative cost of over

\$9 million, based on explicit positive earnings information that he received from Martin.

20. In fact, Megalli's first trade in Carter's shares, on September 14, occurred while on the phone with Martin.

21. On October 23, 2009, Megalli again spoke to Martin in a telephone conversation. During that call, Martin advised Megalli about an unexpected accounting issue that had been uncovered at Carter's. Martin had been tipped about the issue by Posey.

22. While still on the phone, after hearing this information, Megalli ordered the sale of 100,000 shares and instructed Level Global's trader to continue selling the firm's entire position in Carter's. The trader thus sold an additional 100,000 of Carter's shares that day. The trader finished liquidating Level Global's position on October 26, 2009.

23. On October 27, 2009, right at the market open, Carter's announced a "delaying earnings release to complete a review of its accounting for margin support to its wholesale customers."

24. That day, Carter's closed at \$21.66 per share, down \$6.78 per share from its previous day's close at \$28.44. By selling 300,000 shares prior to the negative announcement, the Level Global avoided losses of \$2,110,910.

Trading before Carter's November 9, 2009 Announcement of Restated Earnings due to Improper Accounting Practices

25. After closing out of the stock in late October 2009, Megalli instructed Level Global to purchase Carter's shares at the newly depressed price.

Consequently, Level Global accumulated a position of 600,000 shares by the first week of November 2009.

26. On November 9, during the middle of the trading day, Megalli spoke with Martin by telephone. During that call, Martin told Megalli that Carter's would soon announce that it would be restating its earnings for the years 2007-2009 because of the accounting issue it had identified. Martin was tipped as to that information by Posey.

27. While on that call, Megalli instructed Level Global to "lighten up" in Carter's shares "without killing the stock." As a result, Level Global sold 150,000 shares of Carter's stock at a price of \$23.70 per share.

28. That same day, after the market closed, Carter's announced that it would be restating its earnings for the years 2007-2009 because of the accounting issue it had announced on October 27.

29. When the market opened the next day, Carter's stock opened at \$24.04, a \$2.13 decline from its price before the announcement at market close the

day earlier. The loss avoidance for Level Global by selling ahead of the negative news was \$268,500.

30. Megalli's trader, noting the incredible timing of this trade and the similar timing of the trade they had completed in late October in front of another negative announcement emailed Megalli and asked, "haven't we done this before?"

**Trading Ahead of Carter's December 23, 2009 Announcement
of a Restatement of its Earnings**

31. Megalli again spoke to Martin by telephone call on November 10, 2009, during which Martin advised that Carter's upcoming quarterly earnings would be favorable. Martin had been tipped as to that information by Posey.

32. The next day, Megalli directed Level Global to buy 50,000 Carter's shares and commented, in an instant message to a colleague, that he was bullish on the stock and had "100% conviction" and a "ton of recon on" Carter's. The shares were purchased at a price of \$22.67 per share.

33. Throughout the rest of November and early December, Megalli continued to receive positive information from Martin about Carter's prospects.

34. On December 22, Megalli spoke to Martin and communicated by e-mail regarding Carter's prospects. In one email, Martin hinted that Carter's would be updating investors regarding its already announced accounting issues "tomorrow." Martin was tipped as to that information by Posey.

35. The next day, December 23, before the market opened, Carter's announced the results of its restatement of earnings. The market reacted positively to the news.

36. That same trading day, shortly after Carter's announcement, Megalli ordered Level Global to sell Carter's shares, and Level Global sold a total of 100,000 shares at a price of \$26.77 per share.

37. As a result of this trading, Level Global profited on the 50,000 shares purchased on the basis of inside information by \$205,000.

Trading Ahead of Carter's July 29, 2010 Earnings Release

38. Megalli and Martin had another telephone conversation on July 8, 2010. During this call, Martin told Megalli that Carter's earnings for the quarter would be below expectations. Martin had been tipped as to this information by Posey.

39. Subsequently on that same day, Megalli told Level Global to begin accumulating a short position in Carter's, and Level Global initially sold 150,000 shares short.

40. At Megalli's direction, Level Global continued to build up this short position over the next few days, ending up with a short position of 300,000 shares by July 19, at an approximate value of \$7,800,000.

41. On July 29, before the market opened, Carter's issued an earnings release that contained negative future guidance. The announcement caused Carter's stock to decline \$2.47 per share, from \$26.01 before the announcement to \$23.54.

42. Right at the market open, Level Global covered its entire short position of 300,000 shares at a price of \$23.87, generating profits of \$648,655.

43. After the trade, Megalli bragged to colleagues in instant messages of being "max short" Carter's before the negative announcement and, in return, received hearty congratulations from his colleagues on the trading profits from his short position.

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

44. Paragraphs 1 through 43 are hereby re-alleged and are incorporated herein by reference.

45. Between approximately September 2009 and July 2010, Defendant, in the offer and sale of securities described herein, by the use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes, and artifices to defraud, all as more particularly described above.

46. 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 intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

47. 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)]

48. Paragraphs 1 through 43 are hereby re-alleged and are incorporated herein by reference.

49. Between approximately September 2009 and July 2010, Defendant, in the offer and sale of securities described herein, by the use of the means and instruments of transportation and communication in 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.

50. 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 thereunder [17 C.F.R. § 240.10b-5]

51. Paragraphs 1 through 43 are hereby re-alleged and are incorporated herein by reference.

52. Between approximately September 2009 and July 2010, 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
- 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.

53. 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 intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

54. 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 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 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(a) and (c) thereunder.

III.

An order requiring the disgorgement by Defendant of all ill-gotten gains or unjust enrichment (including amounts received by Level Global as a result of Megalli's actions) with prejudgment interest, to affect the remedial purposes of the federal securities laws.

IV.

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

V.

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: November 14, 2013.

Respectfully submitted,

/s/M. Graham Loomis
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Georgia Bar Number 457868

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