

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

96-8675

Case No.

CIV - RYSKAMP

COMPLAINT FOR MAGISTRATE JUDGE  
INJUNCTIVE AND VITUNAC  
OTHER RELIEF

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE APPLETREE COMPANIES, INC. )  
 f/k/a MODAMI SERVICES, INC., )  
 MICHAEL H. SALIT, DAVID B. LOBEL, )  
 PAUL B. KRAVITZ, AND )  
 W. SCOTT LONG III, )  
 )  
 Defendants. )

FILED BY [Signature]  
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CLERK OF FLA. SUP. CT.  
S.D. OF FLA. - MIAMI  
D.C.

Plaintiff, Securities and Exchange Commission  
("Commission"), alleges that:

INTRODUCTION

1. The Commission brings this action as a result of various material omissions and misrepresentations in connection with AppleTree Companies, Inc.'s ("AppleTree"), offer and sale of securities in 1992, as well as in various reports with the Commission thereafter. The misstatements and omissions in AppleTree's 1992 offering materials and subsequent filings relate to: (a) an undisclosed relationship between former officers and directors of AppleTree and AppleTree's sole supplier of the raw material for its yogurt product; (b) \$440,000 in machinery and equipment purportedly owned by AppleTree; (c) an undisclosed \$250,000 loan which AppleTree made from the proceeds of its 1992 offering; and (d) a joint venture agreement with an unauthorized signature included in a filing with the Commission. The Commission seeks injunctive relief and an accounting against all

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Defendants, and civil penalties and disgorgement against all individual Defendants.

**DEFENDANTS**

2. **The AppleTree Companies, Inc.** ("AppleTree"), a Delaware corporation which until in or about August 1996 had its principal offices in Boca Raton, Florida, is a diversified food and consumer products company. At all times relevant, AppleTree was subject to the reporting requirements of the Securities Exchange Act of 1934 ("Exchange Act") and AppleTree filed current and periodic reports with the Commission.

3. **Michael H. Salit** ("Salit"), 52, resides in Boca Raton, Florida. Salit was AppleTree's chairman from its inception until in or about March 1994.

4. **David B. Lobel** ("Lobel"), 56, resides in Boca Raton, Florida. Lobel was AppleTree's vice-president and chief financial officer from its inception until in or about July 1993.

5. **Paul B. Kravitz** ("Kravitz"), 64, resides in Boca Raton, Florida. Kravitz was president of AppleTree from its inception through in or about April 1994, when he became chairman and president. In or about August 1996, Kravitz resigned as chairman and president.

6. **W. Scott Long III** ("Long"), 52, resides in Shorewood, Minnesota. At the time of AppleTree's August 1992 offering, Long was president of Kennedy, Mathews, Landis, Healy & Pecora, Inc. ("Kennedy Mathews"), the underwriter of AppleTree's 1992 offering.

**JURISDICTION**

7. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(d), 77v(a), and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.

8. The Commission brings this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d), and 77v(a), and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa, to restrain and enjoin the Defendants from engaging in the acts and practices complained of herein, and for other equitable relief.

9. AppleTree, Salit, Lobel, Kravitz and Long, directly or indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts and practices complained of herein.

**OVERVIEW OF THE FRAUDULENT SCHEME**

10. On or about January 3, 1992, AppleTree (formerly known as Modami Services, Inc. ("Modami")) filed with the Commission a registration statement on Form S-18 (the "Registration Statement"). According to its Registration Statement, AppleTree, a development stage company, intended to raise approximately \$5 million to commence distribution of a frozen yogurt product.

11. Salit, Lobel, Kravitz and Long caused AppleTree's Registration Statement, as well as certain subsequent reports to the Commission, to contain numerous material omissions and affirmative misrepresentations. Additionally, Salit and Lobel intentionally and/or recklessly provided AppleTree's independent accountants with false information and caused AppleTree to fail to make and keep accurate books and records.

**APPLETREE'S FRAUDULENT REGISTRATION STATEMENT**

12. AppleTree's Registration Statement disclosed that it intended to use approximately \$1.6 million of the proceeds of this offering to purchase dehydrated yogurt powder from an Israeli company known as Nutrix, Ltd. ("Nutrix"); AppleTree represented that \$200,000 already had been advanced to Nutrix. AppleTree's Registration Statement stated that Nutrix was the sole supplier of this product, and further represented that Nutrix was an unaffiliated, privately-owned company, owned and controlled by Leon Unger ("Unger") and Avi Shalev ("Shalev"). AppleTree's Registration Statement did not disclose that Salit and Lobel had any relationship with or interest in Nutrix.

**Undisclosed Corporate and Creditor Relationships With Nutrix**

13. On or about September 12, 1990, Salit and Lobel, with others, co-founded Nutrix's predecessor. From that time until at least AppleTree's advance of \$200,000 to Nutrix on or about June 11, 1991, Salit and Lobel remained both stockholders (each owning approximately 25%) and directors of Nutrix. Furthermore, Salit and Lobel claim that, until well after the effective date of

AppleTree's Registration Statement, Nutrix owed them approximately \$600,000, which would have made them Nutrix's creditors at the time of the 1992 offering.

14. In response to questions from AppleTree's auditors in connection with the audit of its financial statements for the period ended August 31, 1991, as well as in response to questions from AppleTree's attorneys and underwriter in connection with the preparation of AppleTree's Registration Statement, Salit and Lobel failed to disclose that they had any relationship with Nutrix and, in fact, affirmatively denied that they had any such relationship.

15. As a result of Salit's and Lobel's failures to disclose their relationships with Nutrix, AppleTree's Registration Statement failed to disclose that Salit and Lobel were stockholders, directors and claimed to be creditors of Nutrix during the time that AppleTree was doing business with Nutrix.

16. When Salit and Lobel prepared AppleTree's Registration Statement or caused or allowed it to be filed with the Commission, they knew, or recklessly disregarded the fact, that it materially misrepresented, or omitted to state material facts concerning, their relationships with Nutrix.

17. These misstatements and omissions concerning Salit's and Lobel's relationship to Nutrix were material because an investor would have wanted to know that Salit and Lobel had such relationships with AppleTree's sole supplier of raw material for its yogurt product.

offering. Regal, also a client of Kennedy Mathews, was seeking to raise funds to build a gambling casino. To document the loan, Regal issued a promissory note to AppleTree. Kravitz learned of the loan either at or about the same time or shortly thereafter.

22. The loan to Regal was not disclosed, and no provision for such a loan had been made, in AppleTree's Registration Statement. In fact, the Regal loan was made in contradiction of the affirmative statements in the Registration Statement as to how AppleTree would utilize the proceeds of the offering. AppleTree did not file any post-effective amendment to its Registration Statement to disclose this loan, nor did AppleTree, Salit, Lobel, Kravitz, or Long (in his capacity as an underwriter) cause the loan to Regal to be otherwise disclosed to prospective investors and investors in AppleTree's 1992 offering. The failure to make a post-effective disclosure of the Regal loan caused the Registration Statement to become materially misleading.

23. AppleTree did not disclose the Regal loan in the initial Form SR (which discloses the use of proceeds), signed by Kravitz, which AppleTree filed with the Commission on or about November 16, 1992. AppleTree did not disclose the Regal loan until it filed its annual report with the Commission on Form 10-K for the period ended August 31, 1992 on or about December 15, 1992, after its year-end audit. On or about December 22, 1992, after disclosing the loan in its 1992 10-K, AppleTree filed an

Amended Form SR with the Commission which included the loan in its report itemizing the use of proceeds from the offering.

24. Regal defaulted on the note and it remains unpaid. The loan to Regal represented approximately 5% of the gross proceeds of AppleTree's 1992 offering. The fact that the Regal loan was being made would have been material to investors in AppleTree's 1992 offering.

25. Salit, Lobel, Kravitz and Long fraudulently, knowingly, willfully and/or recklessly failed to disclose AppleTree's loan to Regal to investors to whom securities were offered and sold during AppleTree's 1992 offering.

**SALIT AND LOBEL'S MISREPRESENTATION AND OMISSION  
OF MATERIAL FACTS TO APPLETREE'S OUTSIDE AUDITORS AND  
CAUSING APPLETREE TO MAINTAIN FALSE BOOKS, RECORDS AND ACCOUNTS**

26. In the course of AppleTree's audit for fiscal year 1992, Salit and Lobel, and in the course of AppleTree's audit for fiscal year 1993, Salit fraudulently, knowingly, willfully and/or recklessly falsely confirmed to AppleTree's outside auditors the accuracy of AppleTree's financial statements which included the \$440,000 in machinery and equipment that Salit and Lobel purportedly contributed to AppleTree. As a result of Salit and Lobel's misrepresentations, AppleTree's books, records, accounts and financial statements inaccurately reflected ownership of \$440,000 in machinery and equipment which AppleTree did not in fact own.

27. During the 1992 and 1993 audits, AppleTree's outside auditors asked Salit and Lobel to disclose any transactions with

a related party. During the 1992 audit, Salit and Lobel affirmatively represented to AppleTree's outside auditors that they had disclosed all related party transactions, yet Salit and Lobel failed to disclose that they claimed to be creditors of Nutrix in the amount of approximately \$600,000. In the course of the 1993 audit, Salit affirmatively represented to AppleTree's outside auditors that he had disclosed all related party transactions, yet Salit failed to disclose that he and Lobel claimed to be creditors of Nutrix in the amount of approximately \$600,000. As a result of Salit and Lobel's failures to disclose their relationships with Nutrix, AppleTree's books, records, accounts and financial statements failed to disclose Salit's and Lobel's interests in AppleTree's transactions with Nutrix.

**MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACT  
IN APPLETREE'S PERIODIC FILINGS WITH THE COMMISSION**

28. AppleTree, at all times relevant herein, has been subject to the reporting requirements of Exchange Act Section 13(a) and the rules thereunder, more particularly, Rules 13a-1, 13a-13, and 12b-20.

**Misrepresentations and Omissions Relating to \$440,000  
in Machinery and Equipment and Relationships with Nutrix**

29. AppleTree's filings on Form 10-K for the year ended August 31, 1992, and its filings on Forms 10-Q and 10-QSB for the quarters ended November 30, 1992, February 28, 1993, and May 31, 1993, (a) falsely reported that AppleTree owned \$440,000 in machinery and equipment; and (b) failed to disclose that Salit and Lobel claimed to be creditors of Nutrix while AppleTree was

doing business with Nutrix. AppleTree's Form 10-KSB filings for the year ended August 31, 1993, and its Form 10-QSB for the quarter ended November 30, 1993, failed to disclose that Salit claimed to be a creditor of Nutrix while AppleTree was doing business with Nutrix.

30. The misrepresentations and failures to disclose set forth in the preceding paragraph would have been material to investors and prospective investors in AppleTree.

31. Salit and Lobel, as agents and/or officers and directors of AppleTree, fraudulently, knowingly, willfully and/or recklessly prepared, caused and/or allowed to be filed with the Commission the reports set forth two paragraphs above.

**Misrepresentations and Omissions Relating to  
Proposed Joint Venture between AppleTree and TSR, Inc.**

32. AppleTree's annual report on Form 10-K for the period ended August 31, 1992, represented that AppleTree had entered into an agreement in principle to form a joint venture with TSR, Inc. ("TSR") to market a dehydrated milk product. Included with AppleTree's 1992 Form 10-K as an exhibit was the so-called joint venture agreement, purportedly signed by the president of TSR.

33. TSR's president had never signed any joint venture agreement with AppleTree. In fact, Kravitz signed the name of TSR's president, without his authorization, to the purported agreement between AppleTree and TSR that was included in AppleTree's 1992 Form 10-K.

34. It would have been material to AppleTree's investors that TSR's president had not signed the joint venture agreement, or authorized Kravitz to sign on his behalf.

35. In its annual report on Form 10-KSB for the next fiscal year which ended August 31, 1993, AppleTree falsely reported that AppleTree and TSR had "mutually agreed" not to pursue the joint venture project due to "marketing concerns." In fact, TSR had broken off negotiations with AppleTree when TSR's president discovered that Kravitz had signed his name to the proposed joint venture agreement. TSR's president informed Kravitz that the primary reason that TSR would not proceed with the joint venture agreement was because of Kravitz' unauthorized signing of his name.

36. It would have been material to AppleTree's investors to know that the reason TSR chose not to go forward with the proposed joint venture agreement was because of Kravitz' unauthorized signing of the agreement.

37. Kravitz, as an agent and/or officer and director of AppleTree, fraudulently, knowingly, willfully and/or recklessly prepared, caused and/or allowed to be filed with the Commission materially false and misleading annual reports by AppleTree on Forms 10-K and 10-KSB for the years ended August 31, 1992, and August 31, 1993 relating to (a) Kravitz' unauthorized signature of the TSR contract, and (b) the fact that TSR broke off negotiations with AppleTree due to its discovery of Kravitz' unauthorized signature of the joint venture agreement.

COUNT I

**FRAUD BY SALIT, LOBEL, KRAVITZ AND LONG  
IN VIOLATION OF SECTION 17(a)(1)  
OF THE SECURITIES ACT, 15 U.S.C. § 77q(a)(1)**

38. Paragraphs 1 through 37 are hereby realleged and are incorporated herein by reference.

39. Salit and Lobel, as more particularly described in paragraphs 1 through 25 above, Kravitz, as more particularly described in paragraphs 1 through 12 and 21 through 25 above, and Long, as more particularly described in paragraphs 1 through 12 and 21 through 25 above, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, singly or in concert, fraudulently, knowingly, willfully and/or recklessly employed devices, schemes and artifices to defraud purchasers of such securities.

40. By reason of the foregoing, Salit, Lobel, Kravitz and Long have violated, and unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT II

**FRAUD BY SALIT, LOBEL, KRAVITZ AND LONG  
IN VIOLATION OF SECTIONS 17(a)(2) AND 17(a)(3) OF  
THE SECURITIES ACT, 15 U.S.C. §§ 77q(a)(2) AND 77q(a)(3)**

41. Paragraphs 1 through 40 are hereby realleged and are incorporated herein by reference.

42. Salit and Lobel, as more particularly described in paragraphs 1 through 25 above, Kravitz, as more particularly described in paragraphs 1 through 12 and 21 through 25 above, and

Long, as more particularly described in paragraphs 1 through 12 and 21 through 25 above, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, singly or in concert:

- (a) obtained money or property by means of untrue statements of material facts 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/or
- (b) engaged in transactions, practices and courses of business which operated as a fraud and deceit upon the purchasers and prospective purchasers of such securities.

43. By reason of the foregoing, Salit, Lobel, Kravitz and Long have 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 BY SALIT, LOBEL, KRAVITZ AND LONG  
IN VIOLATION 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**

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44. Paragraphs 1 through 43 are hereby realleged and are incorporated herein by reference.

45. Salit and Lobel, as more particularly described in paragraphs 1 through 25 above, Kravitz, as more particularly

described in paragraphs 1 through 12, 21 through 25, and 32 through 37 above, and Long, as more particularly described in paragraphs 1 through 12 and 21 through 25 above, directly or indirectly, by the use of the means or instruments of interstate commerce or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of securities, as described herein, fraudulently, knowingly, willfully and/or recklessly: (i) employed devices, schemes and artifices to defraud; (ii) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (iii) engaged in acts, practices and courses of business which have operated as a fraud or deceit upon the purchasers and prospective purchasers of such securities.

46. By reason of the foregoing, Salit, Lobel, Kravitz, and Long, directly or indirectly, have 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, 17 C.F.R. § 240.10b-5, thereunder.

COUNT IV

**FALSE OR MISLEADING STATEMENTS BY  
SALIT AND LOBEL IN VIOLATION OF SECTION 13(b)(5)  
OF THE EXCHANGE ACT AND RULE 13b2-1 UNDER THE EXCHANGE ACT**

47. The allegations contained in paragraphs 1 through 46 are realleged and incorporated by reference.

48. As described in paragraphs 1 through 27 above, Salit and Lobel, directly or indirectly, knowingly falsified or caused to be falsified, books, records, or accounts of AppleTree required to be kept pursuant to Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

49. By reason of the foregoing, Salit and Lobel have violated and, unless enjoined, will continue to violate 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, promulgated under the Exchange Act.

COUNT V

**FALSE OR MISLEADING STATEMENTS OR OMISSIONS  
OF MATERIAL FACT TO AN ACCOUNTANT BY SALIT AND LOBEL  
IN VIOLATION OF RULE 13b2-2 UNDER THE EXCHANGE ACT**

50. The allegations contained in paragraphs 1 through 49 are realleged and incorporated by reference.

51. As described in paragraphs 1 through 27 above, Salit and Lobel, while serving as directors or officers of AppleTree, directly or indirectly: (a) made or caused to be made materially false or misleading statements, or (b) omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances

under which such statements were made, not misleading to an accountant in connection with (1) an audit or examination of the financial statements of AppleTree required to be made pursuant to Section 13(b)(2) of the Exchange Act, or (2) the preparation or filing of a document or report required to be filed with the Commission.

52. By reason of the foregoing, Salit and Lobel have violated and, unless enjoined, will continue to violate Rule 13b2-2, 17 C.F.R. § 240.13b2-2, promulgated under the Exchange Act.

**COUNT VI**

**FAILURE TO MAKE AND KEEP ACCURATE BOOKS AND RECORDS  
BY APPLETREE IN VIOLATION OF  
SECTION 13(b)(2)(A) OF THE EXCHANGE ACT**

53. The allegations contained in paragraphs 1 through 52 are realleged and incorporated by reference.

54. As described in paragraphs 1 through 37, above, AppleTree failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of AppleTree.

55. By reason of the foregoing, AppleTree has violated and, unless enjoined, will continue to violate Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

COUNT VII

**FILING OF FALSE AND MISLEADING FORMS 10-K, 10-KSB, 10-Q AND 10-QSB BY APPLETREE AND FAILURE BY APPLETREE TO INCLUDE IN FORMS 10-K, 10-KSB, 10-Q AND 10-QSB SUCH FURTHER MATERIAL INFORMATION NECESSARY TO MAKE THE REQUIRED STATEMENTS NOT MISLEADING IN VIOLATION OF SECTION 13(a) OF THE EXCHANGE ACT AND RULES 12b-20, 13a-1 AND 13a-13 THEREUNDER**

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56. The allegations contained in paragraphs 1 through 55 are realleged and incorporated by reference.

57. As described in paragraphs 28 through 37, above, AppleTree filed with the Commission false and misleading Forms 10-K, 10-KSB, 10-Q and 10-QSB.

58. As described in paragraphs 28 through 37, above, AppleTree failed to include such further material information in its Forms 10-K, 10-KSB, 10-Q and 10-QSB to make the required statements, in light of the circumstances under which they were made, not misleading.

59. By reason of the foregoing, AppleTree has violated and, unless enjoined, will continue to violate Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13, thereunder.

**RELIEF REQUESTED**

**WHEREFORE**, the Plaintiff Commission respectfully prays that the Court:

**I.**

Declare, determine and find that each of the Defendants named herein committed the violations alleged herein.

**II.**

Issue a Permanent Injunction restraining and enjoining Salit, Lobel, Kravitz and Long, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with them, and each of them, from violating Sections 17(a)(1), (2) and (3) of the Securities Act, 15 U.S.C. § 77q(a)(1), 77q(a)(2) and 77q(a)(3).

**III.**

Issue a Permanent Injunction restraining and enjoining Salit, Lobel, Kravitz and Long, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with him, and each of them, from violating 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.

**IV.**

Issue a Permanent Injunction, restraining and enjoining Salit and Lobel, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, directly or indirectly, from violating Section 13(b)(5) of the Exchange Act, 15 U.S.C. §

78m(b) (5), and Rules 13b2-1 and 13b2-2, 17 C.F.R. §§ 240.13b2-1, and 240.13b2-2, promulgated under the Exchange Act.

**V.**

Issue a Permanent Injunction, restraining and enjoining AppleTree, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, directly or indirectly, from violating Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13, thereunder.

**VI.**

Issue a Permanent Injunction, restraining and enjoining AppleTree, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, directly or indirectly, from violating Section 13(b) (2) (A) of the Exchange Act, 15 U.S.C. § 78m(b) (2) (A).

**VII.**

Issue an Order requiring AppleTree, Salit, Lobel, Kravitz and Long, to provide an accounting of their receipt and disbursement of all proceeds received, directly or indirectly, pursuant to AppleTree's August 1992 registered offering, and requiring Salit, Lobel, Kravitz and Long to disgorge all ill-gotten gains to effect the remedial purposes of the federal securities laws.

**VIII.**

Issue an Order directing Salit, Lobel, Kravitz and Long to pay civil fines and/or penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), for their violations of the federal securities laws as complained herein occurring after October 15, 1990.

**IX.**

Grant such other and further relief as may be necessary and appropriate.

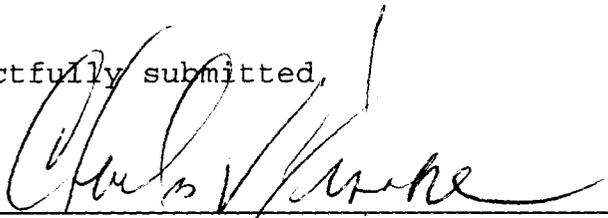
**X.**

Further, plaintiff, Commission, respectfully prays that this Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by

the Commission for additional relief within the jurisdiction of  
this Court.

Respectfully submitted,

By:

  
Charles V. Senatore  
Regional Director  
Florida Bar No. 308935

Mitchell E. Herr  
Regional Trial Counsel  
S.D. FL Bar No. A-5500259

James E. Burt, IV, Esq.  
Senior Counsel  
Louisiana Bar No. 18150

Dated: September 30, 1996

Attorneys for Plaintiff  
**SECURITIES AND EXCHANGE COMMISSION**  
1401 Brickell Avenue, Suite 200  
Miami, Florida 33131  
(305) 982-6336

The 'S-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 indexing the civil cover sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**96-8675**

**I (a) PLAINTIFFS**  
**MAGISTRATE JUDGE VITUNAC**

**DEFENDANTS**  
**CIV - RYSKAL, P**  
**THE APPLETREE COMPANIES, INC. f/k/a**

**SECURITIES AND EXCHANGE COMMISSION**

**MODAMI SERVICES, INC., MICHAEL H. SALIT, DAVID B. LOBEL, PAUL B. KRAVITZ, and W. SCOTT LONG III**

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

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)** Palm Beach

A-WPB-96CV8675-Ryskamp Vitunac

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

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**  
**SEC, Mitchell Herr (305) 982-6336 and James Burt IV (305) 982-6345, 1401 Brickell Ave., Suite 200, Miami, FL 33131**

**ATTORNEYS (IF KNOWN)**  
**See Attached**

**(d) CIRCLE COUNTY WHERE ACTION AROSE:**  
**DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS**

**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)**

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

**IV. 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: **15 U.S.C. § 77q(a)(1), 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, 15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b-1, 17 C.F.R. § 240.13b2-2, 15 U.S.C. § 78m(b)(2)(A), 15 U.S.C. § 78m(a), 17 C.F.R. §§ 240.12b-1**  
5 days estimated (for both sides) to try entire case.

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)** **240.13a-1 and 240.13a-13.**

A CONTRACT	A TORTS	B FORFEITURE/PENALTY	A BANKRUPTCY	A 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	<b>PERSONAL INJURY</b> <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	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <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 <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>B SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <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))	<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 checked="" 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 checked="" type="checkbox"/> 890 Other Statutory Actions
A REAL PROPERTY	A CIVIL RIGHTS	B PRISONER PETITIONS	A LABOR	A FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input checked="" type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)**

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

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A **CLASS ACTION**  UNDER F.R.C.P. 23    **DEMAND \$** \_\_\_\_\_    **JURY DEMAND:**  YES  NO

**VIII. RELATED CASE(S) IF ANY** (See instructions): \_\_\_\_\_    **Disgorgement, Civil Fines/Penalties**

DATE \_\_\_\_\_    SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_ 9/30/96

UNITED STATES DISTRICT COURT    FOR OFFICE USE ONLY: Receipt No. \_\_\_\_\_ Amount: \_\_\_\_\_  
 S/F I-2    Date Paid: \_\_\_\_\_ N/1fp: \_\_\_\_\_  
 REV. 6/90

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