

ORIGINAL

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FILED _____ ENTERED _____
LODGED _____ RECEIVED _____
AUG 24 2004 MR
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPT.

9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

CV04-1837

11 SECURITIES AND EXCHANGE COMMISSION,
12 Plaintiff,
13 v.
14 ATHENA P. DIAZ,
15 Defendant.

Case No. C

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
AND STATUTORY RELIEF

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

17 SUMMARY OF THE ACTION

18 1. Defendant Athena P. Diaz, while controller at Cutter & Buck, Inc. ("Cutter" or the
19 "Company"), a Seattle-based sportswear manufacturer, assisted in a scheme by the Company's
20 management to overstate earnings and revenues for the fiscal year ended April 30, 2000. In that year,
21 Cutter improperly recorded \$5.7 million in sales of product to three distribution companies. In fact,
22 Cutter merely shipped the product to the companies to hold until Cutter could find customers to
23 purchase the product, treating them as warehouses. Diaz knew that the transactions were warehousing
24 arrangements and not sales. Diaz helped conceal the true nature of these transactions from the
25 Company's auditors, board of directors and the public, by hiding invoices from the Company's auditors
26 and making false and misleading entries in the Company's accounting records.
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1 of the shipment date requested by the customer. By 2000, the practice had grown substantially, with
2 Cutter's "early shipping" several million dollars in products each quarter. As a consequence of
3 essentially "borrowing" from the next quarter's sales, Cutter began each quarter with a sales deficit.
4 This was particularly problematic going into the fourth quarter of fiscal year 2000.

5 10. During April 2000, in order to conceal the revenue shortfall, a vice president of sales on
6 behalf of Cutter negotiated deals with three distributors under which Cutter would ship them a total of
7 \$5.7 million in products. None of the three distributors had the financial ability to pay for the volume of
8 products Cutter shipped to them. Nor, under their agreements with the Company, did the distributors
9 have the ability or right to sell the products without Cutter finding customers for them. In addition, the
10 vice president of sales assured the distributors that they did not have to pay for the product until Cutter
11 sold the merchandise and Cutter's customers paid the distributors for the items. In effect, these
12 distributors acted as warehouses for goods that had been consigned to them by Cutter.

13 11. At the very end of the month, in the last days of Cutter's fiscal year, Cutter shipped
14 approximately \$5.7 million of goods to these distributors. Cutter improperly treated the shipments as
15 sales and recognized revenue of \$5.7 million. In filings with the Commission and statements to the
16 public, the Company reported revenue of \$54.6 million for the fourth quarter and \$152.5 million for the
17 fiscal year.

18 12. Under Generally Accepted Accounting Principles ("GAAP"), it was improper for Cutter
19 to recognize revenue on the distributor shipments because Cutter had a continuing obligation to find
20 customers for the products. Revenue recognition was also improper because the Company had no
21 reasonable assurance that the distributors would pay for the products, and such payment was contingent
22 on Cutter's ability to find customers for the goods. By improperly including the distributor deals in its
23 reported revenue, Cutter overstated its revenue by approximately 12% for the fourth quarter and
24 approximately 4% for the fiscal year.

25 13. As controller, Diaz had an obligation to ensure that the Company recorded revenue in
26 accordance with GAAP. This obligation included taking affirmative steps to correct any improper
27 accounting treatment, such as the treatment for the \$5.7 million in consignment sales.
28

1 14. Diaz knew or was reckless in not knowing that the distributor shipments were not sales
2 and not revenue under GAAP. Specifically, Diaz knew that the Company had similar warehouse
3 transactions in 1999, where the distributor had no obligation to pay and that it was Cutter's
4 responsibility to sell the products to the ultimate customer. In addition, for the 2000 distributor sales,
5 Diaz knew or had reason to believe that the distributors did not have the financial ability to pay for the
6 products they were supposedly purchasing from Cutter.

7 15. In or about April 2000, Diaz failed to take steps to correct the improper accounting
8 treatment for the Company's sales to the three distributors. Diaz not only failed to take remedial action,
9 but she actively sought to conceal the consignment sales from Cutter's auditors. In their annual audit for
10 fiscal year April 30, 2000, Diaz deliberately withheld the three distributor invoices from the auditors.
11 Diaz's conduct aided Cutter in its fraudulent overstatement of revenue in its Form 10-K for fiscal year
12 ended April 30, 2000, filed with the Commission and disseminated to the public.

13 16. By late 2000, Cutter's sales force failed to deliver enough customers to the three
14 distributors to fill the orders and by late 2000 most of the inventory held by the distributors remained
15 unsold. By the end of April 2001, the distributors returned approximately \$3.8 million of unsold
16 products to Cutter, and the Company credited the returns against fiscal 2001 sales.

17 17. Nearing the close of fiscal year ended April 30, 2001, the Company's chief financial
18 officer directed Diaz to record the returns in the Company's accounting records by dividing them among
19 multiple sales divisions. The \$5.7 million in revenue from the original sales to the distributors had been
20 recognized in the accounts of Cutter's corporate sales division and, thus, the returns should have been
21 credited solely to this division. Diaz knew that the purpose of dividing the returns among multiple
22 divisions was to hide the consignment sales from the Board and the auditors. Diaz also knew that
23 dividing the returns among multiple divisions was improper and in violation of GAAP. Nevertheless,
24 Diaz divided the returns among multiple channels. By so doing, Diaz aided Cutter in not having to
25 publicly acknowledge that Cutter had erroneously recorded the revenue in fiscal 2000. In addition, this
26 resulted in the material misstatement of false financial information in Cutter's Form 10-K for fiscal year
27 ended April 30, 2001, in that it gave the public a false impression of the Company's growth of its
28 various divisions.

1 18. In or around late July 2002, following a change in management, Cutter's new
2 management learned about the improper distributor transactions. The Company began an internal
3 investigation in early August 2002. Diaz was terminated shortly thereafter. On August 12, 2002, the
4 Company announced that it would restate its financial statements for fiscal years 2000 and 2001. The
5 announcement caused Cutter's stock price to drop from \$4.02 to \$3.44, or 14%, the following day.

6 19. In October 2002, in its Form 10-K for the fiscal year ended April 30, 2002, the Company
7 restated its audited financial statements for fiscal years 2000 and 2001. The Company reported that the
8 restatement resulted from the improper recognition of revenue for shipments to distributors in April
9 2000, as well as from the Company's practice of shipping products in advance of the customer's
10 requested shipment date.

11 **FIRST CLAIM FOR RELIEF**
12 **Aided and Abetted Violations of Section 10(b)**
13 **of the Exchange Act and Rule 10b-5.**

14 20. The Commission realleges and incorporates by reference Paragraphs 1 through 19 above.

15 21. During the relevant period, Cutter and Defendant, directly or indirectly, in connection
16 with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce,
17 or of the mails, with scienter:

18 (a) employed devices, schemes, or artifices to defraud,

19 (b) made untrue statements of material facts or omitted to state material facts
20 necessary in order to make the statements made, in the light of the circumstances under which
21 they were made, not misleading, or

22 (c) engaged in acts, practices, or courses of business which operated or would
23 operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

24 22. Defendant knowingly provided substantial assistance to Cutter's violations of Section
25 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

26 23. Defendant has aided and abetted, and unless restrained and enjoined, will continue to
27 violate and to aid and abet, violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
28 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

**Aided and Abetted Violations of Section 13(a)
of the Exchange Act and Rules 12b-20 and 13a-1**

24. The Commission realleges and incorporates by reference Paragraphs 1 through 19 above.

25. Cutter filed with the Commission annual reports on Form 10-K for the fiscal years ended April 30, 2000, and April 30, 2001, that contained untrue statements of material fact and omitted to state material information required to be stated therein or necessary in order to make the required statements made, in the light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 under the Exchange Act [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

26. Defendant knowingly provided substantial assistance to Cutter's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 under the Exchange Act [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

27. Defendant aided and abetted, and unless restrained and enjoined, will continue to aid and abet, violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 under the Exchange Act [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

THIRD CLAIM FOR RELIEF

**Aided and Abetted Violations of Section 13(b)(2)(A)
of the Exchange Act**

28. The Commission realleges and incorporates by reference Paragraphs 1 through 19 above.

29. Cutter, by engaging in the conduct described above, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of the Company, in violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

30. Defendant knowingly provided substantial assistance to Cutter's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

31. Defendant aided and abetted, and unless restrained and enjoined, will continue to aid and abet, violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

FOURTH CLAIM FOR RELIEF
Aided and Abetted Violations of Section 13(b)(2)(B)
of the Exchange Act

32. The Commission realleges and incorporates by reference Paragraphs 1 through 19 above.

33. Cutter, by engaging in the conduct described above, failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable reassurances that:

(a) transactions are executed in accordance with management's general or specific authorization,

(b) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets,

(c) access to assets is permitted only in accordance with management's general or specific authorization; and

(d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

34. Defendant knowingly provided substantial assistance to Cutter's violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

35. Defendant aided and abetted, and unless restrained and enjoined, will continue to aid and abet, violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

FIFTH CLAIM FOR RELIEF
Violations of Section 13(b)(5) of the Exchange Act

36. The Commission realleges and incorporates by reference Paragraphs 1 through 19 above.

37. By engaging in the conduct described above, Defendant knowingly circumvented or knowingly failed to implement Cutter's system of internal accounting controls or knowingly falsified Cutter's books, records and accounts in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

38. Defendant has violated and, unless restrained and enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

SIXTH CLAIM FOR RELIEF

Violations of Rule 13b2-1 of the Exchange Act

39. The Commission realleges and incorporates by reference Paragraphs 1 through 19 above.

40. By engaging in the conduct described above, Defendant falsified or caused to be falsified Cutter's books, records and accounts in violation of Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

41. Defendant has violated and, unless restrained and enjoined, will continue to violate, Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

SEVENTH CLAIM FOR RELIEF

Violations of Rule 13b2-2 of the Exchange Act

42. The Commission realleges and incorporates by reference Paragraphs 1 through 19 above.

43. By engaging in the conduct described above, and in connection with an examination of the financial statements of Cutter and the preparation and filing of statements and reports with the Commission, Defendant, directly or indirectly, made or caused to be made materially false or misleading statements to accountants and omitted to state, or caused another person to omit to state to accountants, material facts necessary in order to make statements made to the accountants, in light of the circumstances under which such statements were made, not misleading.

44. Defendant has violated and, unless restrained and enjoined, will continue to violate, Rule 13b2-2 under the Exchange Act [17 C.F.R. §240.13b2-2].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Enjoin Defendant from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20 and 13a-1 under the Exchange Act and violating, directly or indirectly, Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder;

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II.

Order Defendant to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], with the amount to be determined at a later date by the parties or if the parties cannot agree by the Court;

III.

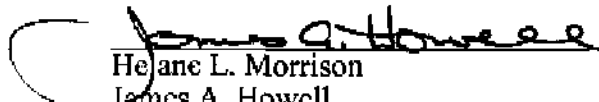
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction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

IV.

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

Dated: August 23, 2004

Respectfully submitted,


Hejane L. Morrison
James A. Howell
Kashya K. Shci

Attorneys for Plaintiff
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ORIGIN

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

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS

DIAZ, ATHENA P.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

FILED ENTERED

LODGED RECEIVED

County of Residence of First Listed

King

(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 1100
San Francisco, CA 94102
(415) 705-2500

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Attorneys (If Known)

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(206) 553-1100

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II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
DEF 1 DEF 1
Incorporated or Principal Place of Business in This State
Incorporated and Principal of Business in Another State
Foreign Nation
DEF 4 DEF 4
DEF 5 DEF 5
DEF 6 DEF 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

Table with 5 main categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, RANKRUPTCY, PROPERTY RIGHTS, OTHER STATUTES. Each category contains a list of specific legal claims with checkboxes.

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

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

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Securities fraud, violations of the Exchange Act: 15 U.S.C. Sections 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and Section 78m(b)(5) and of Rules thereunder: 17 C.F.R. Sections 10b-5, 240.12b-20, 240.13a-1, 240.13b-2-1 and 240.13b2-2.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DATE: 8/23/04 SIGNATURE OF ATTORNEY OF RECORD: James A. Howell

FOR OFFICE USE ONLY

04-CV-01837-CVSHF

RECEIPT # AMOUNT APPLYING JFP