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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Fort Worth Division

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NORTHERN DIST. OF TX
FORT WORTH DIVISION
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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-v.-

ROBERT G. HERNDON,

Defendant.

400 - CV - 1564 - A

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, and venue is proper, pursuant to Sections 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(3)(A), 78u(e) and 78aa]. Defendant, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged herein. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)].

SUMMARY

2. This case involves fraudulent concealment of material information by Defendant Robert G. Herndon while he was Chief Financial Officer ("CFO") for Pier 1 Imports, Inc., a public company. Herndon concealed a \$20 million loss and various other material facts about the

company's investments from Pier 1's senior management, its outside auditors, and the public.

Pier 1's loss was caused by theft of the company's funds by an outside money manager, S. Jay Goldinger. Herndon's and Goldinger's conduct caused material misrepresentations and omissions in quarterly and annual reports filed by Pier 1 with the Commission, as shown in the table attached as Exhibit "A" (comparing reported to restated current asset and pretax income).

3. Goldinger secretly commingled the funds given to him for investment by his clients, including Pier 1, and placed an enormous number of self-hedging trades in Treasury bond futures without allocating the trades to particular clients. Later Goldinger would allocate the winning and losing trades to particular clients. Goldinger also wrote "strangles" in the Treasury options market—in effect placing risky bets that interest rates would not fluctuate significantly over certain periods—to enhance profits. Goldinger's misallocation scheme and the strangles allowed him to pay himself large sums, create tax losses for certain clients, and shift funds among accounts as needed to keep his scheme going. During most of the ten years Goldinger engaged in this scheme, Pier 1 was one of his clients and Herndon personally supervised Pier 1's relationship with him.

4. Herndon's concealment began in 1986 with the first trade Goldinger placed for Pier 1, and ended in 1995 when Goldinger and his clients suffered catastrophic losses after interest rates rose dramatically. In his capacity as CFO, Herndon directed the booking of false entries and oversaw preparation of erroneous filings with the Commission.

5. By engaging in the conduct alleged in this Complaint, Herndon violated the antifraud, books and records, and internal accounting control provisions of the Exchange Act. Herndon also aided and abetted Pier 1's violations of the periodic reporting, books and records, and internal accounting controls provisions of the federal securities laws.

6. Unless enjoined by this Court, Defendant will likely continue to engage in this type of violative conduct. The Commission accordingly seeks injunctions against future violations and statutory money penalties.

DEFENDANT

7. Robert G. Herndon, age 66, resides in Fort Worth, Texas. Herndon was an audit partner with Arthur Andersen & Co. from about 1969 to 1980. Thereafter he was an executive vice-president and Chief Operating Officer with two public companies and CFO of a third public company before becoming Pier 1's CFO in August 1985. Herndon was a licensed Certified Public Accountant from at least 1967 until he allowed his license to lapse in April 1995. Pier 1 terminated Herndon's employment on February 9, 1996.

REGISTRANT

8. Pier 1 Imports, Inc. is a Delaware corporation with headquarters in Fort Worth, Texas. It is a retailer of home furnishings. Pier 1's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. Its fiscal year ends annually on the Saturday closest to the last day in February.

FACTS

Background

9. In early 1986, Pier 1's senior management was concerned that Pier 1's income for the last quarter of the 1986 fiscal year, which ended on February 28, 1986, would not exceed its last quarter income in the previous year. Herndon was asked to contact Goldinger and ask him if he could, by investing some of Pier 1's funds, generate additional income for Pier 1 by the end of the fiscal year. Goldinger indicated that he could.

10. Goldinger succeeded in generating a profit equal to 2 cents per share for Pier 1 by means of a single purchase and sale in an account Goldinger opened for Pier 1 at Refco, Inc., a futures commission merchant, on or about February 21, 1986, a week before the quarter ended. On that date, Goldinger purchased and sold 250 contracts in U.S. Treasury bond futures (each trade having a par value of \$250 million), netting \$279,005 for Pier 1. These trades were executed despite the fact that Pier 1 had no funds at Refco.

11. In March or April 1986, after reviewing the Refco daily statement detailing the transactions that netted \$279,005, Herndon caused Pier 1 to book the \$279,005 as income for 1986. The gain of 2 cents per share Pier 1 realized in the last quarter of fiscal 1986 was entirely attributable to these transactions.

12. At around the same time, Herndon also opened a personal account with Goldinger. For the next five years, Herndon's personal account made annual returns in excess of 100 percent. Herndon invested a total of \$100,000 with Goldinger, and between 1986 and 1991 withdrew almost \$700,000 from the account. Herndon did not disclose his personal financial relationship with Goldinger to anyone at Pier 1.

13. Pier 1 continued to invest with Goldinger after fiscal 1986. As Pier 1's CFO, Herndon personally supervised all aspects of Pier 1's relationship with Goldinger, including accounting for the returns Goldinger produced. Pier 1's returns during the first five years of the relationship were much lower than Herndon's, with annual profits between 8 and 9 percent.

14. During fiscal 1992 (March 1991 through February 1992), Pier 1 did not invest with Goldinger. In fiscal 1993, Herndon caused Pier 1 to invest its funds with Goldinger. From at least that point forward, at the end of each fiscal year, Herndon instructed Goldinger to liquidate Pier 1's positions and to return Pier 1's money, with profits. This procedure avoided

outside auditing of the investments. After the start of the next fiscal year, Herndon would cause Pier 1 to send Goldinger additional funds to invest on Pier 1's behalf.

**Fiscal 1995: Herndon Makes False Statements to Auditors
and Falsifies Audit Confirmation**

15. After his initial \$100,000 investment in 1986, Herndon never deposited additional money in his personal account with Goldinger. However, beginning in early 1994, Herndon's personal account at Refco suffered substantial losses (the losses might have been due to Goldinger's purposeful allocation of losses to Herndon's account), which Goldinger covered by depositing money into the account. Between March 1994 and March 1995, Goldinger deposited over \$375,000 into Herndon's account.

16. Herndon understood that Goldinger was investing on Pier 1's behalf in financial futures and options and knew or was reckless in not knowing that such investments were speculative. However, from at least fiscal 1995, Herndon told Pier 1's senior management before board meetings and Pier 1's auditors during their quarterly reviews that Pier 1 was investing in safe, non-risky Treasury bills. Herndon made similar false statements to Pier 1's management and auditors in each subsequent quarter through the third quarter of fiscal 1996.

17. As a result of Herndon's concealment, Pier 1 failed to reflect losses incurred in the Goldinger accounts on a quarterly basis. (See Exhibit A). Herndon knew or was reckless in not knowing that, under generally accepted accounting principles ("GAAP"), unless a speculative investment such as a future or an option on a future is employed as a "hedge"—that is, unless it is intended to offset a risk to some other investment asset held by the company—it must be marked to market in each quarter in the company's financial statements to recognize fluctuations in its

value. As Herndon also knew, Pier 1 did not, in fact, use the options and futures trading Goldinger conducted to hedge against any asset.

18. By the end of fiscal 1995, Goldinger's misallocation scheme had resulted in a nearly \$3 million loss in Pier 1's account. Shortly thereafter, however, Goldinger recouped Pier 1's loss in a flurry of profitable futures trades that he allocated to Pier 1's account. A week after Pier 1's fiscal year-end, Goldinger wired \$3,637,616.65—purportedly the remainder of Pier 1's principal plus a profit—to Pier 1. Pier 1's accounting staff, at Herndon's instruction, booked this money as though it had been received before the end of the fiscal year.

19. Pier 1's auditors discovered that Pier 1 had received the approximately \$3.6 million wire after year-end and asked Pier 1's accounting staff about the late receipt. In response, Pier 1 sent a confirmation request, signed by Herndon and containing information supplied by him, to Goldinger asking him to confirm that at fiscal year-end Pier 1's account held \$3,500,000 invested in Treasury Bills bearing an interest rate of 10.21 percent, purchased on May 10, 1994, with a maturity date of February 28, 1995. The confirmation also stated that as of February 25, 1995—the last day of the fiscal year—Goldinger held \$137,616.65 in unpaid interest for Pier 1. The information in the audit confirmation was incorrect. As Herndon intended, Goldinger signed the confirmation, falsely attesting that the information was correct and sent it to Pier 1's auditors.

20. Herndon knew the information in the confirmation was false. As a result of the false confirmation and other false statements by Herndon to Pier 1's senior management and auditors, Pier 1's financial statements contained in its Form 10-K filed with the Commission on May 26, 1995 failed to reflect losses in the Goldinger investments and instead reflected

gains, and the Form 10-K materially misled the public with respect to Pier 1's investment strategy.

Fiscal 1996: Pier 1's Investments With Goldinger
Result in Almost Total Losses

21. At the beginning of fiscal 1996, Pier 1 wired Goldinger \$15 million to invest. Account statements sent to Herndon on a daily and monthly basis directly from Refco showed that Goldinger employed the funds in extremely active trading in Treasury bond futures and options on Treasury bond futures and was taking tremendous losses. Most of the losses were caused by Goldinger deliberately allocating losses to Pier 1 and gains to the accounts of other customers. Herndon directed that Pier 1 wire Goldinger an additional \$4.5 million on April 26, 1995, bringing the total invested to \$19.5 million. By the end of April 1995 Goldinger had allocated to Pier 1's account losses of approximately \$14 million.

22. By the end of May 1995, Goldinger's activities resulted in the loss of \$18.4 million of Pier 1's \$19.5 million investment. This was apparent from the account statements Herndon received. Moreover, in May 1995 Goldinger informed Herndon that the investments were not liquid. By the end of May 1995, Herndon either knew the extent of the losses or was reckless in not knowing them.

23. Herndon did not inform senior management at Pier 1 of any problems with the investments. Nor did he cause Pier 1 to reflect a decreased value for the investments in its financial statements for the quarter ended May 27, 1995. During the quarterly audit review, Herndon falsely represented to the auditors that the Goldinger investments were in "T-bills with no mark to market reserve required."

24. By the end of August 1995 Pier 1's investment losses were almost total, as even the most superficial review of Pier 1's account statements would have shown. Herndon again spoke with Goldinger in August or September and Goldinger again said that Pier 1's investments were not liquid. Herndon understood that if Goldinger liquidated the account, Pier 1 would suffer losses. Goldinger assured Herndon that he would be able to solve the liquidity problem by the end of Pier 1's fiscal year. Herndon allowed Goldinger to continue trading in hopes of recouping what Goldinger characterized as temporary losses. Herndon continued to keep the losses secret and once again failed to ensure that the losses were disclosed in Pier 1's financial statements for the quarter ended August 26, 1995. Moreover, Herndon again falsely represented to Pier 1's auditors that the investments were in T-bills and did not need to be marked to market.

Herndon Causes Pier 1 to Issue a False Press Release

25. At a meeting with Herndon on November 12, 1995, Goldinger informed Herndon that if Pier 1 could transfer an additional \$10 million to him Pier 1's losses could be recovered more rapidly. Herndon refused to provide additional funds.

26. On December 12, 1995, Herndon again falsely represented to Pier 1's auditors that the Goldinger investments did not have any "mark to market" issues for the quarter. In addition, on the same day, Herndon was responsible for Pier 1 issuing a press release summarizing Pier 1's quarterly earnings which falsely stated that Pier 1 had earned income equal to 33 cents a share. Had Herndon disclosed the losses in the Goldinger investments, Pier 1 would have announced a loss for the quarter.

27. On December 21, 1995, Goldinger told Herndon that he had lost all of Pier 1's money and could not recoup it. On Friday, December 22, 1995, Herndon finally reported the Goldinger investment losses to Pier 1's Chief Executive Officer. On the next business day,

Tuesday, December 26, 1995, Pier 1 issued a press release announcing non-recurring pre-tax losses of approximately \$20 million. In February, May, June, July, and August 1996, Pier 1 filed restated financial statements with the Commission as reflected in the table at Exhibit A.

FIRST CLAIM

Violations of the Antifraud Provisions of the Federal Securities Laws

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

28. Plaintiff realleges and incorporates by reference paragraphs 1 through 27 above.

29. By reason of the foregoing, Herndon violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

SECOND CLAIM

Violations of the Accounting, Record-Keeping, and Internal Control Provisions of the Federal Securities Laws

[Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1 and 240.13b2-2]]

30. Plaintiff realleges and incorporates by reference paragraphs 1 through 27 above.

31. As Pier 1's chief financial officer, Herndon was responsible for the company's accounting for and disclosure of its investments with Goldinger. Herndon was also responsible for maintaining the company's books and records and implementing internal controls.

32. By engaging in the foregoing conduct, Herndon knowingly or recklessly circumvented and failed to implement a system of internal accounting controls sufficient to ensure that the Goldinger investments were accounted for in conformity with GAAP. Herndon also directed Pier 1's accounting department to recognize a gain for the Goldinger investments in Pier 1's books and records although he knew or was reckless in not knowing that the investments had a loss. In

addition, he failed to ensure that Pier 1's investments were properly disclosed in the company's Forms 10-Q for its quarters ended May 27, 1995 and August 26, 1995.

33. By reason of the foregoing, Herndon violated Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder [15 U.S.C. § 78m(b)(5) and 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2]. Herndon's actions also aided and abetted Pier 1's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

PRAAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently restrain and enjoin Herndon and his agents, servants, employees, attorneys and assigns and those person in active concert or participation with them, and each of them, from (i) violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, (ii) violating Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder [15 U.S.C. § 78m(b)(5) and 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2], and (iii) aiding and abetting or causing violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13];

II.

Permanently restrain and enjoin Herndon from serving as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the

Exchange Act [15 U.S.C. § 78l] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

III.

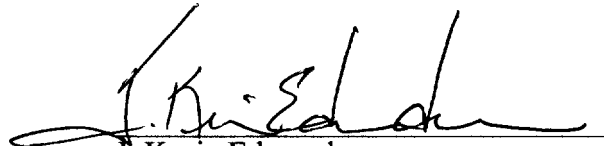
Order Herndon to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

IV.

Order such other relief as the Court may deem just and proper.

Dated: Sept. 19, 2000

Respectfully submitted,



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SECURITIES AND EXCHANGE COMMISSION

Table Comparing Reported to Restated Asset and Income Information

Fiscal Period	CURRENT ASSETS			PRETAX INCOME		
	Original Reported	Restated	% Orig. Overstated	Original Reported	Restated	% Orig. Overstated
1993 3rd Q	313,710	311,291	0.78%	4,792	2,373	101.94%
1994 1st Q	334,216	330,235	1.21%	6,622	2,641	150.74%
1994 2nd Q	313,287	303,079	3.37%	10,355	4,128	150.85%
1994 3rd Q	322,439	307,681	4.80%	5,685	1,135	400.88%
1995 1st Q	341,999	340,455	0.45%	8,011	6,467	23.88%
1995 2nd Q	343,017	337,321	1.69%	12,554	8,402	49.42%
1995 3rd Q	344,762	333,317	3.43%	648	(5,101)	n.a.**
1995 10-K	352,887	350,088	0.80%	36,027	33,228	8.42%
1996 1st Q	343,798	324,686	5.89%	(3,613)*	(19,926)	n.a.**
1996 2nd Q	373,512	353,798	5.57%	15,836*	15,234	3.95%

Note: All numbers in thousands; Pier 1's fiscal year 1993 and 1994 10-Ks did not need to be restated.

* Pier 1 moved a \$14 million write-off due to a default from its 2nd quarter FY 1996 to the 1st when it filed its restated 10-Qs. These income figures account for that change.

** When negative numbers are reported the resulting percentage is not meaningful.

EXHIBIT A