

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ALLEN K. DEARY and
DENNIS A. FICHTER,

Defendants.

CIVIL ACTION
NO.

00 CV 10720 - MEL

COMPLAINT

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

PRELIMINARY STATEMENT

1. This enforcement action involves accounting fraud by the chief financial officer of a public company. In July 1998, Defendant Allen K. Deary fraudulently caused Peritus Software Services, Inc. to record and report over \$1 million of revenue that materially inflated Peritus' second quarter 1998 financial results. In order to substantiate Peritus' claim to the revenue, Deary falsely told Peritus' director of finance and its controller, as well as its outside auditors, that AT&T Corp. had

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RECEIPT # N/A
AMOUNT \$ N/A
SUMMONS REC. yes
LOCAL FILING #1 yes
WILLING TO PAY. /
DATE 4/13/00

①

purchased a software license pursuant to a \$1.9 million purchase order, and that Peritus had delivered the software to AT&T. Deary received substantial assistance in his scheme from Defendant Dennis A. Fichter, a Peritus account manager. Fichter forged the signature of an AT&T official on a letter, which purported to document a license agreement between Peritus and AT&T. In fact, Peritus had not sold a software license to AT&T under that purchase order or performed any services under that purchase order during that quarter. The inclusion of the revenue enabled Peritus to publicly report revenue in line with analyst estimates for the second quarter of 1998. Deary also failed to establish an adequate system of internal controls for recording revenue. As a result, during the third and fourth quarters of 1997, Peritus improperly recorded \$1.8 million in revenue for two sales of software licenses before delivery of the software.

2. As a result of the above-described conduct, Deary and Fichter, directly and indirectly, engaged and, unless enjoined, will continue to engage in acts, practices and courses of business which constitute, variously, violations or aiding and abetting of violations of the antifraud, public company reporting, internal controls and recordkeeping provisions of the Securities Exchange Act of 1934 (the "Exchange Act"). The

Commission brings this action to enjoin such acts, practices and courses of business. The Commission also seeks the imposition of civil monetary penalties against Deary and Fichter.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

4. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Venue is proper in this Court pursuant to the same provision.

5. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the U.S. District Court for the District of Massachusetts and elsewhere.

6. Deary and Fichter, directly and indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein.

DEFENDANTS

7. Deary, age 41, a resident of Carlisle, Massachusetts, was the chief financial officer of Peritus from 1991 to August 17, 1998, when he was promoted to president and chief executive

officer. He was a director from 1991 through 1998. On November 3, 1998, he was forced to resign as an officer and director.

8. Fichter, age 52, a resident of Easton, Pennsylvania, was employed by Peritus as an account manager from August 3, 1998 to December 10, 1998, when he was forced to resign. Before joining Peritus, he was employed by AT&T as a district manager in the business management division.

ISSUER

9. Peritus is a Massachusetts corporation with its headquarters in Westborough, Massachusetts. Peritus' common stock is registered with the Commission under Section 12(g) of the Exchange Act and was traded on the NASDAQ national market system from July 2, 1997 to February 3, 1999, when it was delisted. Peritus' stock currently trades on the OTC Bulletin Board operated by the NASD. Peritus sells, among other things, licenses to use its Year 2000 software, and services.

FACTS

Deary Fraudulently Directs Peritus to Record \$1.085 Million in Revenue

10. On June 26, 1998, AT&T issued a \$1.9 million purchase order to Peritus for software renovation services. The purchase

order stated that it was for services and did not refer to an independent sale of a software license.

11. Under generally accepted accounting principles ("GAAP"), revenue for providing services can be recognized only upon completion of all or a portion of the services. Conversely, revenue from a sale of a software license can be recognized only upon delivery, assuming no significant future obligations remain at the date of delivery.

12. Deary knew or was reckless in not knowing that it was not proper to record revenue under the \$1.9 million AT&T purchase order during the quarter ended June 30, 1998 because Peritus had not provided any services to AT&T during the quarter. However, in an effort to record the revenue, Deary conceived of a scheme to characterize the transaction as, in part, a sale of a software license rather than exclusively as an agreement to provide services.

13. First, Deary requested that Peritus' salespeople obtain an amended purchase order from AT&T, which would refer to a sale of a software license. AT&T, however, refused because the purchase order had already been signed.

14. Nonetheless, Deary directed Peritus' controller to record on Peritus' books and records a portion of the \$1.9

million purchase order, amounting to \$1.085 million, as revenue in the quarter ended June 30, 1998. Deary decided to attribute \$1.085 million of the \$1.9 million purchase order to AT&T's purported purchase of a software license. Deary falsely told Peritus' director of finance and its controller that AT&T had purchased a software license, and that Peritus had delivered the software to AT&T.

15. Deary knew that it was improper to record \$1.085 million as revenue under the AT&T purchase order because he knew or was reckless in not knowing that AT&T had not agreed to purchase a license, and that Peritus had not provided any services to AT&T during the quarter under the purchase order. In addition, Deary knew that inclusion of that revenue would enable Peritus to report revenue in line with analysts' estimates.

False Representations to Peritus' Auditors

16. On July 10, 1998, in preparation for a review of Peritus' second quarter results by its independent auditors, Deary requested that an AT&T official sign a letter prepared by Deary stating that Peritus was providing AT&T with services and licenses under several outstanding AT&T purchase orders.

17. At Deary's request, the AT&T official signed the letter. The official, however, did not attach significance to

the word "licenses," and intended to purchase only services on behalf of AT&T.

18. On July 22, 1998, the evening before Peritus was to announce its second quarter financial results, Peritus' independent auditors were completing their review of certain second quarter transactions. The auditors informed Deary that the \$1.9 million purchase order and the letter from the AT&T official did not establish that a sale of a software license to AT&T had occurred. In response, Deary agreed to obtain further documentation of the purported sale.

19. Deary promptly prepared another letter for the signature of the same AT&T official. The redrafted letter was similar to the first letter, but Deary added that Peritus was providing software to AT&T under its standard licensing agreement.

20. Instead of sending the redrafted letter directly to the AT&T official for signature, Deary faxed the redrafted letter to Fichter, a former AT&T employee who had worked on the transaction and who had just accepted a position at Peritus as an account manager but had not yet begun to work there. Fichter forged the AT&T official's signature on the letter and returned it to Deary.

21. At the time he forged the AT&T official's signature on the letter, Fichter was not employed by AT&T, and he did not have any authority to sign the AT&T official's name. Also, Fichter knew that Peritus had not sold a software license to AT&T because he had participated in negotiating the transaction with Peritus when he was employed by AT&T. Therefore, Fichter either knew, or was reckless in not knowing, that the letter was false and misleading.

22. Deary, who knew or was reckless in not knowing that AT&T had not purchased a license, also knew, or was reckless in not knowing, that Fichter had forged the AT&T official's signature.

23. Despite this knowledge or recklessness, Deary provided the letter to Peritus' auditors as evidence that a sale of a software license had taken place. Deary also falsely told the auditors that software had been delivered under the purchase order. As a result, the auditors approved recognition of the \$1.085 million in revenue under the purchase order for the second quarter of 1998.

False and Misleading Press Release and Form 10-Q

24. On or about July 22, 1998, Deary approved a press release, which Peritus issued the next day. Peritus announced in

the press release that its second quarter revenue had increased 32% to \$11.8 million, as compared to revenue of \$9.0 million in the second quarter of 1997. The reported revenue included the improperly recognized \$1.085 million in license revenue from AT&T.

25. On August 14, 1998, Peritus filed with the Commission a report on Form 10-Q for the quarter ended June 30, 1998, which materially overstated the company's revenues by \$1.085 million and materially understated its pre-tax loss by the same amount. Had Peritus not recorded the revenue from AT&T in the second quarter of 1998, its reported pre-tax loss of \$917,000 would have been \$2 million. The Form 10-Q was signed by Deary as chief financial officer.

26. As a result, assuming no other adjustments, Peritus's revenues were overstated, and its pre-tax loss was understated, by 10% and 54%, respectively.

27. Deary knew or was reckless in not knowing that the financial results presented in the press release and the report on Form 10-Q were materially false and misleading.

Failure to Establish Adequate Internal Controls

28. During the third and fourth quarters of 1997, Peritus improperly recorded \$1.8 million in revenue for two sales of

software licenses. Recognizing this revenue was improper because delivery of the software did not occur until the next quarter, when the revenue should have been recognized instead.

29. This improper recognition of revenue occurred because Peritus did not have internal controls in place to ensure that software had been delivered prior to recognizing revenue on the sale of a software license. After receiving a customer agreement, the finance department did not ascertain whether software had been delivered before recognizing revenue. Instead, the finance department assumed that delivery had taken place and recorded the revenue.

30. As chief financial officer, Deary was responsible for establishing an adequate system of internal accounting controls, which he failed to do.

FIRST CLAIM

**Violation of Section 10(b) of
the Exchange Act and Rule 10b-5 Thereunder
(Defendant Deary)**

31. The plaintiff Commission realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 30 above.

32. Deary, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase and sale of Peritus securities: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaged in acts, practices or courses of business which operated as a fraud or deceit upon purchasers and sellers of Peritus securities.

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

SECOND CLAIM

**Violation of Section 13(b) (5) of the Exchange Act
and Rule 13b2-1 and Aiding and Abetting Violations of
Section 13(b) (2) (A) and 13(b) (2) (B) of the Exchange Act
(Defendant Deary)**

34. The plaintiff Commission repeats and realleges paragraphs 1 through 30 above.

35. Deary knowingly circumvented Peritus' system of internal accounting controls and knowingly falsified the books,

records or accounts that Peritus was required to make and keep pursuant to Section 13(b)(2)(A) of the Exchange Act by improperly directing Peritus' controller to record on Peritus' books and records \$1.085 million of the \$1.9 million AT&T purchase order as revenue in the quarter ended June 30, 1998.

36. Although Deary was responsible for establishing an adequate system of internal controls for recording revenue, Peritus' internal controls did not ensure that software had been delivered before recognizing revenue on the sale of a software license. Therefore, Deary failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP.

37. By reason of the foregoing, Deary violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1], and aided and abetted Peritus' violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

THIRD CLAIM

Violation of Rule 13b2-2
(Defendant Deary)

38. The plaintiff Commission repeats and realleges paragraphs 1 through 30 above.

39. Deary, who was an officer and a director of Peritus, made materially false or misleading statements or omissions to Peritus' director of finance and its controller in connection with their preparation of Peritus' financial statements for the second quarter of 1998, and to Peritus' accountants in connection with their review of those financial statements, which were included in Peritus' quarterly report filed with the Commission on Form 10-Q.

40. By reason of the foregoing, Deary violated Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

FOURTH CLAIM

Aiding and Abetting Peritus' Violations of Section 13(a) of the
Exchange Act and Rules 13a-13 and 12b-20 Thereunder
(Defendant Deary)

41. The plaintiff Commission repeats and realleges paragraphs 1 through 30 above.

42. As a result of Deary's knowing and substantial assistance, described above, Peritus filed a materially false and

misleading report on Form 10-Q for the period ended June 30, 1998.

43. By reason of the foregoing, Deary aided and abetted Peritus' violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], Rule 13a-13 [17 C.F.R. § 240.13a-13] and Rule 12b-20 [17 C.F.R. § 240.12b-20] thereunder.

FIFTH CLAIM

**Aiding and Abetting Deary's Violations of
Sections 10(b) and 13(b)(5) of the Exchange Act
and Rules 10b-5 and 13b2-1 Thereunder
(Defendant Fichter)**

44. The plaintiff Commission repeats and realleges paragraphs 1 through 30 above.

45. Defendant Fichter provided knowing and substantial assistance to Deary by forging the AT&T official's signature on a letter which he knew, or was reckless in not knowing, was false and misleading.

46. By reason of the foregoing, Fichter aided and abetted Deary's violations of Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], Rule 10b-5 [17 C.F.R. § 240.10b-5] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Deary from, directly or indirectly, violating Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2] promulgated thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 13a-13 and 12b-20 [17 C.F.R. §§ 240.13a-13 and 240.12b-20] promulgated thereunder.

II.

Issue an Order requiring Deary to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

III.

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Fichter from, directly or indirectly, aiding and abetting violations of Sections 10(b) and 13(b)(5) of

the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5, 240.13b2-1] promulgated thereunder.

IV.

Issue an Order requiring Fichter to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

V.

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.

VI.

Grant such additional relief as this Court deems necessary or appropriate.

Respectfully submitted,



JUAN MARCEL MARCELINO
District Administrator

James B. Adelman
Associate District Administrator
BBO No. 632531

Madeleine McGrath Blake
Assistant District Administrator
BBO No. 555124

Richard P. Jacobson
Special Counsel
BBO No. 105330

Attorneys for Plaintiff
Securities and Exchange Commission
73 Tremont Street, Suite 600
Boston, MA 02108
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Dated: April 13, 2000

CIVIL COVER SHEET

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

U.S. Securities and Exchange Commission

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Richard P. Jacobson, Esq.
U.S. Securities and Exchange Commission
73 Tremont Street, Boston, MA 02108
(617) 424-5900

DEFENDANTS

Allen K. Deary

Dennis A. Fichter

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Middlesex

(IN U.S. PLAINTIFF CASES ONLY)

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

ATTORNEYS (IF KNOWN)

John Baraniak, Esq.
Choate Hall & Stewart
53 State Street, Boston, MA 02109
(counsel for Deary) (617) 248-2114

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

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 861 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

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)

The defendants committed accounting fraud in violation of 15 U.S.C. §§ 78j(b), 78m(b)(5), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B) and 17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2, 240.13a-13 and 240.12b-20.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

DEMAND \$

CHECK YES only if demanded in complaint:

☐ UNDER F.R.C.P. 23

Permanent Injunction & Civil Penalty

JURY DEMAND:

☐ YES

☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/13/00

Richard P. Jacobson

Richard P. Jacobson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Securities and Exchange Commission
v. Allen K. Deary

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730,
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403) YES ☐ NO ☒
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? YES ☐ NO ☐

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? YES ☐ NO ☒

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES ☐ NO ☒
OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? -
(SEE LOCAL RULE 40.1(D)). YES ☐ NO ☒

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES ☐ NO ☒
(*) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Eastern Section

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE
CENTRAL SECTION; YES ☐ NO ☒ OR WESTERN SECTION; YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Richard P. Jacobson, Esq.

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