UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-18250

In the Matter of MARK MEGALLI, Respondent.	RESPONDENT MARK MEGALLI'S OPPOSITION TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION

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I. INTRODUCTION

The Division of Enforcement (the "Division") contends that the Securities and Exchange Commission ("SEC" or the "Commission") should collaterally debar respondent Mark Megalli from the securities industry based primarily on two, largely cursory arguments stated over three paragraphs of its motion. First, the Division asserts that the mere fact of Mr. Megalli's felony conviction for insider trading and the parallel civil injunction entered against him enjoining any future securities law violations is, standing alone and without any meaningful analysis, sufficient to demonstrate the egregiousness of his underlying offense conduct, which in turn supports his collateral debarment. (Div. Mot. at 7-8). Second, the Division claims that, simply because Mr. Megalli exercised his constitutional right to challenge his *legal* liability for insider trading based on a subsequent change in controlling authority that, according to the SEC, represented an unprecedented and disabling sea change in insider trading jurisprudence – all the while conceding, including herein, (*see* Resp.'s Answer at 2-3), his *factual* liability based on existing law – this Court should somehow discredit his assurances against future securities-related offenses.

The Division's securities industry debarment claims are without merit. First, Mr. Megalli's misconduct – which occurred while he was associated solely with a registered investment adviser – ended before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Collateral debarment is thus unavailable as a matter of law and the SEC's own policy acknowledging that the exercise of collateral debarment authority conferred by Dodd-Frank based solely on pre-enactment securities law violations is administratively improper. Second, because securities industry employment bars are inherently punitive, this Court must ensure that any administrative sanction it deems to be appropriate here is neither excessive nor oppressive. Such analysis must account for the

comparatively isolated nature of Mr. Megalli's misconduct, his minimal personal gain, and the significant criminal and civil punishment he has already endured that render his sworn assurances in open court against future securities law violations both credible and reliable.

II. SUPPLEMENTAL UNDISPUTED FACTS

Because the Division plainly views collateral debarment to be the *pro forma* result of either a criminal insider trading conviction or entry of a permanent civil injunction enjoining future securities law violations, its motion excludes many salient facts going to whether Mr. Megalli's administrative debarment is warranted here.

Mr. Megalli's criminal conviction in *United States v. Megalli*, No. 1:13-CR-442-RWS (N.D. Ga.) (the "DOJ Case") was based on his waiver of indictment and entry of a negotiated guilty plea to a criminal information charging him with a single count of conspiracy to engage in insider trading in violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b), and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, all in violation of 18 U.S.C. § 371. (DOJ Case ECF Nos. 1, 3 and 5).[1] The essence of the criminal insider trading scheme to which Mr. Megalli conceded his liability was that, while serving as a portfolio manager for Level Global, L.P. ("Level Global"), he traded Carter's Inc. ("Carter's") securities based on inside information imparted by Eric Martin, a former Carter's insider who was under contract to provide research and analysis regarding primarily apparel sector companies to Level Global. The specific information that informed the trades at issues had been disclosed to Martin by Richard Posey, a then-current Carter's insider (whose existence

[1] As in connection with the factual and procedural history supporting his Rule 250 motion, (Resp.'s Rule 250 Mem. at 3-6), Mr. Megalli once again invokes this Court's Rule 323 authority to take official notice of the docket entries and district court orders in the criminal and civil proceedings on which this follow-on action is based.

was never made known to Mr. Megalli). *SEC v. Megalli*, 157 F. Supp. 3d 1240, 1243-44 (N.D. Ga. 2015).

The insider trading at issue involved Mr. Megalli's direction on Level Global's behalf of two principal sets of trades. *Id.* at 1244. The first set of trades involved Level Global's liquidation, on October 23 and 26, 2009, of an approximately $9,000,000 position in Carter's stock (comprised of 300,000 shares) based in part on a phone call initiated by Martin to Mr. Megalli on the morning of October 23. *Id.* This preceded Carter's October 27 announcement that it was going to delay disclosure of its earnings for the third quarter of 2009, which had been scheduled to be released that morning. *Id.* These trades, executed through a single, October 23 sell order by Mr. Megalli, enabled Level Global to avoid approximately $2.034 million in losses. *Id.* The second set of trades involved four short sale transactions in Carter's stock between July 8 and 19, 2010. *Id.* They followed a July 8, 2010 call initiated by Martin to Mr. Megalli, and Martin and Mr. Megalli spoke again by phone through July 19. Level Global covered its short positions after Carter's disclosed its earnings for the second quarter of 2010, realizing a profit of $648,655. *Id.*

In relation to the October 2009 trade, which generated fully 76 percent of the illicit gains at issue, Mr. Megalli allocuted as follows to U.S. District Judge Richard W. Story of the Northern District of Georgia regarding his criminal intent:

> [F]or the record, it was very important for me that the government included language on conscious avoidance in the charging instrument. I would not have been here pleading guilty had they not done that because I was not willing to say that Eric Martin had given me a specific tip-off about the fact that there was going to be an accounting fraud or an earnings delay. He never – he did not do that. I found out about the accounting delay on the morning of October 27th with everyone else in the world, and I've stated as such since day one.
>
> However, when he did call me on October 23rd, I did have 300,000 shares of Carter's. The stock had recently risen from [$]25 to $29 which had been my

price target which I wrote up in September. I had started to liquidate a position that was 350,000, and so I had already started selling the position when he called me. And he specifically said to me, as best I can remember, and these may not be the exact words, but the basic I think of what was conveyed on that call was he said to me, Hey, do you still own stock in Carter's? And I said to him, yes, but I've been selling it. What do you think? Is that a good idea or a bad idea? And he indicated to me that he thought it would be a good idea to sell it.

He did not talk about an accounting delay. As [AUSA] Chaiken pointed out, we were on the phone for less than two minutes before the trade was entered in; and we certainly didn't talk about vendor markdown and accommodations . . .
.

What I'm pleading guilty here today to is the conscious avoidance. When he said to me, yes, good idea, sell the stock, that was a change from his prior opinion. And I did – I should have probed and asked more questions about why are you telling me this, what are you basing this on. I did know he had worked at the company before. And that was a mistake and I'm going to be paying for the consequences for that mistake for the rest of my life, and I want to apologize to the Court for that. . . .

[Megalli Counsel] Mr. Monnin: Tell Judge Story about the significance of Mr. Martin to the decision to trade. Were you talking to anyone else about Carter's?

Mr. Megalli: The call with Eric Martin I would characterize as a catalyst to continue selling stock. The decision to buy and sell stock in Carter's was based on many other factors which we've gone into great lengths with the government, and I think they're aware of our position in terms of lots of the buying and selling indicators from other sell-side research. But he was certainly, given, obviously, the timing of the trade, a catalyst for me to continue selling stock.

(DOJ Case ECF NO. 9 at 24-26).

Of course, this is not to say that Mr. Megalli has ever denied culpability for his misconduct. In fact, in connection with his sentencing, he admitted his actual knowledge, based on communications with Martin in early July 2010, of the substance of Carter's second quarter 2010 financial performance prior to Carter's public disclosure of its second quarter numbers in late July 2010. (Ex. C, DOJ Case ECF No. 26 at 19-20). Moreover, prior to being sentenced to a year and a day in custody to be followed by three years of supervised release and being ordered to pay $50,000 in restitution, Mr. Megalli made the following allocution to Judge Story:

> My whole life I've always tried to do the right thing, and obviously with respect to the events here I got it completely and utterly wrong and I'm not going to make excuses today. Obviously, the advice that [the first-level tippee] was providing to his clients and me was over the line, I knew it was wrong and I should not have traded on it, and obviously I wish I had stopped myself from doing that early on in this process and I didn't. I also just want to make clear I do fully accept responsibility for my actions. I will honor and respect whatever decision you make here today, of course and, you know, I just am ready to accept the consequences of my behavior.

(Ex. D, DOJ Case ECF No. 31 at 22).

Indeed, while Mr. Megalli later challenged the legal validity of his conviction and sentencing in a petition for collateral relief based on *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), *cert. denied*, ___ U.S. ___, 136 S. Ct. 242 (2015), and *Salman v. United States*, ___ U.S. ___, 137 S. Ct. 420 (2016), he has *never* denied that he intentionally traded Carter's sharese based on inside information shared by Martin that had been disclosed to Martin by Posey (whose existence remained unknown to Mr. Megalli throughout). In fact, in the memorandum accompanying his habeas petition, Mr. Megalli stated expressly that he "does not seek to re-litigate the facts he admitted in connection with his guilty plea and sentencing for conspiracy to engage in insider trading in violation of 18 U.S.C. § 371," including (i) that while employed as a Level Global portfolio manager, he relied on Carter's material, non-public information in directing certain trades of Carter's securities that generated trading profits and avoided losses to Level Global that both the government and the SEC referenced in their respective enforcement actions against him, and (ii) that the government could prove such information originated with Posey (without Mr. Megalli knowing who Posey was) and was passed to Mr. Megalli through Martin. (DOJ Case ECF No. 40-1 at 4-5).

Mr. Megalli's ongoing admissions regarding his offense conduct extended to his answer in *SEC v. Megalli*, No. 1:13-CV-3783-AT (the "SEC Case"), the SEC's parallel enforcement

proceeding before U.S. District Judge Amy Totenberg of the Northern District of Georgia. (*See, e.g.*, SEC Case ECF No. 13 at ¶¶ 1-4 (admitting that Mr. Megalli caused Level Global to trade Carter's securities "based in whole or in part on material, non-public information, knowing and consciously avoiding knowledge as to the source of Martin's information")). As with his habeas petition, Mr. Megalli invoked *Newman* solely to challenge, by way of a motion for summary judgment, whether the SEC could sustain its insider trading claims as a matter of law, not whether he had intentionally relied on Carter's inside information in directing the trades at issue. *See id.* ECF No. 27-1 at 2 ("Mr. Megalli does not, nor could he, dispute that he traded on Carter's inside information, as alleged in the SEC's complaint. He has pleaded guilty to and been sentenced on a single count of conspiracy to engage in insider trading in violation of 18 U.S.C. § 371 in a parallel criminal action in this district styled, *United States v. Mark Megalli*, No. 1:13-CR-442-RWS. He has also answered, consistently with his criminal plea, the factual contentions of the SEC's complaint by admitting his reliance on Carter's material, non-public information in relation to directing certain Level Global trades of Carter's securities.") (internal footnotes omitted)).

After Judge Totenberg rejected Mr. Megalli's invocation of *Newman* and entered partial summary judgment against him solely as to his insider trading liability, *id.* ECF No. 48, she conducted an evidentiary hearing on October 27, 2015 that involved pre- and post-hearing briefing regarding whether Mr. Megalli was personally liable in disgorgement and for any associated civil penalty based on trading gains realized exclusively by Level Global, *see, e.g.*, *id.* ECF Nos. 39, 43 and 61.

Mr. Megalli testified at this October 27, 2015 evidentiary hearing before Judge Totenberg, which in many ways serves as a proxy for the administrative hearing contemplated by

the Order Instituting Proceedings (the "OIP") that has been assigned to this Court. Indeed, on cross-examination by the Division's trial counsel, Mr. Megalli testified as follows with regard to the impact of the criminal and civil enforcement proceedings against him and his likelihood to reoffend:

> Q. [BY SEC COUNSEL MR. HUDDLESTON]: . . . CAN WE AGREE THAT THE VIOLATIONS THAT THE JUDGE HAS FOUND LIABLE FOR ARE SERIOUS VIOLATIONS?
>
> A. OF COURSE. LOOK AT THE RESULT ON MY LIFE. SURE, IT FEELS VERY SERIOUS.
>
> * * *
>
> Q. AM I HEARING YOU SAY THAT YOU'RE GIVING JUDGE TOTENBERG ASSURANCES THAT YOU WON'T REOFFEND IN THIS MATTER?
>
> A. THERE IS A ZERO CHANCE OF ME REOFFENDING. IF YOU KNEW WHAT [WE] HAVE BEEN THROUGH THE LAST THREE YEARS, YOU WOULD KNOW THAT IT'S BEEN SO DEVASTATING TO OUR FAMILY THAT THE IDEA THAT SOMETHING LIKE THIS WOULD EVEN HAVE A TENTH OF A PERCENT CHANCE OF HAPPENING AGAIN IS JUST IMPOSSIBLE.
>
> * * *
>
> Q. . . . YOU ARE AWARE THAT THE COURT IS NOT ALLOWED TO PROHIBIT YOU FROM EVER TRADING ON THE STOCK MARKET AGAIN, RIGHT?
>
> A. THAT'S MY UNDERSTANDING.
>
> Q. WHETHER OR NOT YOU DECIDE TO ENGAGE IN INSIDER TRADING LIABILITY IN THE FUTURE IS PURELY A MATTER THAT YOU WILL DECIDE IN YOUR JUDGMENT, YES?
>
> A. LIKE I SAID, THE ODDS OF IT HAPPENING ARE ZERO.

(Ex. A, SEC Case ECF No. 67, Oct. 27, 2015 Hr'g Tr. (hereinafter "Hr'g Tr.") at 86, 91 and 94).

Mr. Megalli further proved at the remedies hearing before Judge Totenberg, without any meaningful opposition from the SEC, that:

- He was at all relevant times solely an employee of Level Global;
- He was contractually ineligible for a performance-based bonus in 2009, and, as such, never benefitted from Level Global's avoided losses associated with the October 2009 sale of Carter's stock;
- The $648,655 in Carter's short position profits Mr. Megalli generated for Level Global in 2010 comprised only 1.65% of the $39,198,356 of profit in Level Global's consumer portfolio that year and merely 0.1627% (or 1.6 *thousandths*) of Level Global's total 2010 return;
- Carter's was merely one of 105 securities Mr. Megalli traded in 2009 and one of 98 securities he traded in 2010 (*i.e.*, approximately one percent in both years);
- Only 46 of Mr. Megalli's 1,861 equity trades in 2009-2010 involved Carter's securities (*i.e.*, 2.47%);
- Carter's securities comprised, on average, only 1.8% of invested capital in Level Global's consumer portfolio in 2009 and 2010;
- Per his employment agreement with Level Global, Mr. Megalli was merely entitled, on a performance bonus basis, to 0.3% (or three *thousandths*) of Level Global's total return for 2010; and
- As result, Mr. Megalli's 2010 incentive-based compensation merely increased by $1,945 based on Level Global's short sale profits in Carter's securities in 2010 (*i.e.*, 0.003 x $648,655).[2]

(*Id.* at 23, 28, 32-34, 46, 51, 58-59 and 62).

[2] Judge Totenberg ultimately ordered $19,790 in disgorgement and a two-times civil penalty of $39,580. (SEC Case ECF Nos. 62, 65 and 66). This was based on Mr. Megalli's remedies hearing testimony and underlying hearing exhibits evidencing that, because the $648,655 in Carter's short sale profits from July 2010 constituted 1.65% of Level Global's consumer portfolio profitability for that year, these same profits contributed $19,790 to his 2010 performance bonus (*i.e.*, 0.00165 x $1,195,936 (with the latter figure representing Mr. Megalli's total incentive-based compensation for 2010)). (Ex. A, Hr'g. Tr. at 46-48; SEC Case ECF No. 53, Attach. 9).

In other words, Mr. Megalli, who was at all relevant times solely a Level Global employee, earned nothing from the $2.034 million in avoided losses associated with the October 2009 sale of Carter's shares. His employment agreement with Level Global rendered him contractually ineligible for a performance-based bonus for 2009, and he declined to pursue a discretionary award from Level Global's management. Further, within the approximately $500 million portfolio Mr. Megalli managed for Level Global, Carter's was merely one of approximately 100 separately issued securities Mr. Megalli traded in 2009 and 2010. Plus, Carter's comprised only 2.5 percent of the equity transactions Mr. Megalli ordered in 2009 and 2010 and never constituted more than 1.8 percent of invested capital in Level Global's consumer portfolio during this same period. Finally, Mr. Megalli's contractual entitlement to 0.3 percent (or 0.003) of Level Global's total return for 2010, based on a total consumer portfolio return for 2010 of $39,198,356, meant that his share of Level Global's $648,655 in short sale profits in July 2010 amounted to only $1,945, which is the sole compensatory benefit Mr. Megalli received from the insider trading at issue.

III. ARGUMENT AND CITATIONS OF AUTHORITY

A. Collateral Debarment is Legally Unavailable

As set forth in Mr. Megalli's memorandum in support of his own summary disposition motion, the Division may not seek a collateral bar in this case because Mr. Megalli's securities law violations occurred prior to the July 22, 2010 effective date of the Dodd-Frank Act. (*See* Resp.'s Rule 250 Mem. at 18-19). As a matter of controlling law and the SEC's own publicly-announced policy, the imposition of collateral debarment here would constitute an "impermissibly retroactive" application of the Dodd-Frank Act's expansive collateral debarment authority. *See Bartko v. SEC*, 845 F.3d 1217, 1225-26 (D.C. Cir. 2017) (cataloguing the

differences between the SEC's pre- and post-Dodd-Frank collateral debarment authority and holding that, in combination, the expanded debarment authority conferred by Dodd-Frank constitutes a substantive change in controlling law that is without retroactive effect); Commission Statement Regarding Decision in *Bartko v. SEC* (Feb. 23, 2017) (authorizing the submission of petitions for SEC reconsideration of collateral bars based on securities law offenses committed prior to Dodd-Frank's July 22, 2010 effective date).

To obtain collateral debarment before Dodd-Frank,

> The Commission had to establish that a ban on each class was in the public interest, a task it often accomplished by considering the *Steadman* factors. In addition, the Commission had to show that the market participant had been, *inter alia*, convicted of a specified offense within the last ten years or enjoined from working in the industry *and* that the market participant was associated with – or seeking to become associated with – each class from which debarment was sought. Although the Commission could ban a market participant from, for example, the broker-dealer class at "T_0," it had to wait until "T_1" – the point at which the market participant sought to associate with a new class – before imposing a ban covering that class. Moreover, even at T_1, the burden remained on *the Commission* to show that the broader ban was also in the public interest.

Bartko, 845 F.3d at 1225-26 (emphasis in original; internal citations omitted). Conversely, after Dodd-Frank,

> [T]he Commission may impose a collateral bar covering each class during ane omnibus proceeding at T_0. In effect, then, Dodd-Frank changed *when* thee Commission must apply a *Steadman* analysis to determine whether it is in thee public interest to bar a market participant from classes that he was not associatede with at T_0 – whereas before Dodd-Frank, the Commission was required to waite until T_1 before making that determination (a delay that required the Commissione to take into account any intervening rehabilitation that may have occurred sincee T_0). The Commission may now use its T_0 public interest analysis to bar thee participant from those additional classes in the first proceeding. This frontloadinge deprives the participant of the ability to avoid a broader ban at T_1 by undergoinge "*Steadman* rehabilitation" after T_0. Moreover, Dodd-Frank's enactment alsoe switches the burden of persuasion. After Dodd-Frank, it is the responsibility of thee market participant (not the Commission) to show at T_1 that reinstatement toe (rather than debarment from) a given class "would be consistent with the publice interest," a burden that even a wholly rehabilitated offender might struggle toe establish.e

Id. at 1226 (emphasis supplied; internal citations omitted).

At the time of his securities violations, Mr. Megalli was associated solely with Level Global, a registered investment adviser. But Level Global did not serve as a broker-dealer, municipal securities dealer, transfer agent, municipal advisor, or nationally recognized statistical rating organization. Mr. Megalli was not, therefore, a member of any securities industry class other than being associated with an investment adviser at the time of his offense conduct. Accordingly, his debarment exposure, if any, is as a matter of law and SEC policy limited to an advisory ban under Section 203(f) of the Advisers Act of 1940 (the "Advisers Act), 15 U.S.C. § 80b-3(f).

B. Because They are Punitive, Employment Bars May Neither Be Excessive nor Oppressive

Mr. Megalli's Rule 250 memorandum also documents the rising tide of legal authority,e most notably the U.S. Supreme Court's ruling in *Kokesh v. SEC*, ___ U.S. ___, 137 S. Ct. 1635 (2017), holding that much of the SEC's suite of both financial and non-financial sanctions, including employment bars, is inherently punitive. (*See* Resp.'s Rule 250 Mem. at 19-23). In *Kokesh*, the Supreme Court held that disgorgement, which has traditionally been considered equitable, qualifies as punishment for purposes of 28 U.S.C. § 2462, imposing a five-year limitations period on any SEC "action, suit or proceeding" related to the Commission's "enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise." In support of its unanimous holding, the Supreme Court reasoned that, "[s]anctions imposed for the purpose of deterring infractions of public laws are inherently punitive because deterrence [is] not [a] legitimate nonpunitive government objective[e]." *Kokesh*, 137 S. Ct. at 1638 (internal quotations and citations omitted). The *Kokesh* Court specifically held that disgorgement is a penalty because

it is imposed to deter future securities law violations and because disgorged funds are not used to compensate victims. *Id.*

Kokesh followed the Supreme Court's unanimous ruling in *Gabelli v. SEC*, 568 U.S. 442 (2013), that the SEC's pursuit of civil penalties is subject to Section 2462's five-year statute of limitations, *id.* at 447-48, and the Eleventh Circuit's holding in *SEC v. Graham*, 823 F.3d 1357 (11th Cir. 2016), that the SEC's pursuit of declaratory relief is also a "penalty" for purposes of Section 2462 because it "goes beyond compensation and is intended to punish." *Id.* at 1362.

Because debarment from employment in the securities industry (including any class thereof) does nothing to make victims whole or to remedy their losses, the foregoing appellate authority establishes that occupational sanctions imposed by the Commission are inherently punitive. Indeed, in his recent concurring opinion in *Saad v. SEC*, 873 F.3d 297 (D.C. Cir. 2017), Judge Brett M. Kavanaugh of the D.C. Circuit, the federal appellate forum charged with review of Commission debarment orders, reasoned that exclusion from employment as a securities professional is precisely the type of penalty the Supreme Court envisioned as being punitive in *Kokesh*:

> As I see it, the *Kokesh* analysis matters here. The Supreme Court's reasoning in *Kokesh* was not limited to the specific statute at issue there. Like disgorgement paid to the government, expulsion or suspension of a securities broker does not provide anything to the victims to make them whole or to remedy their losses. Therefore, in light of the Supreme Court's analysis in *Kokesh*, expulsion or suspension is a penalty, not a remedy.

Id. at 304-05.

Moreover, if employment bars are punitive, they must be proportional, both in terms of the respondent's misconduct and by reference to the degree of punishment already imposed in collateral civil and criminal proceedings involving the same respondent. *See, e.g., Maher F. Kara*, 113 SEC Docket 3891, at *7 (Mar. 15, 2016) (ALJ Foelak) (rejecting permanent collateral

bar and substituting a three year bar to be "congruent with the sentence of three years' probation" imposed in the respondent's criminal case). To that end, Mr. Megalli urges the Court to adopt Judge Kavanaugh's concurring admonition regarding the imposition of employment sanctions in *Saad*, a case involving SEC review of a FINRA debarment decision:

> If FINRA and the SEC must justify expulsions or suspensions as punitive (as I believe they must after *Kokesh*), they will have to explain why such penalties are appropriate under the facts of each case. FINRA and the SEC will have to reasonably explain in each individual case why an expulsion or suspension serves the purposes of punishment and is not excessive or oppressive. Over time, a fairer, more equitable, and less arbitrary system of FINRA and SEC sanctions should ensue.

Saad, 873 F.3d at 306; *see also McCurdy v. SEC*, 396 F.3d 1258, 1264-65 (D.C. Cir. 2005) (holding that the Commission "may impose sanctions for a remedial purpose, but not to punish"); *SEC v. Gentile*, No. CV 16-1619 (JLL), 2017 WL 6371301, at *3 (D.N.J. Dec. 13, 2017) (noting that, "Courts throughout the country have consistently held that a remedy, including an injunction, is penal in nature when it serves no retributive or remedial purpose and merely seeks to punish an individual," and citing *Johnson v. SEC*, 87 F.3d 484, 488 (D.C. Cir. 1996); *SEC v. Jones*, 476 F. Supp. 2d 374, 381 (S.D.N.Y. 2007); and *SEC v. Alexander*, 248 F.R.D. 108, 115-16 (E.D.N.Y. 2007), in support).

Notably, Judge Kavanaugh cited 18 U.S.C. § 3553(a), the criminal statute that enumerates the factors in aggravation and mitigation that all district courts must consider in deriving a "reasonable" sentence, as guidance for how the Commission's debarment authority should be exercised in SEC administrative proceedings. *Saad*, 873 F.3d at 306 n.4. By its express terms, Section 3553(a) cabins judicial discretion in affixing a reasonable sentence to criminal judgments that are "sufficient, but not greater than necessary" to accomplish the basic goals of

sentencing; namely, just punishment, deterrence, public protection and rehabilitation. 18 U.S.C. § 3553(a).e

To be sure, and as Mr. Megalli acknowledged in his Rule 250 motion, (*see* Resp.'s Rule 250 Mem. at 22), and as other courts have admonished, including the D.C. Circuit in *Saad*, "[n]othing in *Kokesh* unravels [the D.C. Circuit's] on point precedent," 873 F.3d at 310, authorizing the Commission to impose a permanent associational bar after applying the public interest standard of Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78o(b)(6)(A), as this standard is informed by consideration of the relevant *Steadman* factors. But the point here is that, if the SEC truly believed that Mr. Megalli's debarment was necessary to protect investors and the securities markets – that is, if the SEC wants to contend that Mr. Megalli's debarment is remedial, rather than punitive – it was incumbent on the Commission to initiate a follow-on proceeding following Mr. Megalli's October 2013 criminal conviction, his July 2014 criminal sentencing and Judge Story's concurrent entry of a judgment and commitment order in the DOJ Case, or, at the very latest, following Judge Totenberg's entry of final judgment against Mr. Megalli in the SEC Case in December 2015.

The SEC waited, however, until more than three years after Judge Story's criminal judgment in July 2014 and nearly two years after Judge Totenberg's civil judgment in December 2015 to institute this proceeding in October 2017. While the Division may assert that this years-long delay is attributable to Mr. Megalli's pursuit of habeas relief, this is of no moment with regard to the Commission's debarment jurisdiction. Both Mr. Megalli's and the government's publicly available habeas briefing make clear that his guilty plea and the procedural default accompanying it presented significant obstacles to collateral relief. In addition, despite Mr.

Megalli's invocation of *Newman* principles with respect to his insider trading liability, Judge Totenberg readily entered partial summary judgment as to his liability in September 2015 and final judgment, including a permanent injunction against future securities law violations, less than three months later. Simply put, Mr. Megalli's pursuit of habeas relief involved neither a legal nor a procedural bar to the instant administrative proceeding, which, if the SEC truly viewed Mr. Megalli to be a potential recidivist, should have been initiated long ago.

Moreover, the SEC has itself conceded that its enforcement objectives with respect to Mr. Megalli are fundamentally punitive. This is evidenced by the fact that, despite Mr. Megalli's existing entry of a criminal plea, the SEC repeatedly required that Mr. Megalli admit to aggravating, yet unsubstantiated, facts that were beyond his guilty plea and sentencing as part of any proposed consent judgment. (*See* Resp.'s Rule 250 Mem. at 11). Further, the SEC asked for nearly $2.7 million in disgorgement and more than $6 million in civil penalties from Judge Totenberg, notwithstanding the fact that Mr. Megalli realized no meaningful personal gain from the trading activity in suit. *Id.* at 10. Indeed, in rejecting Mr. Megalli's assertion that the SEC had waived its administrative debarment claims by telling Judge Totenberg it did not intend to pursue them, the Division responded in no uncertain terms that Mr. Megalli was deserving of substantial civil punishment because he had advised Judge Story in connection with his criminal sentencing that he would settle his liability, yet thereafter invoked *Newman* to move for summary judgment on the SEC's insider trading claims. *Id.* at 11 (citing Ex. C, Nov. 22, 2017 Letter from SEC Regional Trial Counsel Graham Loomis to Paul Monnin, at 2-3).

It follows that, as punishment, Mr. Megalli's exclusion from associating with an investment adviser under Advisers Act Section 203(f) (not to mention the Division's pursuit of his collateral debarment from all other securities industry classes over which the Commission

has exclusionary authority) is both needlessly excessive and oppressive in light of the fact that he went to prison, paid restitution, disgorgement and a civil penalty, and has endured the irretrievable diminishment of his personal reputation and professional prospects – all over trading activity for which he realized no material personal gain. In short, because no incremental punishment or deterrence is achieved by Mr. Megalli's administrative debarment, none should enter here.

C. Application of the *Steadman* Factors Weighs Strongly Against the Imposition of Any Employment Sanction Here

It is well-established that the Commission's imposition of administrative debarment is informed by: (i) the egregiousness of the offense; (ii) the isolated or recurrent nature of the infraction; (iii) the degree of scienter involved; (iv) the sincerity of assurances against future violations; (v) the defendant's recognition of the wrongful nature of his conduct; and (vi) the likelihood of future violations. *SEC v. Steadman*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). Consideration of these factors militates heavily against the imposition of any employment sanction in this case.

1. Egregiousness

As noted above, Mr. Megalli has never denied responsibility for having engaged in insider trading – not in waiving indictment and entering a guilty plea to a criminal information, not in moving for collateral relief, and not in moving for summary judgment in the SEC's civil enforcement proceeding. While he assuredly invoked the Second Circuit's ruling in *Newman* and the Supreme Court's clarifying decision in *Salman* to assert that these opinions imposed newly-recognized, yet essential insider trading elements for purposes of Exchange Act Section 10(b) and Rule 10b-5 thereunder, he expressly acknowledged his substantive liability under pre-

existing Eleventh Circuit law in both his habeas and summary judgment motions. (DOJ Case ECF No. 40-1 at 4-5; SEC Case ECF No. 27-1 at 2).

But Mr. Megalli's illegal conduct – the seriousness and severity of which he conceded repeatedly in open court – must be assessed in context. Mr. Megalli readily acknowledges in this regard that a criminal conviction or entry of a permanent injunction for violation of an anti-fraud provision of the federal securities laws has traditionally been considered sufficiently egregious to justify summary disposition of a follow-on claim for administrative debarment. (*See* Div. Mot. ate 4-5 (citing cases)). That said, the mere fact of a criminal conviction or entry of a restraining order is not in and of itself dispositive of the scope or degree of an administrative sanction, particularly where, as here, such sanction is fundamentally punitive.[3] *See generally Bartko*, 845e

[3] In addition, the Division's decisional authority cited in support of Mr. Megalli's debarment, (Div. Mot. at 7-8), is plainly distinguishable. For example, in *John W. Lawton*, Release No. 3531, 2012 WL 6208750 (Dec. 13, 2012), the respondent repeatedly misrepresented the historical performance of the hedge fund he managed and "dramatically overstat[ed]" the value of its assets. *Id.* at *1-2. Over nearly three years, he sent investors fraudulent account statements, converted $1.8 million of investor assets, and, once the fraud was discovered, attempted to conceal it by producing a falsified account statement to the SEC. *Id.* at *1-3, 10. While Lawton eventually consented to a permanent injunction and pled guilty to criminal mail fraud and obstruction charges, he later sought to "minimize [his] conduct [by] attempting to withdraw his consent to the injunction [and] failed to offer assurances against future violations." *Id.* The Division's other authority is similarly distinguishable. *See Omar Ali Rizvi*, Release No. 479, 2013 WL 64626, at *4-8 (Jan. 7, 2013) (investment adviser sold approximately 600,000 unregistered shares to 172 investors that generated nearly $2 million over two years, "repeatedly misled" potential investors by drafting offering circulars containing false statements, "supervised, actively sought out, and knowingly hired" unregistered brokers to solicit potential investors, and did not "acknowledge wrongdoing and offer[ed] the meekest of assurance of no further wrongdoing"); *Gregory Bartko, Esq.*, Release No.e 467, 2012 WL 3578907, at *2-7 (Aug. 21, 2012) (investment adviser raised $701,000 "over an extended period of time" through marketing materials that contained false and misleading statements, none of which was ever invested and nearly half of which was converted by the respondent, who was sentenced to 276 months in prison, ordered to pay $886,000 in criminal monetary penalties, and failed to "offer assurances against future violations [or] to recognize the wrongful nature of his conduct").

F.3d at 1225-26 (noting that consideration of the *Steadman* factors is a condition precedent toe imposition of an associational bar); *Horning v. SEC*, 570 F.3d 337, 346 (D.C. Cir. 2009) (same).

It is uncontested that at the time of his offense conduct, Mr. Megalli, who had no equity in Level Global, managed an approximately $500 million consumer portfolio for his employer. Of the approximately 100 independently issued securities Mr. Megalli traded during 2009 and 2010, Carter's shares comprised only 2.5 percent of the value of the equity transactions he directed in 2009 and 2010 and never amounted to more than 1.8 percent of invested capital in Level Global's consumer portfolio during this timeframe.

Unlike the vast majority of insider trading cases in which a trader has profited handsomely from his illicit activity, it is also undisputed that Mr. Megalli realized no meaningful compensatory benefit from the October 2009 and July 2010 Carter's trades. Because his employment agreement with Level Global did not contemplate a bonus for 2009, Mr. Megalli realized nothing from Level Global's avoidance of $2.034 million in losses associated with the sale of Carter's shares in October 2009. And, while Mr. Megalli's consumer portfolio generated a total return of more than $39 million for 2010, this merely entitled him to a 0.3% share (or 0.003) of such profits, meaning that he personally realized only $1,945 from the $648,655 of Carter's short sale profits in July 2010 (*i.e.*, 0.003 x $648,655 = $1,945). (*See, e.g.*, Ex. D, DOJ Case ECF No. 31 at 5 ("AUSA Chaiken: . . . I think Mr. Megalli rightly points out that he did not profit in a direct and tangible way from the misconduct.").

In addition, Mr. Megalli did not seek to offset his minimal compensatory benefit from Level Global through parallel personal trading of Carter's securities or through forward tipping. (Ex. C, DOJ Case ECF No. 26 at 52). He never traded Carter's securities for his own account, nor did he recommend to David Ganek, Level Global's principal, that Ganek trade Carter's

shares in parallel with him, notwithstanding Ganek's access to exponentially greater trading capital and leverage. *Id.* Simply put, there were clearly more direct – and certainly more remunerative – means for Mr. Megalli to have profited from his misconduct, yet he availed himself of none of them. *Id.*

Nor did Mr. Megalli induce any Carterès insider to breach a duty. He was at all times a secondary tippee of Martin, who was himself a tippee of Posey. *Id.* Mr. Megalli never met Posey, nor was he even aware of Posey's identity. *Id.* at 52-53. Courts have long held that those who breach a fiduciary duty are more culpable than those whose liability is derivative of a breach. *See, e.g., Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 313 (1985) ("[I]n the context of insider trading, we do not believe that a person whose liability is solely derivative can be said to be as culpable as one whose breach of duty gave rise to that liability in the first place"); *SEC v. Tome*, 638 F. Supp. 638, 639 n.1 (S.D.N.Y. 1986) ("it is illogical to argue . .e that a tippee's liability can be greater than that of the tipper"), *aff'd*, 833 F.2d 1086 (2d Cir. 1987).

Indeed, the SEC has itself advocated that the relative culpability of those who directly breach or induce a breach of fiduciary duty is higher than those who directly profit from it, noting that tippers are the "*persons most directly culpable in a violation*," because, "[a]bsent the tipper's misconduct, the tippee's trading would not occur." Brief for the U.S. Securities and Exchange Commission as Amicus Curiae Supporting Respondents, *Bateman Eichler, Hill Richards, Inc. v. Berner*, No. 84-679, 1985 WL 669566, at *21 (quoting H.R. Rep. No. 98-355, at 9 (1983)) (emphasis in original). Congress codified the SECès position in the Insider Trading Sanctions Act of 1984, Pub. L. No. 98-376, 98 Stat. 1264 (1984), which authorized the

imposition of civil penalties on non-trading tippers based "on the premise that tippers are the parties most responsible for any fraud on the investing public." *Id.*

Perhaps most importantly, the egregiousness of Mr. Megalli's offense conduct and his relative degree of culpability have twice been assessed by federal district courts, including based on an evidentiary hearing in which the Division cross-examined Mr. Megalli regarding multiple *Steadman* factors. In the criminal case, Judge Story downwardly departed from the 41-month guideline sentence to which the parties had agreed on an advisory basis, ruling instead that Mr. Megalli should serve a year and a day in custody. (Ex. D, DOJ Case ECF No. 31 at 32). Judge Story further ordered that Mr. Megalli pay $50,000 in criminal restitution (which he satisfied prior to sentencing), a fraction of the $950,000 and $750,000 in criminal restitution (comprised of Carter's legal fees) allocated to Martin and Posey. In delivering his sentence, Judge Story pointed to, among other things, Mr. Megalli's demonstrated character beyond his misconduct, as evidenced by the letters submitted on his behalf prior to sentencing and the witnesses who appeared on his behalf at sentencing. *Id.* at 23-25. Judge Story also viewed Mr. Megalli to be less culpable than either Martin or Posey, who as former corporate insiders had betrayed Carter's confidence for their own personal profit, including by trading Carter's shares for their own account. *Id.* at 26-27.

In the civil case, Judge Totenberg personally witnessed Mr. Megalli testify about the seriousness of his misconduct and the devastating personal and familial effects of his criminal prosecution and incarceration that categorically preclude any future securities law offenses. (Ex. A, Hr'g Tr. at 86, 91 and 94). She also heard Mr. Megalli's testimony and received documentary evidence establishing the isolated nature and negligible compensatory benefit he realized from his offense conduct. *Id.* at 23-62. In combination with Mr. Megalli's advocacy that he was not

liable as a matter of law for trading gains realized exclusively by Level Global, the fact that Mr. Megalli had neither an equity stake in Level Global nor had he received any meaningful compensation based on his misconduct led Judge Totenberg to reject the SEC's contention that he should pay approximately $9.2 million in disgorgement, prejudgment interest, and a three-times civil penalty.

2. Isolation of Misconduct

Mr. Megalli's illicit trading was neither common nor recurring. Rather, it was confined to a single issuer, Carter's, and implicated only two trades involving material, non-public information: the sale of Carter's shares in October 2009 and the short sale of Carter's stock in July 2010. This is in stark contrast to the scope of other insider trading schemes recently prosecuted by the SEC, including *Raj Rajaratnam* (more than 15 issuers and more than $90 million in illicit profits or losses avoided) and *Michael Kara* (more than 20 issuers). *See* SEC Obtains Record $92.8 Million Penalty Against Raj Rajaratnam, Release No. 2011-233; SEC Charges Wall Street Investment Banker and Seven Others in Widespread Insider Trading Scheme, Release No. 2009-99.

Notably, in cross-examining Mr. Megalli at the remedies hearing in its civil enforcement action, the Division itself elicited Mr. Megalli's testimony that the two October 2009 trades that resulted in liquidation of Level Global's 300,000 share position involved only a single trading decision after Martin called Mr. Megalli on October 23, and the four short sales in July 2010 involved merely two orders. (*See* Ex. A, Hr'g Tr. at 83-85; *see also id.* at 89-90 ("Q. [BY MR. HUDDLESTON]: WHAT I AM TRYING TO ESTABLISH IS, THIS IS NOT SOMETHING YOU DID ONCE, SIR. YOU DID IT TWICE, RIGHT?; A. I THINK THAT'S FAIR."). More broadly, Carter's was but one of approximately 100 separately issued securities Mr. Megalli

traded each year, and only 46 of Mr. Megalli's 1,861 equity trades during 2009-2010 involved Carter's shares, with only a handful of these (two sales in October 2009 and four short sales plus a cover in July 2010) being tainted by inside information.

3. Degree of Scienter

As Mr. Megalli allocuted to Judge Story in connection with his criminal plea, fully 76 percent of the trading gains at issue in this case were generated based on Mr. Megalli's conscious avoidance as to the source and legitimacy of Martin's October 23, 2009 suggestion that Mr. Megalli should continue to liquidate Level Global's remaining position in Carter's, which Mr. Megalli had started to sell prior to speaking with Martin. (DOJ Case ECF No. 9 at 24-26). While Mr. Megalli fully acknowledges that conscious avoidance is just as criminally actionable as actual knowledge, Ex. C, ECF No. 26 at 35-37, the point here is that Mr. Megalli had already begun selling Level Global's 350,000-share Carter's position prior to October 23, because the company's stock had by that time reached his price target. ECF No. 9 at 24-26. Moreover, his October 23 call with Martin had barely lasted two minutes before Mr. Megalli ordered the sale of Level Global's remaining position. Ex. C, ECF No. 26 at 36. This was clearly insufficient time for Martin to disclose anything to Mr. Megalli other than the catalyzing – yet nonetheless criminally sanctionable – tip to continue selling Carter's shares that Mr. Megalli later described to Judge Story in connection with his guilty plea.[4]

Although Mr. Megalli exploited his actual, pre-disclosure knowledge of Carter's second quarter 2010 financial performance to short Carter's shares in July 2010, he conducted a wealth

[4] After Mr. Megalli's sentencing, the government elicited evidence in a parallel insider trading prosecution that Carter's CEO did not decide to delay the company's earnings announcement until the night of October 26, 2009. (*See United States v. Slawson*, 1:14-CR-186-RWS (N.D. Ga.), Jury Trial Volume 10-A at 2036-37).

of independent due diligence to corroborate the advisability of doing so. *Id.* at 33. This included his review and internal reporting within Level Global of widely-stated analyst concerns that significant cost inflation, caused by rapidly rising cotton prices, Chinese labor rates, and freight costs, was negatively impacting the gross margin of apparel retailers like Carter's. (DOJ Case ECF No. 74, Def.'s Objections at 16-17[5] (citing KeyBanc Capital Markets, J.P. Morgan and Sterne Agee reports)). In fact, Carter's was but one of approximately a half dozen apparel sector stocks that Level Global shorted around this time based on this thesis. *Id.* Simply put, the inside information Martin provided in July 2010 was in line with other widely available research and analysis of the sector.

The broader point, of course, is that, as opposed to other remote tippee defendants who rely in isolation on inside information that has been passed to them, Mr. Megalli's reliance on inside information disclosed by Martin was, in the main, corroborated by independent analysis and otherwise innocent due diligence, particularly with respect to Level Global's July 2010 short sales. *Id.* While a trader who relies on inside information in combination with other data remains criminally liable for his violation, the corresponding sanction must account for the relative immateriality of the disclosure in the overall mix of information justifying an illegal trade.

---

[5] The evidence pertaining to Mr. Megalli's corroborating due diligence in connection with the July 2010 short sales is summarized in his criminal sentencing memorandum. (Ex. C, DOJ Case ECF No. 26). However, a more detailed description of the underlying evidence is contained in the objections he made in response to initial disclosure of his pre-sentence investigation report ("PSR"). Although Judge Story resolved all factual PSR objections in Mr. Megalli's favor, they remain under seal as part of the final PSR in the DOJ Case. (DOJ Case ECF No. 74). To the extent the Court would like to review the PSR objection documenting Mr. Megalli's corroborating due diligence in relation to the July 2010 short sales, Mr. Megalli is committed to moving Judge Story to unseal his PSR objections for purposes of supplementing the record herein.

4. Sincerity of Assurances Against Future Violations

While the Division acknowledges Mr. Megalli's repeated assurances that he will not re-offend, it claims that litigation of his habeas petition, through and including a motion for a certificate of appealability ("COA") from the Eleventh Circuit, discredits these representations. (Div. Mot. at 8). This contention is misplaced.

First, the Eleventh Circuit denied Mr. Megalli's COA motion on December 28, 2017. (DOJ Case ECF No. 78).

Second, as reflected above, Mr. Megalli has never denied his insider trading culpability based on the facts he admitted before Judge Story at his guilty plea hearing, which that court concluded satisfied the essential elements of a criminal charge of conspiracy to engage in insider trading under controlling Eleventh Circuit law. This includes in connection with his habeas petition, which he introduced by stating explicitly that he "[did] not seek to re-litigate the facts he admitted in connection with his guilty plea and sentencing for conspiracy to engage in insider trading in violation of 18 U.S.C. § 371." (DOJ Case ECF No. 40-1 at 4).

Third, Mr. Megalli elected to proceed with a collateral attack on his sentence only after the Second Circuit ruled in *Newman* that, for remote tippee traders like Mr. Megalli, the government must prove both that a tangible benefit induced a corporate insider's breach of fiduciary duty, and that the trader was culpably aware of the nature of such benefit. 773 F.3d at 449. Indeed, shortly after *Newman* was handed down, and while Mr. Megalli remained in prison, the government asserted in separate pleadings that the "decision dramatically . . . departs from thirty years of controlling Supreme Court authority[,]" particularly insofar as it "creates a novel evidentiary bar for tipper benefit, and tippee knowledge of such benefit[.]" (DOJ Case ECF No. 40-1 at 32). The government further argued that, "the Opinion redefines a critical element ofe

insider trading liability . . . holding for the first time that a culpable tippee must know that the insider-tipper who supplied the information acted for . . . a [qualifying] benefit." *Id.* The SEC concurred, claiming that, "No other court of appeals has concluded that a friendship between the tipper and tippee is an insufficient basis from which to infer the required personal benefit[.]" *Id.* at 33 n.8. Most critically, *Newman*'s issuance compelled one district court to vacate the guilty pleas of multiple defendants who, like Mr. Megalli, had admitted their criminal insider trading liability under pre-*Newman* law, which was followed by the government's dismissal of their indictment based on lack of evidence. *Id.* at 13-14.

Finally, the Division's invocation of Mr. Megalli's habeas litigation as putative evidence of his lack of sincerity is illogical. Without denying any underlying facts, Mr. Megalli collaterally attacked his insider trading conviction based on subsequent legal authority dramatically expanding the essential elements of his civil and criminal insider trading liability. It follows that, if he were to be successful in establishing that his guilty plea (the issue preclusive effect of which the SEC invoked in pursuing his civil liability) was involuntary – *i.e.*, that he was illegally convicted – then there would be no future violation for him to disavow. In other words, assurances against future violations require an underlying violation, and Mr. Megalli had every right to attack the legal validity of his underlying conviction (while at the same time continuing to concede established facts) without this constituting an aggravating consideration under *Steadman.*

5. Recognition of Wrongful Nature of Conduct

As noted above, Mr. Megalli has repeatedly – and squarely – acknowledged the wrongfulness of his conduct. This includes during his sentencing allocution before Judge Story in which he said, "My whole life I've always tried to do the right thing, and obviously with

respect to the events here I got it completely and utterly wrong and I'm not going to make excuses today." (Ex. D, DOJ Case ECF No. 31 at 22). In fully accepting responsibility for his misconduct, Mr. Megalli entered a guilty plea to a criminal information, obviating the need for the government to pursue his indictment. *See id.* at 4 ("AUSA Chaiken: There's, you know, there's counterbalancing factors [in Mr. Megalli's favor], including the fact that Mr. Megalli . . . agreed to waive formal indictment and come clean and plead guilty to a criminal information. He even agreed to pay his restitution amount before it was ordered by the court. That's tremendous demonstration of acceptance of responsibility and attempting to make amends for his misconduct."). He also testified under oath before Judge Totenberg that he recognized the severity of his offense conduct, and that there was a "zero" chance of him reoffending. (Ex. A, Hr'g Tr. at 86, 91 and 94).

But perhaps the best evidence of Mr. Megalli's acceptance of responsibility for his misconduct is the fact that he has returned repeatedly to Yale Law School, his legal *alma mater*, to speak with students in Professor Jonathan Macey's Ethics in Financial Markets class about the perils of engaging in securities law violations. As Professor Macey notes:

> The students and I are consistently impressed by how deeply sorry Mr. Megalli is for his past conduct. He is genuinely and deeply committed to proceeding along a future path that is consistent with the law as well as with his deep ethical and moral values. I am absolutely certain that Mr. Megalli is profoundly sorry for what he did and completely sincere in his expressions of deep remorse.
>
> * * *
>
> Mr. Megalli has volunteered his time to speak to law students for no reason other than a genuine desire to share his experience in order to make sure that they will not break the law or even approach any legal or ethical boundaries that they may encounter in their careers.
>
> * * *

> Mr. Megalli has repeatedly expressed his deep remorse and his commitment to avoid any future wrongful conduct in a classroom setting in which he had nothing personally to gain by doing so. I imagine that it is difficult and embarrassing for Mr. Megalli to talk about his experience in front of law students, and his sincerity and commitment to acting in conformity with all applicable laws and norms for the rest of his life.

(Ex. B, Nov. 2, 2017 Letter from Yale Law School Professor Jonathan M. Macey).

While anyone else in Mr. Megalli's position could be excused for wanting to avoid the discomfort and shame of appearing before a class of law students (from their legal *alma mater*, no less) to discuss a major judgmental lapse, Mr. Megalli has amply demonstrated his acceptance of responsibility and the sincerity of his assurances against future violations by embracing the opportunity to share his experience with the next generation of securities practitioners – all before ever knowing that the SEC intended to institute a follow-on proceeding against him.

6. Likelihood of Future Violations

Mr. Megalli understands that this Court must assess the likelihood of any future securities law violations based largely on the position he occupied at the time of his offense conduct (namely, a hedge fund portfolio manager), rather than based on his current, substantially diminished livelihood and career prospects. Such analysis compels the Court to consider the relative lack of egregiousness, isolation and comparatively less culpable intent associated with Mr. Megalli's offense conduct, which, as discussed above, fully support the contention that he has already been sufficiently sanctioned.

The likelihood that Mr. Megalli would reoffend is also inconsistent with his sworn, unequivocal assurances to Judge Story and Judge Totenberg that he fully appreciates the wrongfulness of his actions and their devastating impact on him and his family, most particularly his two young daughters. It is further belied by the multitude of mitigation letters submitted on Mr. Megalli's behalf prior to his sentencing and the observations of the character witnesses who

appeared on his behalf at sentencing, each attesting to his high intelligence, life-long record of personal achievement, strong character and extremely close familial ties. (*See* Ex. C, DOJ Case ECF No. 26 (Resp.'s Sentencing Mem.) at 6-18 and 60-69 (detailing Mr. Megalli's personal and professional history and quoting at length from the pre-sentencing character letters submitted to Judge Story); *see also* Ex. D, DOJ Case ECF No. 31 (July 8, 2014 Sentencing Hr'g Tr.) at 11-12 (mitigation sentencing testimony of Mr. Megalli's mother, father, brother, mother-in-law, and wife).

This wealth of record evidence regarding the aberrational nature of Mr. Megalli's offense conduct caused Judge Story to remark that, "[I]t's clear that you have had a remarkable life and have made a number of substantial contributions and, as you mentioned, I expect that you will make many more in the future." *Id.* at 25. It further led that court to sentence Mr. Megalli to a year and a day in custody, *not* to deter Mr. Megalli from future violations, *see id.* at 26 ("You've not been a person committing crimes all your life to this point and I don't expect you to commit another one from this point forward. So it's not about deterring you."), but rather to deter others who might later find themselves in Mr. Megalli's position.

Judge Story's finding that Mr. Megalli required no further deterrence clearly provides this Court with a strong basis to conclude that no additional incremental deterrence or incapacitation is required here. *See generally Alan E. Rosenthal*, Release No. 40387, at *2 (SEC Sept. 1, 1998) (declining to impose a collateral bar because "Rosenthal's conviction is based on a single incident of wrongdoing, the conduct underlying the conviction is twelve years old, and this record contains no evidence of either prior or subsequent disciplinary history. We further note that the trial judge imposed relatively lenient criminal sanctions."); *Kara*, 113 SEC Docket 3891, at *7 (substituting three year bar for permanent collateral bar based on the respondent's

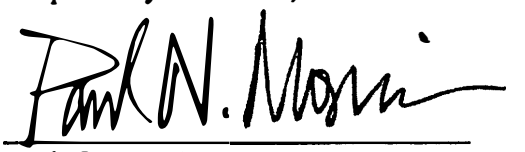
unequivocal recognition of the wrongful nature of his conduct, his lack of personal profit, and the judgment of the district court in his criminal prosecution that he was unlikely to reoffend).

IV. CONCLUSION

Based on the foregoing argument and authority, Mr. Megalli respectfully submits that, if the Court denies his Rule 250 motion that the SEC has either waived or is judicially estopped from pursuing his administrative debarment, such sanction is needlessly excessive here given (i) his existing civil and criminal punishment, (ii) the comparatively less egregious nature of his misconduct (including his negligible gain), and (iii) his character, post-conviction conduct, and assurances against future violations that have been credited by the district courts in the underlying criminal and civil enforcement proceedings giving rise to this follow-on action.

Dated: December 29, 2017

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was delivered to the following via facsimile (exclusive of exhibits) and by depositing three copies of it (inclusive of exhibits) in the U.S. mail, first class postage prepaid:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Mailstop 1090
Attn: Secretary of the Commission Brent J. Fields
703.813.9793 (fax)

A true and correct copy of the foregoing document was delivered to the following via email and by depositing it in the U.S. mail, first class postage prepaid:

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Washington, DC 20549
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Dated: December 29, 2017

By: 

Paul N. Monnin

HARD COPY

Exhibit A

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

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

DOCKET NO. 1:13-CV-03783-AT

-VS-

MARK MEGALLI,

DEFENDANT.

TRANSCRIPT OF HEARING PROCEEDINGS
BEFORE THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT JUDGE
TUESDAY, OCTOBER 27, 2015

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

PAT HUDDLESTON, II, ESQ.

ON BEHALF OF THE DEFENDANT:

PAUL MONNIN, ESQ.
ERIC DAVID STOLZE, ESQ.

ELIZABETH G. COHN, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

I N D E X

(ATLANTA, GEORGIA; OCTOBER 27, 2015, AT 1:50 P.M. IN OPEN COURT.)

THE COURT: GOOD AFTERNOON. PLEASE HAVE A SEAT.

WE'RE HERE IN SEC VERSUS MARK MEGALLI, CIVIL ACTION NUMBER 1:13-CV-3783.

GOOD AFTERNOON, COUNSEL. THANK YOU FOR PERSISTING.

AND, MR. MEGALLI? GOOD TO SEE YOU.

WE'RE GOING TO BE LOOKING AT THE CIVIL PENALTY ISSUE AND THE DISBARMENT ISSUE. IS THERE ANYTHING ELSE THAT WE'RE GOING TO HAVE TO -- DISGORGEMENT AS WELL. GREAT.

ANYTHING ELSE?

MR. HUDDLESTON: WE HAVEN'T PLED FOR DEBARMENT, AND SO THAT'S NOT PART OF THE CASE.

THE COURT: THAT'S NOT PART OF THE CASE.

MR. HUDDLESTON: NO, YOUR HONOR.

MR. MONNIN: YOUR HONOR, WHAT I UNDERSTAND IS THAT THE SEC HAS PLED AN INJUNCTION AGAINST FUTURE VIOLATIONS, AS OPPOSED TO AN INDUSTRY BAR.

MR. HUDDLESTON: RIGHT, CORRECT.

THE COURT: ALL RIGHT. JUST EXPLAIN THAT AGAIN WHAT YOU JUST SAID. AND IF YOU COULD JUST GET A LITTLE CLOSER TO THE MICROPHONE SO THAT --

MR. HUDDLESTON: CERTAINLY, YOUR HONOR.

WHAT WE PLED FOR FIRST IS A PERMANENT INJUNCTION AGAINST FUTURE VIOLATIONS.

SECONDLY, FOR DISGORGEMENT AND PREJUDGMENT INTEREST.

AND FINALLY FOR CIVIL PENALTIES.

THE COURT: OKAY. SO YOU'RE NOT LOOKING FOR DEBARMENT.

MR. HUDDLESTON: THAT IS CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT. I MISUNDERSTOOD THAT, THEN.

ALL RIGHT. VERY GOOD. WELL, LET ME HEAR FROM THE GOVERNMENT FIRST.

MR. HUDDLESTON: IF I MIGHT, YOUR HONOR, I WOULD CERTAINLY YIELD THE FLOOR TO THE DEFENDANTS. THEY PREPARED A PRESENTATION WHICH WILL DRAW OUT ALL THE FACTS.

THE COURT: THAT'S FINE. THAT'S FINE.

MR. HUDDLESTON: OKAY.

MR. MONNIN: YES, YOUR HONOR. WE'VE DONE THAT.

AND, JUST FOR THE RECORD, I'VE GIVEN YOUR LAW CLERK, MR. BARTHOLOMEW?

THE COURT: RIGHT.

MR. MONNIN: CORRECT. AND THAT MR. BARTHOLOMEW HAS THE ORIGINAL EXHIBITS 1 THROUGH 7 THAT THE SEC HAS STIPULATED TO.

THE COURT: ALL RIGHT.

MR. MONNIN: IN LIGHT OF THAT STIPULATION, I GUESS I'LL JUST GO AHEAD AND MOVE THOSE. AND I'LL CERTAINLY HAVE MY CLIENT TESTIFY ABOUT THE FOUNDATION AND WHAT THEY RELATE TO.

THE COURT: ALL RIGHT.

MR. HUDDLESTON: NO OBJECTIONS.

THE COURT: VERY GOOD. THEY ARE ADMITTED, THEN.

MR. MONNIN: AND I ALSO HAVE A SLIDE DECK THAT IS IN THE POCKET. YOUR HONOR HAS A BINDER OF THE EXHIBITS. AND WE HAVE A SLIDE DECK AS WELL THAT BOTH THE COURT AND MR. BARTHOLOMEW --

THE COURT: AS I UNDERSTAND, MINE ARE COPIES WHERE I CAN WRITE ON MINE.

MR. MONNIN: CORRECT.

THE COURT: ALL RIGHT. VERY GOOD. BECAUSE I'VE BEEN KNOWN TO WRITE ON ORIGINALS AND MAKE EVERYONE'S LIFE MISERABLE.

MR. MONNIN: NO, JUDGE. WE CAME PREPARED.

AND I HAVE EXPLAINED TO MY CLIENT THAT THE PURPOSE OF -- HE CERTAINLY UNDERSTANDS WHAT THE PURPOSE OF THE HEARING IS. HE ABSOLUTELY UNDERSTANDS THAT YOU MAY BE ASKING HIM QUESTIONS AS WELL --

THE COURT: ALL RIGHT.

MR. MONNIN: -- WITH REGARD TO HIS COMPENSATION AND THE BENEFITS HE RECEIVED FROM LEVEL GLOBAL. SO IT WILL BE OBVIOUS WHERE WE'RE HEADED.

WHAT WE'RE REALLY TRYING TO DO, JUDGE, IS THAT WE'RE TALKING ABOUT A TWO-YEAR COURSE OF CONDUCT HERE FROM 2009 TO 2010. AND WHAT I AM GOING TO HAVE MY CLIENT TESTIFY ABOUT IS THE COMPENSATORY BENEFITS THAT HE RECEIVED CONTRACTUALLY FROM HIS EMPLOYER, LEVEL GLOBAL, DURING THAT TIME.

ONCE WE GET THROUGH THOSE COMPENSATORY BENEFITS, I'M THEN GOING TO HAVE MY CLIENT, THROUGH HIS TESTIMONY, ILLUSTRATE WHAT WE BELIEVE IS THE IMMATERIALITY OF THE CARTER'S TRADING IN 2009. WHAT WE'RE TALKING ABOUT IS OCTOBER OF 2009, THE SALE OF CARTER'S RELATED -- CARTER'S STOCK IN OCTOBER 2009, OCTOBER 26TH OF 2009, JUDGE.

AND THE OTHER SALES OR THE OTHER SECURITIES TRADING THAT WE'RE TALKING ABOUT IS JULY 2010, SHORT SALES DURING THAT PERIOD OF TIME. SO WE'RE GOING TO ELICIT THE COMPENSATORY BENEFIT THAT MY CLIENT RECEIVED ASSOCIATED WITH THE 2009 TRADES, OR TRADE, WHICH WE BELIEVE THERE WAS REALLY NO COMPENSATORY BENEFIT WHATSOEVER TO MY CLIENT DURING THAT TIME. AND THEN WE'RE GOING TO MOVE INTO THE 2010 TIME FRAME, AND WE'RE GOING TO SHOW THE COURT THAT THERE WAS A PROFIT THAT WAS MONETIZED, IF YOU WILL, DURING THAT TIME FRAME IN JULY 2010.

BUT THE AMOUNT OF THE PROFIT, WHEN IT'S COMPARED TO THE OVERALL PROFITABILITY OF THE HEDGE FUND WHERE MY CLIENT WAS EMPLOYED, THAT THAT OVERALL PROFITABILITY DWARFS THE PROFITS OR PROCEEDS THAT MY CLIENT REALIZED -- OR NOT MY CLIENT REALIZED, THAT THE HEDGE FUND REALIZED FROM THE TRADING ACTIVITY IN ISSUE.

SO WE'D EXPECT THAT, HOPEFULLY, WE SHOULD BE MAYBE ABOUT 45 MINUTES OR SO.

THE COURT: ALL RIGHT.

MR. MONNIN: AND THEN WE'LL YIELD TO THE SEC.

AND SO WITH THAT, I'LL CALL MARK MEGALLI.

THE COURTROOM DEPUTY: MR. MEGALLI, PLEASE RAISE YOUR RIGHT HAND.

MARK MEGALLI,

HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURTROOM DEPUTY: THANK YOU. PLEASE BE SEATED.

DIRECT EXAMINATION

BY MR. MONNIN:

Q. MR. MEGALLI, COULD YOU PLEASE GIVE THE COURT A SENSE OF YOUR, JUST STARTING OFF, YOUR EDUCATIONAL BACKGROUND?

A. YES. SURE. SO I ATTENDED YALE UNIVERSITY AS AN UNDERGRAD. I GRADUATED IN 1994, MAJORED IN POLITICAL SCIENCE. GRADUATED PHI BETA KAPPA AND MAGNA CUM LAUDE AND THEN ATTENDED YALE LAW SCHOOL AND THE YALE SCHOOL OF MANAGEMENT AND RECEIVED A J.D. AND MBA DEGREE IN 1999.

Q. DID YOU PASS THE BAR?

A. I PASSED THE BAR IN NEW YORK, YES.

Q. DID YOU EVER PRACTICE LAW?

A. ONLY AS A 2L. IN MY 2L SUMMER I WORKED AT DEBEVOISE AND PLIMPTON IN NEW YORK FOR ABOUT JUST THE SUMMER.

Q. SO YOUR CAREER HAS BEEN MORE FOCUSED ON FINANCIAL SERVICES IN THE HEDGE FUND INDUSTRY?

A. CORRECT. WELL, WHEN I GRADUATED FROM --

THE COURT: LET ME INTERRUPT YOU FOR ONE SECOND.

I HAVE CASEVIEW HERE.

(WHEREUPON, AN OFF-THE-RECORD DISCUSSION WAS HAD.)

THE COURT: ALL RIGHT. GO AHEAD, CONTINUE.

MR. MONNIN: THANK YOU, JUDGE.

Q. (BY MR. MONNIN) SO, MR. MEGALLI, I THINK THAT WE WERE TO THE POINT WHERE YOU WERE TALKING ABOUT WHEN YOU ENTERED THE FINANCIAL SERVICES INDUSTRY.

A. RIGHT. SO AFTER GRADUATE SCHOOL, I BEGAN MY CAREER REALLY AT MCKINSEY AND COMPANY AND WORKED AS A MANAGEMENT CONSULTANT IN THE FINANCIAL SERVICES FIELD FOR ABOUT FOUR YEARS FROM '99 UNTIL 2003.

AND THEN STARTING IN 2003, I HAD A CAREER CHANGE AND ENDED UP STARTING TO WORK AT A HEDGE FUND ON WALL STREET AND ENDED UP WORKING FOR A FEW DIFFERENT HEDGE FUNDS FROM 2003 UNTIL A COUPLE OF YEARS AGO.

Q. JUST SO THE COURT IS AWARE OF THIS, HOW OLD ARE YOU CURRENTLY?

A. FORTY-THREE YEARS OLD.

Q. AND YOU STARTED IN THE HEDGE FUND INDUSTRY ABOUT 12 YEARS AGO?

A. ABOUT 12 YEARS AGO.

Q. TAKE THE COURT FORWARD FROM WHEN YOU FIRST GOT INTO THE HEDGE FUND INDUSTRY TO THE POINT WHERE YOU WERE THINKING ABOUT WORKING WITH LEVEL GLOBAL.

A. SURE. OKAY. SO MY FIRST JOB WAS WORKING FOR A COMPANY

CALLED JOHN LEVIN AND COMPANY. AND I WAS HIRED TO BE AN ANALYST FOR ONE OF THEIR HEDGE FUNDS THERE. AND THEY WANTED ME TO SPECIALIZE IN THE CONSUMER DISCRETIONARY SPACE. THE CONSUMER DISCRETIONARY SPACE BASICALLY IS COMPRISED OF THE RETAILERS, THE RESTAURANTS, GAMING COMPANIES, LODGING COMPANIES, THINGS THAT CONSUMERS SPEND DISCRETIONARY DOLLARS ON. AND SO THAT WAS THE SECTOR THAT I REALLY STARTED WITH AND ENDED UP SPENDING MY WHOLE CAREER SPECIALIZING IN. AND THAT WOULD INCLUDE APPAREL AND FOOTWEAR-TYPE COMPANIES.

SO I STARTED WORKING AT JOHN LEVIN AND COMPANY IN '03, ENDED UP MOVING TO A DIFFERENT COMPANY IN AROUND, OH, END OF '07, BEGINNING OF '08 CALLED BUCKINGHAM CAPITAL. AND BUCKINGHAM CAPITAL SPECIALIZED IN THE CONSUMER DISCRETIONARY SECTOR. AND THAT WAS A BIG PART OF WHY THEY RECRUITED ME TO GO IN AND SORT OF BE A JUNIOR PORTFOLIO MANAGER FOR THEM.

SO I HAD BEEN WORKING THERE FOR ABOUT A YEAR AND A HALF WHEN I WAS CONTACTED BY LEVEL GLOBAL IN THE SUMMER OF 2009. AND LEVEL -- GO AHEAD.

Q. MR. MEGALLI, LET ME JUST STOP YOU THERE. BRIEFLY TELL THE COURT WHAT YOUR JOB RESPONSIBILITIES WERE AT JOHN LEVIN. HOW MUCH MONEY DID YOU MANAGE OR HAVE INVESTMENT DISCRETION OVER, THINGS LIKE THAT?

A. SO REALLY JOHN LEVIN HAD TWO PIECES TO IT. THE FIRST HALF OF THE TIME THAT I WORKED THERE WAS FOR A HEDGE FUND, HEDGE FUND CALLED SR CAPITAL. AND I REALLY DIDN'T HAVE MUCH

DISCRETION. I HAD VIRTUALLY NO DISCRETION THERE. SO I WAS REALLY JUST A CONSUMER ANALYST. AND I WOULD HELP THE PORTFOLIO MANAGERS WITH SOURCING IDEAS, BUILDING FINANCIAL MODELS, MEETING WITH COMPANY MANAGEMENT, ATTENDING CONFERENCES, YOU KNOW, THIS SORT OF DUE DILIGENCE THAT YOU WOULD THINK OF AN ANALYST DOING.

JOHN LEVIN EVENTUALLY SPUN OUT THIS SR CAPITAL GROUP INTO ANOTHER COMPANY CALLED SEAROCK CAPITAL. AND THAT WAS THE FIRST TIME I HAD SOME DISCRETION OVER, YOU KNOW, THE MONEY THAT WAS BEING MANAGED BY SEAROCK CAPITAL. AND, OVERALL, WE WERE ABOUT A $700 MILLION FUND, IF I REMEMBER. AND I, I HAD DISCRETION OVER SOMEWHERE AROUND 50 TO $100 MILLION IN THAT FUND.

Q. HOW ABOUT AT BUCKINGHAM, SAME TYPES OF --

A. WHEN I, WHEN I GOT TO BUCKINGHAM, BUCKINGHAM MANAGED A LITTLE BIT MORE CAPITAL THAN THAT. IT WAS MORE LIKE 800 MILLION TO A BILLION DOLLARS. AND THE WAY THAT IT WORKED AT BUCKINGHAM IS THAT THERE WERE FOUR PORTFOLIO MANAGERS. AND WE ALL HAD, NOT EQUAL SAY, BUT WE ALL CONTRIBUTED TO THE MANAGEMENT OF THE PORTFOLIO. SO I WAS SORT OF A CO-PORTFOLIO MANAGER IN THE SENSE OF BEING, YOU KNOW, A JUNIOR GUY THERE. BUT I GAVE INPUT INTO BUYING AND SELLING DECISIONS ON THE OVERALL PORTFOLIO.

Q. NOW, TAKING US FORWARD TO LEVEL GLOBAL, WAS THAT MORE OF A PUSH ON YOUR PART, A PULL ON LEVEL'S PART? TELL US ABOUT THAT.

A. NO. I HAD REALLY NEVER HEARD OF LEVEL GLOBAL. IN THE

SUMMER OF 2009, THEY CONTACTED ME. AND LEVEL GLOBAL HAD TRADITIONALLY FOCUSED ON TECHNOLOGY STOCKS. THE TWO MAIN COFOUNDERS HAD DONE TECH THEIR WHOLE CAREERS BASICALLY. AND THEY WANTED TO START UP A CONSUMER VERTICAL, IF YOU WILL, WITHIN LEVEL GLOBAL WHERE THEY WANTED TO HIRE ME TO BE THE PORTFOLIO MANAGER WITHIN THAT CONSUMER VERTICAL AND THEN HIRE A TEAM OF ANALYSTS, HIRE CONSULTANTS AND SO FORTH AND REALLY BUILD OUT AN EFFORT WITHIN CONSUMER. AND THEY HAD ALREADY DONE THIS SUCCESSFULLY IN A COUPLE OF OTHER VERTICALS. THEY HAD DONE FINANCIALS. THEY HAD DONE INDUSTRIALS. THEY WERE ALREADY IN TECHNOLOGY.

THE COURT: WHEN YOU SAY A VERTICAL TEAM, I KNOW WHAT THAT MEANS FOR ANTITRUST PURPOSES. BUT I DON'T KNOW THAT IT'S THE SAME, WHAT IT MEANS HERE FOR SURE. SO WHY DON'T YOU JUST CLARIFY WHAT YOU MEAN BY, THEY HAD A NUMBER OF OTHER VERTICALS.

THE WITNESS: SURE. BASICALLY JUST A GROUP WITHIN THE COMPANY THAT WOULD SPECIALIZE IN A CERTAIN SECTOR. SO IT WOULD BE RUN BY, SAY, IN THE INDUSTRIALS GROUP, THEY HAD AN INDUSTRIALS PORTFOLIO MANAGER. THEY HAD INDUSTRIAL ANALYSTS, AND THEY WOULD BASICALLY CARVE OUT A PIECE OF THE OVERALL PORTFOLIO TO JUST FOCUS ON THAT INDUSTRIAL SPACE.

SO IT WAS REALLY JUST A TEAM OF SPECIALISTS WITHIN INDUSTRIALS THAT WOULD MANAGE MONEY ON BEHALF OF LEVEL GLOBAL WITHIN THAT SECTOR.

Q. (BY MR. MONNIN) WITH WHOM WERE YOU MEETING AT LEVEL

GLOBAL REGARDING ITS RECRUITMENT OF YOU?
A. WELL, REALLY, THE HEAD OF THE FIRM, DAVID GANEK, WAS THE ONE ULTIMATELY WHO HIRED ME. AND BASICALLY WHAT HE SAID IS, WE -- YOU KNOW, THEY MANAGED ABOUT THREE TO THREE AND A HALF BILLION DOLLARS, ROUGHLY, WHEN THEY WERE RECRUITING ME. AND HE SAID, LOOK, YOU KNOW, IF YOU LEAVE BUCKINGHAM TO COME HERE, WE'LL GIVE YOU ABOUT $250 MILLION TO MANAGE WITHIN THE CONSUMER SPACE. IF YOU'RE SUCCESSFUL WITH THAT, WE'LL INCREASE IT OVER TIME. IT WILL BE AN OPPORTUNITY FOR YOU TO TAKE A MORE SENIOR ROLE THAN YOU HAVE, YOU KNOW, PRIOR TO THIS, IN THE SENSE THAT YOU CAN, YOU KNOW, YOU CAN HIRE ANALYSTS TO HELP YOU MANAGE THE MONEY; YOU CAN HAVE MORE DISCRETION OVER THE TRADING AND SO FORTH.

AND SO, ULTIMATELY, I DECIDED TO LEAVE BUCKINGHAM TO GO TO THEM. BUT, I MEAN, THE ANSWER TO YOUR QUESTION IS, THEY RECRUITED ME.

Q. LAST POINT ON BUCKINGHAM. IN GENERAL TERMS, WHAT WAS YOUR COMPENSATION THERE? HOW MUCH MONEY DID YOU MAKE, LET'S SAY, IN THE LAST FULL YEAR AND THEN THE STUB YEAR?
A. WELL, BEFORE I, BEFORE I WENT TO LEVEL. SO, LET'S SEE. I GUESS --
Q. JUST GENERALLY.
A. IN 2008, I BELIEVE I MADE $700,000.00 THAT YEAR.
Q. AND YOU WERE --
A. AND IN 2009, TO BE CLEAR, I LEFT IN THE MIDDLE OF THE

YEAR. AND SO WHEN YOU LEAVE A HEDGE FUND IN THE MIDDLE OF THE YEAR, YOU REALLY LEAVE BEHIND YOUR COMPENSATION. SO I MADE SOME SALARY THAT YEAR, BUT I DIDN'T GET ANY KIND OF A BONUS FROM BUCKINGHAM THAT YEAR.

Q. DO YOU HAVE A SENSE OF WHAT YOUR SALARY WAS?

A. OH, SURE. MY SALARY AT BUCKINGHAM WAS $500,000.00 A YEAR.

Q. SO LET'S --

THE COURT: SO YOU RECEIVED A PORTION OF YOUR SALARY, BECAUSE YOU WEREN'T THERE THE WHOLE YEAR?

THE WITNESS: THAT'S CORRECT.

THE COURT: AND YOU DIDN'T RECEIVE A BONUS?

THE WITNESS: CORRECT.

THE COURT: ALL RIGHT.

Q. (BY MR. MONNIN) AND, JUST TO BE CLEAR, MR. MEGALLI, WERE YOU TRADING IN CARTER'S SECURITIES AT BUCKINGHAM?

A. THERE WAS TRADING IN CARTER'S, NOT BY ME, NECESSARILY, BECAUSE OF THE WAY THAT BUCKINGHAM WAS MANAGED IN A CO-PORTFOLIO MANAGER STRUCTURE. SO SINCE THE FOUR OF US WERE ALL GIVING INPUT INTO DECISIONS, YOU KNOW, THERE WERE SORT OF GROUP DECISIONS BEING MADE. BUT, YES, THERE WAS TRADING IN CARTER'S, GIVEN THAT IT WAS AN APPAREL COMPANY, AND WE WERE A CONSUMER-FOCUSED FUND.

Q. WERE YOU ALWAYS AN EMPLOYEE AT BUCKINGHAM?

A. AT THAT TIME, I WAS AN EMPLOYEE, YEAH.

Q. DIRECTING YOUR ATTENTION -- WE CAN PULL UP THE SLIDE DECK.

DIRECTING YOUR ATTENTION TO THE FIRST SLIDE OF THE DECK, AS WELL AS DEFENSE EXHIBIT NUMBER 1, WHICH IS YOUR EMPLOYMENT AGREEMENT, COULD YOU PLEASE WALK THE COURT THROUGH THE, ESSENTIALLY, THREE BUCKETS OR CATEGORIES OF COMPENSATION THAT YOU WERE ELIGIBLE TO RECEIVE IN 2009 AND 2010?

A. SURE. SO THE FIRST COMPONENT WAS MY SALARY, WHICH WAS MEANT TO BE $250,000.00 PER YEAR. BECAUSE I WENT IN THE MIDDLE OF THE YEAR IN 2009, IT ENDED UP WORKING OUT TO THAT NUMBER THAT YOU SEE THERE, THE 111,000, WHICH INCLUDED SOME DE MINIMIS BENEFITS, I GUESS.

Q. WHEN DID YOU START AT LEVEL GLOBAL?

A. I STARTED AUGUST 9TH OF 2009, I BELIEVE.

Q. SO THIS IS THE PRO RATA AMOUNT OF $250,000.00?

A. FOR AUGUST, SEPTEMBER, OCTOBER, NOVEMBER, DECEMBER, CORRECT. AND THEN FOR 2010, IT WAS MY SALARY OF 250,000. AND AS I THINK WE'LL SEE LATER, THERE WAS ANOTHER 31,000 OF ADDITIONAL BENEFITS, WHICH THEY TERMED PSP BENEFITS, WHICH I BELIEVE IT WAS A PROFIT-SHARING DESIGNATION.

Q. HOW ABOUT SIGNING BONUS, WHAT DOES THAT REFER TO?

A. SO THE SECOND COMPONENT WAS, I GUESS, AS AN ENTICEMENT TO GET ME TO LEAVE BUCKINGHAM TO GO TO LEVEL GLOBAL, THEY OFFERED ME A $500,000.00 SIGNING BONUS, WHICH WAS TO VEST OVER A THREE-YEAR PERIOD. SO I JOINED IN AUGUST OF 2009, AND THE AGREEMENT STIPULATED THAT AS LONG AS I WAS AN EMPLOYEE, AS LONG AS I WAS EMPLOYED AT LEVEL GLOBAL, ON DECEMBER 31ST OF 2010, I

WOULD GET THE FIRST THIRD OF THAT SIGNING BONUS. AND THEN DECEMBER 31ST OF 2011, I WOULD GET THE SECOND THIRD. AND DECEMBER 31ST OF 2012, I WOULD GET THE FIRST -- THE LAST THIRD. AND ALL OF THAT WOULD BE PAID OUT IN FEBRUARY OF 2013.

SO THAT REPRESENTED -- THE 178,000 YOU SEE THERE IS THE FIRST THIRD THAT VESTED OF MY SIGNING BONUS. AND BECAUSE THEY INVESTED IT IN THE FUND, IT WORKED OUT TO 178,000. IT WASN'T 166,667.

Q. JUST SO THE COURT KNOWS, WHEN WERE YOU ACTUALLY PAID THE 178,000?

A. I WAS PAID THAT IN FEBRUARY OF 2013. I NEVER RECEIVED THE SECOND AND THIRD PORTIONS OF THE SIGNING BONUS BECAUSE LEVEL GLOBAL CEASED TO BE AN ONGOING CONCERN SOMETIME IN 2011.

Q. SO YOU HAD A BASE SALARY OF $250,000.00. YOU HAD A SIGNING BONUS OF 500,000 THAT VESTED PERIODICALLY STARTING IN 2010.

A. CORRECT.

Q. SO YOU DIDN'T RECEIVE ANY SIGNING BONUS IN 2009. CORRECT?

A. CORRECT. AND I DIDN'T RECEIVE THE FINAL TWO-THIRDS OF MY SIGNING BONUS FOR '11 AND '12.

Q. LET ME ASK YOU THIS. WE'LL GET TO IT IN A MOMENT. BUT DID YOUR INVESTMENT MANAGEMENT PERFORMANCE HAVE ANY IMPACT ON YOUR BASE SALARY OR YOUR SIGNING BONUS?

A. NO, IT DID NOT.

Q. LET'S TALK ABOUT INCENTIVE PAYMENTS. WHAT DOES THAT MEAN

GENERALLY?
A. INCENTIVE PAYMENTS -- SO LET ME TAKE A STEP BACK.
THE COURT: MAKE SURE I UNDERSTAND. THE TWO REMAINING $1,850.00 WAS THE FULL SALARY, BASE SALARY YOU RECEIVED?
THE WITNESS: IT WAS 250,000 IN SALARY PLUS 31,850 OF BENEFITS, WHICH WERE CALLED PSP. AND I BELIEVE THEY HAD TO DO WITH A PROFIT-SHARING PROGRAM.
THE COURT: ALL RIGHT.
Q. (BY MR. MONNIN) WHAT WAS THE INTENT OF THE ROUGHLY 31,000?
A. TO BE HONEST, I DON'T KNOW.
THE COURT: SO YOU ACTUALLY TOOK A SUBSTANTIAL PAY CUT IN TERMS OF THE ACTUAL SALARY WHEN YOU MOVED THERE FROM BUCKINGHAM.
THE WITNESS: CORRECT. THAT'S EXACTLY RIGHT.
THE COURT: ALL RIGHT.
Q. (BY MR. MONNIN) WHY DID YOU DO THAT, MR. MEGALLI?
A. I THOUGHT OVER THE LONG RUN IT WOULD BE A GOOD INVESTMENT IN MY FUTURE TO ADVANCE, YOU KNOW, TO MAYBE A SLIGHTLY MORE SENIOR ROLE THAN WHERE I WAS AT BUCKINGHAM.
Q. YOU MAY NEED TO SPEAK MORE INTO THE MICROPHONE.
A. I'M SORRY. I APOLOGIZE.
YEAH, I THOUGHT IT WOULD BE A GOOD CAREER MOVE, I GUESS.
Q. WAS THERE A PERCEPTION ON YOUR PART THAT YOU WOULD HAVE

MORE INCENTIVE-BASED COMPENSATION WITHIN THE SUBJECT MATTER AREA THAT YOU DO?

A. CAN YOU REPEAT THAT? I'M SORRY, PAUL.

Q. WAS THERE A THOUGHT THAT YOU MIGHT HAVE MORE OF AN INCENTIVE-BASED UPSIDE AT LEVEL, AS OPPOSED TO BUCKINGHAM?

A. YOU KNOW, I ASSUMED THAT, BECAUSE LEVEL MANAGED MORE ASSETS THAN BUCKINGHAM, THAT AS YOU BECAME MORE SENIOR AT LEVEL, THERE WAS POTENTIAL TO EARN MORE. BUT, TO BE HONEST, YOU KNOW, HAD I STAYED AT BUCKINGHAM, MY COMPENSATION, YOU KNOW, ULTIMATELY PROBABLY WOULD HAVE BEEN BETTER IN THE SHORT RUN. SO I WASN'T TRYING TO MAKE, YOU KNOW, DIRECT DECISIONS BASED ON WHAT IS MY INCENTIVE COMPENSATION GOING TO BE AT A VERSUS B. I WAS JUST TRYING TO THINK KIND OF LONGER TERM ABOUT, YOU KNOW, WHERE AM I BETTER SITUATED.

Q. OKAY. YOU WERE STARTING TO DESCRIBE FOR THE COURT IN GENERAL TERMS -- AND WE'LL GET INTO THIS FURTHER -- BUT WHAT WAS THE INCENTIVE COMPONENT OF YOUR COMPENSATION?

A. WELL, THAT WAS THE LAST, THE 1.2 MILLION, ROUGHLY, THAT YOU SEE THERE.

Q. BUT IN TERMS OF THE CONTRACT, HOW WAS IT DEFINED, JUST IN BROAD TERMS?

A. WELL, LET ME, LET ME JUST MAYBE DESCRIBE WHAT INCENTIVE COMPENSATION IS. HEDGE FUNDS ARE PAID REALLY IN TWO WAYS. THEY COLLECT A MANAGEMENT FEE EVERY YEAR, WHICH, FOR MOST HEDGE FUNDS, TENDS TO BE ABOUT TWO PERCENT A YEAR OF THE ASSETS UNDER

MANAGEMENT. AND THAT TWO PERCENT TYPICALLY IS USED TO PAY FOR SALARIES AND RENT AND COSTS OF RUNNING THE BUSINESS.

THE SECOND WAY HEDGE FUNDS ARE COMPENSATED TYPICALLY IS THROUGH AN INCENTIVE FEE, WHICH, FOR LEVEL GLOBAL AT THE TIME, WAS ABOUT A TEN PERCENT INCENTIVE FEE. AND BASICALLY WHAT THAT MEANS IS THAT WHEN YOU, WHEN YOU INVEST MONEY ON BEHALF OF YOUR INVESTORS, YOU'RE GOING TO HOPEFULLY GENERATE A RETURN ON THOSE FUNDS. OF THAT RETURN, 90 PERCENT WOULD BE RETURNED TO THE INVESTORS, AND LEVEL GLOBAL WOULD KEEP TEN PERCENT IN THE FORM OF AN INCENTIVE FEE. OF THAT TEN PERCENT THAT WE KEPT, THE SENIOR MANAGEMENT WOULD USE THAT TO PAY OUT PEOPLE'S BONUSES AT THE END OF THE YEAR. SO THAT 1.2 MILLION REFLECTS MY PORTION OF THE TEN PERCENT INCENTIVE FEE THAT LEVEL GLOBAL RETAINED.

Q. AND WE WILL GET INTO IN A MOMENT WHAT PERCENTAGE OF LEVEL GLOBAL'S INCENTIVE FEE YOU WERE ENTITLED TO.

A. RIGHT.

Q. SO WHAT WE'VE GOT FOR 2009 IS ROUGHLY 111,000 IN COMPENSATION AND, FOR 2010, ROUGHLY 1.65 MILLION. DID YOU RECEIVE, TO THE BEST OF YOUR RECOLLECTION, ANY OTHER AMOUNTS OTHER THAN WHAT'S REFLECTED ON THE SCREEN?

A. NO. THAT'S EVERYTHING.

Q. DID YOU HAVE ANY OTHER INCOME, ANY OTHER EMPLOYMENT --

A. NO.

Q. -- DURING THIS TIME FRAME?

A. NO.

Q. SO LET'S MOVE ALONG TO THE NEXT SLIDE, WHICH --

MR. MONNIN: AND WE'LL RUN THROUGH THIS VERY QUICKLY, YOUR HONOR.

Q. (BY MR. MONNIN) -- WHICH IS YOUR BASE SALARY.

A. RIGHT.

Q. AND WHAT I'D LIKE YOU TO DO, MARK, IS REFER TO EXHIBIT NUMBER 1 IN FRONT OF YOU, WHICH IS YOUR EMPLOYMENT AGREEMENT.

A. I THINK YOU NEED TO -- DO I NEED THE HANDOUT? I'LL JUST GO OFF THE SCREEN. THAT'S FINE. DON'T WORRY.

Q. WELL, YOU KNOW WHAT? I'LL JUST HAND THEM TO YOU. SO LET ME --

MR. MONNIN: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YES.

Q. (BY MR. MONNIN) LET ME SHOW YOU EXHIBITS 1, 2, AND 3 FOR THIS HEARING. AND LET ME DIRECT YOU SPECIFICALLY, MR. MEGALLI, TO PARAGRAPH 4(A) OF YOUR EMPLOYMENT AGREEMENT.

WELL, FIRST OF ALL, LET ME ASK YOU, WHAT IS EXHIBIT NUMBER 1?

A. THIS WAS MY EMPLOYMENT CONTRACT WITH LEVEL GLOBAL.

Q. AND IS THAT A COMPLETE COPY OF YOUR AGREEMENT SIGNED BY YOU AND SIGNED BY LEVEL?

A. I BELIEVE IT IS, YES.

Q. DID YOU HAVE ANY OTHER EMPLOYMENT AGREEMENT WITH LEVEL GLOBAL DURING 2009 AND 2010?

A. THIS WAS THE ONLY AGREEMENT I EVER HAD WITH LEVEL GLOBAL.

Q. AND DIRECTING YOU TO PARAGRAPH 4(A), IS THAT THE PARAGRAPH THAT PERTAINS TO YOUR BASE SALARY?
A. YES, IT IS.
Q. AND, IN ESSENCE, WHAT DOES IT -- I'M NOT ASKING YOU TO CALL FOR OR TESTIFY ABOUT A LEGAL CONCLUSION, BUT WHAT DOES IT PROVIDE WITH REGARD TO YOUR BASE SALARY?
A. PROVIDES FOR ANNUALIZED BASE SALARY OF $250,000.00, SUBJECT TO ANNUAL REVIEW AND ADJUSTMENT BY THE INVESTMENT MANAGER AT ITS SOLE DISCRETION.
Q. AND LET ME DIRECT YOU OVER TO EXHIBIT 2 AS WELL. WHAT'S THAT DOCUMENT?
A. EXHIBIT 2 IS WHAT I ENDED UP MAKING WHILE I WAS WORKING AT LEVEL GLOBAL. AND IT INCLUDES BOTH AN ESTIMATE OF WHAT I WAS GOING TO BE PAID AND THEN AN ACTUAL IN TERMS OF WHAT I WAS ACTUALLY PAID FOR '09, '10, AND THE FIRST LITTLE BIT OF '11.
Q. IS EXHIBIT 2 ACCURATE IN TERMS OF WHAT YOU ACTUALLY MADE IN TERMS OF BASE SALARY FROM LEVEL GLOBAL?
A. YES, IT IS.
Q. AND JUST WALK THE COURT VERY BRIEFLY THROUGH WHAT YOUR BASE SALARY WAS FOR 2009 AND YOUR BASE SALARY FOR 2010.
A. IT WAS $250,000.00.
Q. AND THEN, BUT WHAT WERE YOU ACTUALLY PAID ON THE BASE SALARY?
A. SO ON THE BASE SALARY IN '09, I WAS PAID $98,558.00 PLUS THE BENEFITS WE DISCUSSED EARLIER, PSP BENEFITS OF $12,733.00.

IN 2010, I WAS PAID A BASE SALARY OF $250,000.00, AND THE PSP BENEFITS WERE $31,850.00.

Q. WAS ANY OF THE COMPENSATION, EITHER THE 111,000 OR THE 281,000, DID THAT VARY AT ALL BASED ON YOUR PERFORMANCE AS A MANAGER?

A. NO, IT DID NOT.

Q. AND SINCE I'M THERE, TELL THE COURT BASICALLY, WHAT WERE YOU HIRED TO DO? WHAT WERE YOU RESPONSIBLE FOR AT LEVEL GLOBAL?

A. MY ROLE WAS TO START UP A CONSUMER DISCRETIONARY-FOCUSED EFFORT WITHIN LEVEL GLOBAL. AND WHEN I SAY EFFORT, WHAT I MEAN IS, I WAS MEANT TO MANAGE MONEY, HIRE A TEAM OF ANALYSTS, HIRE CONSULTANTS, AND CONDUCT DUE DILIGENCE ON THAT PORTION OF LEVEL GLOBAL THAT I WAS INVESTING.

Q. HOW MUCH MONEY WERE YOU MANAGING, OR HOW MUCH CAPITAL DID YOU HAVE AVAILABLE TO YOU?

A. WHEN I BEGAN, IT WAS 250 MILLION OF CAPITAL. AND THAT WAS AUGUST OF 2009 WHEN I BEGAN WORKING THERE. AND THEN IN JANUARY OF 2010, THAT WAS INCREASED TO 500 MILLION OF TOTAL CAPITAL.

THE COURT: WHEN IN 2010?

THE WITNESS: JANUARY 1ST, 2010.

THE COURT: OKAY.

Q. (BY MR. MONNIN) LET'S MOVE ON TO PARAGRAPH 4(B) OF EXHIBIT 1, MR. MEGALLI. IS THIS THE PARAGRAPH THAT RELATES TO YOUR SIGNING BONUS?

A. YES, IT IS.
Q. AND YOU TESTIFIED ABOUT THIS EARLIER. BUT WHAT'S THE ESSENCE OF THE CONTRACTUAL PROVISION RELATED TO YOUR SIGNING BONUS?
A. THE SIGNING BONUS WAS MEANT TO BE $500,000.00, AND IT WAS TO VEST OVER THREE YEARS. SO, AS I SAID EARLIER, IT WAS TO VEST AT THE END OF 2010, 2011, 2012. AND THEN WHATEVER AMOUNT WAS VESTED WOULD BE PAID IN 2013.
Q. SO DOES THE CONTRACT PROVIDE THAT ANY OF THE VESTING WAS BASED ON YOUR PERFORMANCE? COULD THE VESTING CHANGE IF YOU DIDN'T DO WELL AS A PORTFOLIO MANAGER?
A. NO. IT WAS NOT RELATED.
Q. IS THAT A PRETTY COMMON TYPE OF PROVISION IN THE HEDGE FUND INDUSTRY IN TERMS OF THE SIGNING BONUS?
A. YES, IT IS.
MR. MONNIN: JUDGE, WE CAN GO, MOVE ALONG --
THE COURT: OKAY.
MR. MONNIN: -- WITH OUR HARD COPY, IF YOU LIKE.
THE COURTROOM DEPUTY: I CAN BRING IT BACK UP.
THE COURT: IT WON'T TAKE A SECOND.
THERE WE GO.
Q. (BY MR. MONNIN) OKAY. AND, AGAIN, THIS AMOUNT FOR 2010, THAT'S NOT A THIRD OF 500,000. RIGHT?
A. CORRECT. SO A THIRD WOULD BE ABOUT 167,000. AND THE REASON IT'S DIFFERENT IS BECAUSE, AS IT SAYS IN THE CONTRACT,

DURING THE VESTING PERIOD, THAT BONUS SHALL BE INDEXED TO THE FUND, TO THE OFFSHORE FUND. SO BASICALLY THE FUND WAS UP A LITTLE BIT, AND THAT'S WHY IT INCREASED FROM 167,000 TO 178,000.

Q. AND THIS WAS PAID WHEN?

A. THAT WAS PAID IN FEBRUARY OF 2013.

Q. SO WE'VE TALKED ABOUT YOUR BASE SALARY. WE'VE TALKED ABOUT YOUR SIGNING BONUS. IN EITHER OF THOSE TWO CATEGORIES, WAS YOUR PERFORMANCE AS A PORTFOLIO MANAGER RELEVANT TO WHAT YOU GOT PAID WITHIN THOSE CATEGORIES?

A. NO.

Q. LET ME DIRECT YOU TO PARAGRAPH 4(C) OF YOUR EMPLOYMENT AGREEMENT. WHAT DOES THAT RELATE TO?

A. 4(C) SAYS, 2009 DISCRETIONARY BONUS. AND BASICALLY WHAT THIS SAYS IS THAT IT WOULD BE UP TO THE INVESTMENT MANAGER, WHO WOULD BE THE HEAD OF LEVEL GLOBAL, THAT, AT HIS SOLE DISCRETION, THAT YOU WOULD BE ELIGIBLE TO RECEIVE A DISCRETIONARY BONUS. BUT IT WAS REALLY AT HIS SOLE DISCRETION.

Q. DID YOU GET A DISCRETIONARY BONUS IN 2009?

A. I DID NOT.

Q. LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT THAT. LET ME SHOW YOU WHAT HAS BEEN ADMITTED IN EVIDENCE AS DEFENSE EXHIBIT 4. COULD YOU PLEASE TELL THE COURT WHAT THAT DOCUMENT IS?

A. THIS DOCUMENT IS A SUMMARY OF WHAT MY PERFORMANCE WAS IN EACH OF THE TWO YEARS THAT I MANAGED MONEY AT LEVEL GLOBAL.

AND SO THIS PARTICULAR DOCUMENT RELATES TO MY PERFORMANCE IN 2009. AND IT'S A YEAR-END SUMMARY THAT DISCUSSES STATISTICS OF MY MONEY MANAGEMENT, I GUESS, INCLUDING HOW MUCH MONEY I INVESTED, WHAT MY PROFIT WAS ON THOSE INVESTMENTS, WHAT MY BATTING AVERAGE WAS, WHAT MY RETURN ON EQUITY WAS, WHAT MY WINNERS AND LOSERS WERE, ALL THOSE SORTS OF STATISTICS THAT WOULD HELP THE INVESTMENT MANAGER ANALYZE MY PERFORMANCE.

Q. WHAT WERE THE MOST IMPORTANT CONSIDERATIONS IN YOU BEING EVALUATED BY LEVEL GLOBAL?

A. I WOULD SAY PROBABLY THE MOST IMPORTANT WOULD BE HOW MUCH PROFIT YOU WERE CONTRIBUTING OR NOT CONTRIBUTING RELATIVE TO THE AMOUNT OF CAPITAL THAT YOU WERE GIVEN.

Q. IS THAT HIGHLIGHTED IN EXHIBIT 4?

A. IT IS.

Q. WHERE IS IT HIGHLIGHTED, AND WHAT'S THE AMOUNT?

A. IT'S HIGHLIGHTED UNDER TOTAL P&L. AND THE AMOUNT IS $7,964,238.00.

Q. SO, MR. MEGALLI, IF THAT'S THE NUMERATOR, WHAT WAS THE DENOMINATOR?

THE COURT: I'M LOOKING AT EXHIBIT 4. ARE YOU LOOKING AT SOMETHING ELSE?

MR. MONNIN: NO, JUDGE. IT'S THE FIRST LINE OF EXHIBIT 4, THE TOP LINE.

THE COURT: ALL RIGHT. AND SO YOU'RE LOOKING AT?

MR. MONNIN: TOTAL P&L, WHICH HAS BEEN HIGHLIGHTED IN

7.9 MILLION.

THE COURT: ALL RIGHT.

Q. (BY MR. MONNIN) SO, MARK, YOU MADE -- SO, BASICALLY, YOU MADE A TRADING PROFIT OR GAIN OF RETURN OF 7.9 MILLION FOR THAT YEAR. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND THE PERIOD WE'RE TALKING ABOUT IS SEPTEMBER THROUGH THE END OF THE YEAR?

A. AUGUST THROUGH THE END OF THE YEAR, UH-HUH.

Q. AND TELL THE COURT WHAT TYPE OF -- WHAT PERCENTAGE RETURN, HOW MUCH CAPITAL YOU HAD INVESTED.

A. WELL, THE AVERAGE CAPITAL IS WRITTEN IN HERE AS 189,876,000. IF YOU SEE, IT'S ABOUT THE THIRD, FOURTH COLUMN OVER.

Q. AND THAT'S UNDER THE INITIALS GMV?

A. YEAH. THAT STANDS FOR GROSS MARKET VALUE. AND IF YOU LOOK, THERE'S ALSO THE CURRENT MARKET VALUE WHICH, AT THE END OF THE YEAR, WAS $239,649,000.00. SO BECAUSE I WAS RAMPING UP OVER THE COURSE OF THAT FIVE-MONTH PERIOD OF TIME, IT TOOK ME A WHILE TO GET TO THE 250-ROUGHLY MILLION DOLLARS. SO THAT'S WHY THE AVERAGE WAS 189 MILLION. AND IF YOU LOOK AT THE EIGHT MILLION ON BASE OF -- THERE ARE REALLY TWO WAYS YOU CAN LOOK AT IT. YOU CAN LOOK AT IT UNDER -- AND I DON'T WANT TO GET TOO TECHNICAL HERE -- THE GROSS MARKET VALUE, WHICH WOULD BE THE LONGS PLUS THE SHORTS, WHERE THERE'S SOMETHING CALLED YOUR

ASSETS UNDER MANAGEMENT, WHICH IS THAT $113 MILLION NUMBER. AND THAT WAS SORT OF AN ESTIMATE OF THE EQUIVALENT EQUITY THAT YOU WOULD BE MANAGING IF YOUR FUND WERE A SEPARATE FUND.

SO THE BOTTOM LINE, YOU ASKED THE QUESTION ABOUT, WHAT WAS THAT RETURN. AND IT SAYS ROE, THAT'S RETURN ON EQUITY, SEVEN PERCENT. SO THAT WAS ROUGHLY THE EQUIVALENT RETURN THAT I GENERATED, ABOUT A SEVEN PERCENT RETURN.

Q. SO JUST TO SUM UP, WHAT WE'RE TALKING ABOUT IS BASICALLY A SEVEN PERCENT RETURN ON THE CAPITAL THAT YOU HAD INVESTED. AND THE ECONOMIC VALUE OF THAT WAS ROUGHLY EIGHT MILLION.

A. CORRECT.

Q. NOW, JUDGE TOTENBERG, IN HER LIABILITY ORDER ON SUMMARY JUDGMENT, HAS FOUND YOU LIABLE FOR INSIDER TRADING ASSOCIATED WITH THE LIQUIDATION OF A CARTER'S LONG POSITION. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. SO TELL THE COURT WHAT'S, WHAT'S THE VALUE HERE OF 2.034 MILLION? WHAT DOES THAT REFER TO?

A. THAT REFERS TO WHAT I GUESS IS CALLED AN AVOIDED LOSS. SO I SOLD 300,000 SHARES OF STOCK IN CARTER'S DURING THE RUN-UP, A COUPLE OF DAYS DURING THE RUN-UP INTO AN EARNINGS ANNOUNCEMENT. AND WHEN THEY ANNOUNCED THEIR EARNINGS, THEY SAID THAT THEY HAD FOUND AN ACCOUNTING PROBLEM, AND THAT CAUSED THE STOCK TO GO DOWN APPROXIMATELY 20 OR 25 PERCENT THE DAY THAT THEY WERE SUPPOSED TO REPORT EARNINGS. AND BECAUSE THAT EQUATED TO ABOUT

A SIX- OR SEVEN-DOLLAR DROP IN THE STOCK, HAD WE NOT SOLD THE 300,000 SHARES LEADING UP TO THAT EARNINGS EVENT, WE WOULD HAVE LOST $2,034,000.00. AND THAT'S WHY IT'S NOT CALLED A DIRECT PROFIT, BUT IT'S AN AVOIDED LOSS. AND THAT'S WHAT THAT REPRESENTS IS THE SALE OF THOSE 300,000 SHARES IN THE DAYS BEFORE THAT EARNINGS EVENT.

THE COURT: SO WHERE IS THAT ON THIS PAGE? I AM MISSING THAT. I UNDERSTAND THE CONCEPT. I JUST DON'T UNDERSTAND WHERE I SEE THAT FIGURE, THE 2.43.

Q. (BY MR. MONNIN) MARK, IS THE LOSS AVOIDED REFLECTED ON YOUR ANALYST DOCUMENT?

A. NO, BECAUSE THAT WOULD HAVE BEEN ONE TRADING RESULT OUT OF MANY DOZENS OR HUNDREDS OF TRADING RESULTS. SO IT WOULDN'T BE BROKEN DOWN.

THE COURT: ALL RIGHT. SO OF THE 2.43, THE PART OF THE 7.9 MILLION, APPROXIMATELY, ARE YOUR PROFITS AND LOSS?

THE WITNESS: THAT'S CORRECT.

THE COURT: OKAY.

Q. (BY MR. MONNIN) SO IF YOU HAD NOT SOLD THE LONG POSITION IN CARTER'S IN OCTOBER 2009, YOUR PROFIT ON THE PORTFOLIO WOULD HAVE BEEN REDUCED BY TWO MILLION.

A. CORRECT. IT WOULD HAVE BEEN ABOUT SIX MILLION INSTEAD OF ABOUT EIGHT MILLION.

Q. AND WE'VE DONE THE MATH HERE FOR THE COURT. THE LOSS AVOIDED ON THE CARTER'S POSITION WAS APPROXIMATELY 25.5 PERCENT

OF YOUR OVERALL PROFIT. IS THAT RIGHT?
A. THAT'S CORRECT.
Q. NOW, I GUESS THE QUESTION IS, SINCE YOU HAD THE ABILITY TO GET A DISCRETIONARY BONUS FOR 2009 UNDER SECTION FOUR POINT -- OR 4(C) OF YOUR CONTRACT, IS THAT CORRECT, YOU WOULD HAVE GOTTEN A BONUS?
A. UH-HUH.
Q. WHY DIDN'T YOU PURSUE A SIGNING -- OR NOT A SIGNING BONUS, BUT WHY DIDN'T YOU SEEK TO MONETIZE OR SEEK TO GET SOME TYPE OF RETURN BASED ON YOUR PROFIT FOR 2009?
A. I DIDN'T THINK I WAS ENTITLED TO IT IN THE SENSE THAT MY -- AND WE'LL GET INTO MY EQUITY POINTS, I GUESS, SHORTLY. BUT MY EQUITY PARTICIPATION AT LEVEL GLOBAL REALLY STARTED IN 2010. 2009, I JOINED IN AUGUST, AND IT WAS A STUB YEAR. AND TYPICALLY WHEN THAT HAPPENS, YOU DON'T HAVE AN EXPECTATION OF PARTICIPATING IN THE PROFITABILITY OF THE FUND BECAUSE IT'S CONSIDERED UNFAIR TO PEOPLE WHO HAVE BEEN THERE FOR THE FULL YEAR OR WHO HAVE BEEN THERE FOR LONGER PERIODS OF TIME. SO, YOU KNOW, IT JUST WAS NOT SOMETHING THAT WE REALLY CONSIDERED WAS GOING TO BE PART OF MY OVERALL COMPENSATION PACKAGE.
Q. SO MY QUESTION IS -- AND YOU ANSWERED MY QUESTION. MY NEXT QUESTION IS, DID YOU GET ANY COMPENSATORY BENEFIT IN TERMS OF A BONUS FOR THE LOSS AVOIDED RELATED TO THE CARTER'S SALE?
A. NO, I DID NOT.
Q. WERE YOU CONTRACTUALLY ELIGIBLE, POTENTIALLY, TO GET A

BONUS?
A. POTENTIALLY, UH-HUH.
THE COURT: WHAT DOES IT SAY, $2.34 MILLION, $3,334,000.00, AND THEN PLUS SEVEN MILLION I THOUGHT WERE PART OF THE --
MR. MONNIN: I'M SORRY, JUDGE. THAT'S A DIVISION SYMBOL.
THE COURT: OH. THAT'S WHAT HAPPENS WHEN YOU'RE GOING BACK AND FORTH HERE. SORRY.
MR. MONNIN: SO THE NUMERATOR IS THE LOSS AVOIDED. DENOMINATOR IS THE PROFITABILITY. AND WHAT WE'RE SAYING IS IS THAT 25.5 PERCENT IS LOSS AVOIDED.
THE COURT: I SEE.
MR. MONNIN: AND HE DIDN'T GET ANY COMPENSATORY BENEFIT FROM THAT.
THE COURT: OKAY.
Q. (BY MR. MONNIN) SO MOVING ON, MR. MEGALLI, LET'S GO TO THE NEXT SLIDE HERE. DIRECTING YOUR ATTENTION TO PARAGRAPHS 4(D) AND 4(E) OF YOUR EMPLOYMENT AGREEMENT, COULD YOU JUST WALK THE COURT THROUGH? THIS IS WHERE WE'RE GETTING TO WHAT YOUR INTEREST WAS IN LEVEL GLOBAL'S PROFITS OR LEVEL GLOBAL'S INCENTIVE FEES. JUST DESCRIBE IN BASIC TERMS WHAT THE CONTRACT PROVIDES.
A. SURE. OKAY. SO I DESCRIBED THE INCENTIVE FEES EARLIER THAT LEVEL GLOBAL WOULD RECEIVE AT THE END OF THE YEAR FROM THE

INVESTORS, WHICH WAS TEN PERCENT OF THE COMPANY'S PROFITS. AND I WAS ELIGIBLE TO RECEIVE A PORTION OF THAT TEN PERCENT DEPENDING ON HOW MY CONSUMER DISCRETIONARY FUND DID.

SO IF MY CONSUMER DISCRETIONARY FUND IN 2010 -- AND, AGAIN, IT WAS A $500 MILLION FUND -- IF I WAS UP ZERO TO $50 MILLION, I WAS TO RECEIVE SOMEWHERE BETWEEN ONE AND THREE PERCENT OF LEVEL GLOBAL'S INCENTIVE FEES. AND IF I WAS UP 50 MILLION OR MORE DOLLARS, I WAS TO RECEIVE THREE TO FIVE PERCENT OF LEVEL GLOBAL'S INVESTMENT FEES. AND THE REASON THERE'S A RANGE WAS TO GIVE THE INVESTMENT MANAGER DISCRETION OVER WHERE I ENDED UP WITHIN THAT.

Q. SO LET'S BREAK THAT DOWN A LITTLE BIT. WHAT WE'RE TALKING ABOUT IN THESE GREY BOXES, THIS IS YOUR PERFORMANCE. CORRECT?

A. CORRECT. IT'S HOW I DID ON THE 500 MILLION THAT I WAS RESPONSIBLE FOR.

Q. SO IF YOU -- I KNOW YOU WEREN'T ELIGIBLE FOR AN INCENTIVE BONUS IN 2009, BUT JUST TO ILLUSTRATE, THE RETURN DURING THAT YEAR WAS 7.9 MILLION. CORRECT?

A. THAT'S CORRECT.

Q. SO UNDER THE CONTRACT, WHERE, CONCEIVABLY, WOULD THAT HAVE PLACED YOU IN TERMS OF POINTS?

A. HAD I BEEN ELIGIBLE,. IT WOULD HAVE BEEN IN THAT FIRST CATEGORY, ONE TO THREE PERCENT.

Q. AND LET ME SHOW YOU EXHIBIT 5, WHICH IS YOUR PERFORMANCE DOCUMENT FOR 2010. TELL THE COURT WHAT, WHAT PROFITABILITY DID

YOU RETURN TO LEVEL GLOBAL FOR 2010?
A. SO ON THE 500 MILLION, MY PROFITS WERE $39,198,356.00.
Q. AND WHAT WAS THE PERCENTAGE RETURN THAT YOU WERE GENERATING?
A. WELL, HERE IT HAS RETURN ON ASSETS UNDER MANAGEMENT ABOUT 15.6 PERCENT.
Q. WAS THAT A PRETTY FAVORABLE PERFORMANCE IN RELATION TO THE OTHER PORTFOLIO MANAGERS?
A. YEAH. I MEAN, IT WAS PRETTY GOOD.
Q. BUT THAT $39 MILLION PROFIT THAT YOU HAD, WHAT DID THAT POTENTIALLY ENTITLE YOU TO IN TERMS OF POINTS AGAINST LEVEL GLOBAL'S PROFITS?
A. WELL, BECAUSE IT WAS BETWEEN ZERO AND $50 MILLION, THEN I WOULD BE ENTITLED TO GET ONE TO THREE PERCENT OF LEVEL GLOBAL'S INCENTIVE FEES.
Q. AND WHO DECIDED AS BETWEEN THE ONE TO THREE PERCENT?
A. DAVID GANEK, THE INVESTMENT MANAGER.
Q. HOW DID THAT DISCUSSION WORK?
A. THERE WAS NO DISCUSSION. I WAS TOLD IT WOULD BE THREE PERCENT.
Q. DO YOU HAVE ANY INSIGHT AS TO WHY IT WAS SET AT THREE PERCENT AS OPPOSED TO TWO PERCENT?
A. MY GUESS IS BECAUSE IT WAS TOWARDS THE VERY HIGH END OF THAT RANGE.
Q. SO, BASED ON YOUR PERFORMANCE IN 2010, THE MAXIMUM POINTS

THAT YOU HAD WERE THREE PERCENT. CORRECT?
A. CORRECT.
Q. NOW, WE'VE DONE THE SAME ANALYSIS FOR 2010. IN 2009, WE WERE TALKING ABOUT A LOSS AVOIDED OF 2.043 MILLION. WHAT HAS JUDGE TOTENBERG FOUND YOU LIABLE FOR IN TERMS OF AN ILLEGAL PROFIT IN 2010?
A. $648,655.00.
Q. WHAT DOES THAT RELATE TO, SIR?
A. THAT RELATES TO A SHORT SALE IN CARTER'S THAT OCCURRED IN JULY OF 2010 WHERE WE SHORTED STOCK AT THE BEGINNING OF JULY. WE COVERED THAT STOCK AT THE END OF JULY AND GENERATED A PROFIT ON THAT TRADE OF 648,000, ROUGHLY, DOLLARS.
Q. AND JUST SO I'M CLEAR FOR THE RECORD, SO IN 2009, THE SALE OF THE CARTER'S LONG POSITION, FOR WHICH JUDGE TOTENBERG HAS FOUND YOU LIABLE, CONSTITUTED 25.5 PERCENT OF THE PROFIT THAT YOU RETURNED. IS THAT RIGHT?
A. CORRECT.
Q. AND WHAT PERCENT OF THE PROFIT THAT YOU RETURNED IN 2010 DID THE SHORT SALE COMPRISE?
A. IT WAS 1.65 PERCENT, WHICH IS THE 650,000 OVER THE 39.2 MILLION OF TOTAL RETURN WITHIN MY CONSUMER FUND.
Q. SO, IN ESSENCE, IN TERMS OF JUDGE TOTENBERG'S LIABILITY ORDER, YOU HAD A 25.5 PERCENT IMPACT IN 2009. OR THE TRADING DID.
A. CORRECT.

Q. AND IT HAD A 1.65 PERCENT IMPACT IN 2010.
A. CORRECT.
Q. DID YOU GET PAID ON THE CARTER'S PROFITS IN 2010?
A. WELL, I GOT PAID ON HOW LEVEL GLOBAL DID OVERALL. I DIDN'T GET PAID DIRECTLY ON MY CONSUMER FUND PERFORMANCE. MY CONSUMER FUND PERFORMANCE WAS MEANT TO BE A TRIGGER TO GET ME INTO THE ONE TO THREE PERCENT OR THE THREE TO FIVE PERCENT. BUT I WAS NOT MEANT TO GET PAID DIRECTLY ON HOW THE CONSUMER FUND DID. MY COMPENSATION HAD TO DO WITH HOW LEVEL GLOBAL DID OVERALL.
Q. SO LET'S RUN THE ILLUSTRATION. LET'S MOVE FORWARD. TELL THE COURT AGAIN, THIS IS ESSENTIALLY A SUMMARY OF YOUR PERSONAL INTEREST IN LEVEL GLOBAL'S PROFIT. CORRECT?
A. CORRECT. SO LEVEL GLOBAL WOULD COLLECT INCENTIVE FEES, WHICH WERE TEN PERCENT OF THE RETURNS GENERATED BY THE FUND, THE PARENT COMPANY.
Q. IS THAT PRETTY STANDARD?
A. YEAH. THAT'S STANDARD. IT COULD BE TEN TO 20. WE WERE AT TEN BECAUSE THE COMPANY, BEFORE I JOINED, HAD GONE UNDER WHAT THEY CALL A HIGH-WATER MARK. AND IT WAS ONLY GOING TO COLLECT INCENTIVE FEES AT A RATE OF TEN PERCENT UNTIL IT GOT BACK TO THE HIGH-WATER MARK, PLUS AN ADDITIONAL AMOUNT. SO, YOU KNOW, IT WAS TEN PERCENT OF WHATEVER THE RETURN WAS.
AND THEN, AS WE SAID EARLIER, I WAS TO RECEIVE THREE PERCENT, ULTIMATELY, OF THE TEN PERCENT. SO THAT'S THE 0.3

PERCENT OF THE TOTAL INCENTIVE FEES AT THE COMPANY.

MR. MONNIN: AND, YOUR HONOR, I APOLOGIZE IF THIS IS BASIC, BUT WE'VE GOT IN THE NEXT SLIDE A VERY BASIC ILLUSTRATION.

THE COURT: BASIC IS GOOD.

MR. MONNIN: THAT'S WHAT I FIGURED.

Q. (BY MR. MONNIN) SO LET'S MOVE FORWARD. SO YOU'RE ENTITLED TO POINT THREE PERCENT ESSENTIALLY OF WHAT LEVEL GLOBAL PROFITS. IS THAT RIGHT?

A. CORRECT.

Q. SO LET'S RUN THE ILLUSTRATION. SO IF THE OVERALL FUND RETURNS $10.00, WALK THE COURSE OF WHAT YOU REALIZED.

A. SURE. WELL, LET ME TAKE A STEP BACK. LET'S JUST ASSUME THAT LEVEL GLOBAL MANAGED $100.00 IN TOTAL. AND LET'S SAY ON THAT $100.00, THEY WERE UP TEN PERCENT FOR THE YEAR. SO NOW THEY'VE GENERATED $10.00 OF PROFITS. SO THE WAY IT WORKS IS, THE $9.00 OF THOSE $10.00 WOULD GO BACK TO THE INVESTORS. AND LEVEL GLOBAL WOULD RETAIN $1.00 OF THAT $10.00 AS AN INCENTIVE FEE. AND THAT'S THE TEN PERCENT I TALKED ABOUT EARLIER THAT WE TALKED ABOUT.

NOW, OF THAT $1.00 THAT'S RETAINED BY LEVEL GLOBAL, I WAS TO GET THREE PERCENT OF THE $1.00 AND THE COMPANY WOULD USE THE OTHER 97 CENTS FOR OTHER PURPOSES. SO FOR EVERY $10.00 THAT THE COMPANY GENERATED IN PROFITS, I WAS TO RECEIVE THREE CENTS OF THE $10.00 BY CONTRACT.

Q. AND THAT'S ASSUMING THAT YOUR PERSONAL PERFORMANCE PUTS YOU -- GAVE YOU THREE POINTS, IF YOU WILL?
A. CORRECT. AND THAT COULD HAVE BEEN ONE PERCENT. IT COULD HAVE BEEN AS HIGH AS FIVE, BUT ULTIMATELY IT WAS THREE.
Q. SO IF THE COURT IS GOING BACK TO CHAMBERS TO TAKE A LOOK AT YOUR EMPLOYMENT AGREEMENT TO FIND THE BASIS FOR THIS ILLUSTRATION, IS THAT IN PARAGRAPHS 4(D) AND 4(E)?
A. YES, IT IS.
THE COURT: SO WHAT DOES THAT MEAN, OTHER PEOPLE WERE RECEIVING MONEY AND MAKING THIS ALL WORK? I MEAN, YOU'RE GETTING THREE CENTS ON THE DOLLAR. HOW MANY OTHER PEOPLE WERE RECEIVING MONEY?
THE WITNESS: WELL, THERE WERE ABOUT -- I BELIEVE THERE WERE ABOUT 60 TO 70 EMPLOYEES AT LEVEL GLOBAL, BUT NOT ALL OF THOSE EMPLOYEES WERE INVESTMENT PROFESSIONALS. THEY WERE, YOU KNOW, TRADERS AND ADMINISTRATIVE PERSONNEL AND SO FORTH. I DON'T KNOW HOW MANY PEOPLE EXACTLY WERE ELIGIBLE TO RECEIVE INCENTIVE COMPENSATION, BUT I CAN TELL YOU THERE WERE FOUR SECTOR VERTICALS. AND THOSE PEOPLE WOULD HAVE BEEN ELIGIBLE. THERE WAS DAVID GANEK, OF COURSE, THE HEAD OF THE FIRM. THERE WAS HIS COFOUNDER, ANTHONY CHIASSON, WHO WOULD HAVE BEEN ELIGIBLE. I WOULD ESTIMATE, ESTIMATE THAT THERE WERE PROBABLY ABOUT 20 PEOPLE, BUT THAT'S REALLY AN ESTIMATION.
Q. (BY MR. MONNIN) AND THE BEST THAT YOU COULD POSSIBLY EVER DO, IF YOU WERE ABOVE 50 MILLION IN TERMS OF YOUR OWN SECTOR'S

PROFITABILITY, WOULD BE .5 PERCENT. CORRECT?
A. WOULD BE .5 PERCENT OF THE COMPANY, YEAH, RETURNS, THAT'S CORRECT.
Q. SO THE BEST YOU COULD DO ON A $10.00 PROFIT WOULD BE FIVE CENTS.
A. THAT'S CORRECT.
Q. WERE YOU EVER -- DID YOU EVER HAVE AN EQUITY STAKE OR OWNERSHIP INTEREST IN LEVEL GLOBAL?
A. NO, I DID NOT.
Q. WERE YOU ALWAYS AN EMPLOYEE OF LEVEL GLOBAL?
A. YES, I WAS.
Q. TELL THE COURT WHERE, TO YOUR KNOWLEDGE, THE MAJORITY OF THE 97 CENTS WENT, OR THE .97?
A. WELL, THE MAJORITY WENT TO THE FOUNDER, THE TOP TWO OR THREE PEOPLE IN THE COMPANY, YOU KNOW. THEY KEPT THE MAJORITY OF THAT. AND THEN ANOTHER PORTION WOULD GO TO --
Q. WHO WERE THE TOP THREE?
A. DAVID GANEK WAS THE NUMBER ONE GUY. ANTHONY CHIASSON WAS THE NUMBER TWO GUY AND ALSO A COFOUNDER. AND WILL MCCLANAHAN WAS THE NUMBER THREE GUY.
THE COURT: AND WHO WAS HE?
THE WITNESS: HE WAS THE HEAD OF THE FINANCIALS SECTOR VERTICAL AND ONE OF THE FIRST EMPLOYEES THERE.
Q. (BY MR. MONNIN) TO YOUR KNOWLEDGE, MARK, DID ANY OF THE PORTFOLIO MANAGERS HAVE A BETTER DEAL THAN WHAT YOU HAD UNDER

PARAGRAPHS 4(D) AND 4(E)?
A. I HAVE NO IDEA WHAT OTHER DEALS PEOPLE HAD, TO BE HONEST. I JUST DON'T KNOW.
Q. NOW, LET'S MOVE ON TO WHAT YOU ACTUALLY GOT PAID IN TERMS OF INCENTIVE COMPENSATION. ROUGHLY, WHAT WE'RE TALKING ABOUT IS 1.2 MILLION?
A. THAT'S CORRECT.
Q. NOW, THERE'S A REFERENCE IN PARAGRAPH 4(E) OF YOUR EMPLOYMENT AGREEMENT TO LEVEL RADAR. AND THE COURT IS GOING TO SEE THAT AS SHE REVIEWS THE CONTRACT. WHAT IS LEVEL RADAR, AS OPPOSED TO LEVEL GLOBAL?
A. LEVEL RADAR WAS A TECHNOLOGY-FOCUSED FUND MANAGED BY ANTHONY CHIASSON, ONE OF THE COFOUNDERS OF THE FIRM, THAT FOCUSED EXCLUSIVELY ON TECHNOLOGY-RELATED STOCKS. I DON'T KNOW EXACTLY HOW MUCH OF THE THREE TO THREE AND A HALF BILLION WAS IN RADAR, SO IT'S HARD FOR ME TO KNOW EXACTLY. BUT THE VAST MAJORITY WAS IN LEVEL GLOBAL.
Q. DID YOUR CARTER'S TRADING OR YOUR CONSUMER PORTFOLIO TRADING IMPACT LEVEL RADAR'S PROFITABILITY IN ANY WAY?
A. NO, IT DID NOT.
Q. WHY IS IT THAT YOU STILL GOT AN INCENTIVE BONUS BASED ON LEVEL RADAR'S PERFORMANCE?
A. BECAUSE MY INCENTIVE BONUS WAS MEANT TO BE ON HOW THE OVERALL COMPANY WHOLISTICALLY DID, AND NOT JUST LEVEL GLOBAL OR JUST LEVEL RADAR. IT WAS MEANT TO BE HOW THE COMPANY DID. AND

LEVEL RADAR WAS PART OF THE COMPANY, EVEN THOUGH I REALLY HAD NOTHING TO DO WITH IT.

MR. MONNIN: AND LET ME REFER YOU IF I MAY, YOUR HONOR, TO EXHIBIT -- JUST SO THAT WE'VE GOT IT CLEAR IN THE RECORD, EXHIBIT 3.

Q. (BY MR. MONNIN) COULD YOU PLEASE TELL THE COURT WHAT THAT DOCUMENT IS?

A. SURE. THIS WAS AN ESTIMATE OF WHAT MY COMPENSATION WAS TO BE FOR THE YEAR 2010. AND I GUESS WHAT IT ILLUSTRATES IS THAT, ULTIMATELY, I WAS PAID 3.00 POINTS OR PERCENT OF THE COMPANY'S PROFITS.

THE COURT: THAT'S NOT -- YOU'RE LOOKING AT THAT.

THE WITNESS: YEAH.

Q. (BY MR. MONNIN) SO JUST FOR THE COURT'S REFERENCE, WHAT I AM REALLY FOCUSING YOU IN ON, MARK, IS THE 3.00. WHAT DOES THAT REFER TO?

A. THAT WAS MY THREE PERCENT THAT WE DISCUSSED EARLIER, THREE PERCENT OF THE COMPANY INCENTIVE FEES.

Q. SO YOU RECEIVED THREE POINTS, IF YOU WILL, RELATED TO LEVEL GLOBAL'S INCENTIVE FEES, AS WELL AS LEVEL RADAR'S INCENTIVE FEES?

A. CORRECT. AND SO YOU SEE IT'S LISTED AS LG. IT'S LEVEL GLOBAL. AND THEN BELOW THAT WHERE IT SAYS LR, THAT STANDS FOR LEVEL RADAR.

Q. AND THEN GOING BACK TO THE POWERPOINT DECK, WHAT'S IN

EXHIBIT 3 WERE ESTIMATED NUMBERS. WHAT'S IN THIS, I GUESS IT'S EXHIBIT 2, AS WELL, WERE ACTUAL -- OUR ACTUAL NUMBERS?

A. TRUE. THAT'S ACTUAL NUMBERS, CORRECT.

Q. AND TO THE BEST OF YOUR RECOLLECTION, IS 1.195 MILLION WHAT YOU RECEIVED IN 2010 IN TERMS OF INCENTIVE-BASED COMPENSATION?

A. THAT'S CORRECT. AND IF I MAY JUST POINT ONE OTHER THING OUT, GOING BACK TO THE OTHER SLIDE WITH THE THREE PERCENT ON IT?

Q. SURE. LET'S DO THAT.

A. THERE IS A MISTAKE IN HERE IN THE SENSE THAT IT INCLUDES MY ENTIRE SIGNING BONUS AS PART OF MY COMPENSATION, WHICH IS OBVIOUSLY WRONG BECAUSE IT HADN'T VESTED. I AM TALKING ABOUT THE 486,300. YOU KNOW, THEY SORT OF THREW THAT IN THERE AS PART OF YOUR COMPENSATION. BUT TWO-THIRDS OF THAT HAD NOT VESTED AT THAT POINT. SO THAT'S WHY THE NUMBERS AREN'T GOING TO BE THE SAME AS THE NUMBERS WE WERE SHOWING EARLIER. I JUST WANT TO MAKE THAT CLEAR.

Q. BUT THE NUMBERS THAT ARE IN THE SLIDE DECK -- WE'VE MET OVER THE LAST NUMBER OF WEEKS; WE MET YESTERDAY -- THOSE NUMBERS, TO THE BEST OF YOUR KNOWLEDGE, ARE ACCURATE IN TERMS OF YOUR COMPENSATION?

A. CORRECT. CORRECT.

Q. ALL RIGHT. LET'S MOVE ON. WHAT I WANT TO GET TO HERE IS REVERSING THE THREE-PENNY COMPUTATION, BECAUSE WHAT I WANT THE

COURT TO UNDERSTAND IS, WHAT WAS THE OVERALL, YOUR PORTFOLIO PROFITABILITY, AS WELL AS LEVEL GLOBAL'S OVERALL PROFITABILITY FOR 2010, BECAUSE WE'RE GOING TO RUN SOME ARITHMETIC.

A. RIGHT. SO IF YOU REVERSE ENGINEER MY $1.2 MILLION YEAR-END INCENTIVE BONUS, THAT WAS THREE PERCENT, AS WE'VE DISCUSSED, OF THE COMPANY'S INCENTIVE FEES. SO THAT'S THREE PERCENT OF THAT $39.9 MILLION NUMBER RIGHT BELOW IT. SO THAT IS ROUGHLY WHAT LEVEL GLOBAL COLLECTED IN 2010 IN THE FORM OF INCENTIVE FEES. AND BECAUSE THEIR INCENTIVE FEES COMPRISE TEN PERCENT OF THE TOTAL RETURNS, THE TOTAL RETURNS TO THE COMPANY WERE $398.6 MILLION. SO, IN OTHER WORDS, OF THE THREE AND A HALF OR SO BILLION THAT LEVEL WAS INVESTING, THEY GENERATED 398 MILLION OF RETURN. AND OF THE 398 MILLION OF RETURN, THEY RETAINED 39.8 MILLION IN THE FORM OF INCENTIVE FEES. AND OF THE 39.8 MILLION IN INCENTIVE FEES, I WAS PAID THREE PERCENT OF THAT, WHICH IS 1.2 MILLION.

Q. SO WE RAN A COMPUTATION EARLIER FOR THE COURT. THE 648 GRAND IS THE PROFIT THAT HER HONOR HAS FOUND YOU LIABLE FOR IN INSIDER TRADING. CORRECT?

A. CORRECT.

Q. AND WHAT PERCENTAGE WAS THAT OF THE ROUGHLY 40 MILLION IN PROFIT THAT YOU RETURNED TO LEVEL GLOBAL?

A. WELL, OF THE 400 MILLION TO LEVEL GLOBAL HERE, IT WAS .1627 PERCENT.

Q. RIGHT. SO ROUGHLY WHAT WE HAVE IS THAT THE 648,000 WAS

1.65 PERCENT OF YOUR PERSONAL PROFIT.

A. RIGHT.

Q. AND IT'S .1627 OF LEVEL GLOBAL OVERALL?

A. OF LEVEL GLOBAL, RIGHT, UH-HUH.

Q. SO JUST TO SUM UP, LET'S MOVE ALONG TO THE NEXT SLIDE. YOU HEARD ME INTRODUCE OUR PRESENTATION TO THE COURT WHEN I INITIALLY STOOD UP. WHAT I'D LIKE TO DO NOW IS, WHAT I ADVISED THE COURT WAS THAT YOU REALLY DIDN'T RECEIVE ANY COMPENSATORY BENEFIT FOR THE 2.034 MILLION IN LOSS AVOIDED IN 2009. CORRECT?

A. CORRECT.

Q. WALK THE COURT THROUGH WHY THAT'S THE CASE IN 2009.

A. THAT'S THE CASE BECAUSE I DIDN'T RECEIVE ANY YEAR-END BONUS IN 2009.

Q. WHAT WAS THE CONTRACTUAL MEANS THAT YOU MAY HAVE HAD TO RECEIVE A BONUS OR SOME TYPE OF COMPENSATORY BENEFIT FOR WHAT HER HONOR HAS FOUND YOU DID ILLEGALLY IN 2009?

A. THAT MECHANISM WOULD HAVE BEEN 4.C IN MY CONTRACT, WHICH IS CALLED 2009 DISCRETIONARY BONUS, WHICH WAS NEVER EXERCISED OR OFFERED.

Q. AND YOUR ALL-IN COMPENSATION FOR 2010 INCLUDES WHAT?

A. SO THE THREE COMPONENTS WE DISCUSSED, MY SALARY, MY FIRST YEAR OF MY SIGNING BONUS, AND MY INCENTIVE BONUS AT THE END OF THE YEAR. AND THAT AMOUNTS TO 1.65 MILLION ROUGHLY.

MR. MONNIN: JUDGE, WHAT I'D LIKE TO DO NOW IS RUN

THROUGH WHAT WE BELIEVE ARE APPROPRIATE DISGORGEMENT MODELS BASED ON THE CASE LAW AND THE AUTHORITY. AND WE'LL DO THOSE MATHEMATICALLY. AND, REALLY, WHAT WE'RE TRYING TO GET TO IS WHAT WAS MR. MEGALLI'S DIRECT COMPENSATORY BENEFIT, WHICH WAS A PART OF OUR SUMMARY JUDGMENT BRIEFING. BUT WE'RE GOING TO DO IT MATHEMATICALLY NOW FOR THE COURT'S REFERENCE IN THE SLIDE DECK.

THE COURT: OKAY.

Q. (BY MR. MONNIN) SO, MR. MEGALLI, YOU'VE HELPED ME RUN SOME OF THESE COMPUTATIONS. AND YOU'RE THE WITNESS UP THERE. IF YOU COULD PLEASE WALK THE COURT THROUGH WHAT IS BEING ILLUSTRATED IN THIS NEXT SLIDE.

A. SURE. THE $648,655.00 WAS THE PROFITS ON THE SHORT SALE IN JULY OF 2010, WHICH WE'VE ALREADY DISCUSSED. AND SO THIS CALCULATION SHOWS THAT IF YOU TAKE TEN PERCENT OF THE 648,000, THAT'S $64,865.00. THAT'S THE PORTION THAT LEVEL GLOBAL, THE PARENT COMPANY, WOULD RETAIN OF THOSE PROFITS. THE REMAINING 90 PERCENT WOULD BE RETURNED TO THE INVESTORS. SO LEVEL GLOBAL WOULD RETAIN TEN PERCENT OF -- I'M JUST GOING TO SAY 648,000. SO THAT'S $64,000.00, ROUGHLY. AND OF THAT $64,000.00, I WAS TO BE PAID THREE PERCENT, WHICH IS $1946.00 ROUGHLY.

Q. SO IS IT FAIR TO SAY THAT, ESSENTIALLY WHAT YOU'VE DONE HERE IS RUN -- OR WHAT WE'VE DONE HERE IS RUN THE WATERFALL UNDER 4(D) AND 4(E) OF YOUR EMPLOYMENT AGREEMENT?

A. CORRECT.

Q. SO YOU WERE ENTITLED TO THREE PERCENT OF LEVEL GLOBAL'S TEN PERCENT.
A. CORRECT.
Q. AND THE TOP LINE NUMBER IS THE ILLEGAL PROFIT.
A. CORRECT.
Q. LET'S LOOK AT IT ANOTHER WAY BASED ON YOUR PERCENTAGE CONTRIBUTION OR THE PERCENTAGE CONTRIBUTION OF YOUR ILLEGAL CONDUCT OR THE CONDUCT THAT THE COURT HAS FOUND TO BE ILLEGAL --
A. RIGHT.
Q. -- IN TERMS OF LEVEL GLOBAL'S OVERALL PROFITABILITY.
A. RIGHT. SO, AGAIN, I WAS PAID ON LEVEL GLOBAL'S OVERALL PROFITABILITY, WHICH WAS APPROXIMATELY $398 MILLION THAT YEAR. THE CARTER'S TRADE, THAT SHORT SALE TRADE IN JULY OF '10, REPRESENTED 648,000 OUT OF 400 MILLION, WHICH WAS .1627 PERCENT OF LEVEL GLOBAL'S PROFITS. AND IF YOU LOOK AT .1627 PERCENT OF MY BONUS, WHICH, AGAIN, WAS BASED ON LEVEL GLOBAL'S TOTAL PROFITS, IT WAS THE SAME, $1946.00.
Q. NOW, LET ME ASK YOU, THIS $1.2 MILLION FIGURE, DOES THAT INCLUDE LEVEL RADAR INCENTIVE COMPENSATION?
A. YES, IT DOES.
Q. WOULD THERE HAVE BEEN A BASIS TO EXCLUDE LEVEL RADAR FROM THIS COMPUTATION?
A. PERHAPS, YES, YOU COULD EXCLUDE THAT IN THE SENSE THAT I HAD NOTHING TO DO WITH IT. SO PERHAPS.

Q. BUT YOU STILL GOT BONUSED ON IT.
A. CORRECT.
Q. SO YOU STILL GOT BONUSED ON IT. SO IT'S BEEN INCLUDED HERE IN TERMS OF THE CALCULATION.
A. CORRECT.

MR. MONNIN: AND, YOUR HONOR, THESE ARE THE TWO NUMBERS THAT WE ARE -- THE NUMBER THAT WE INCLUDED IN OUR SUMMARY JUDGMENT BRIEFING ESSENTIALLY RUNNING THE WATERFALL OF WHAT THE ILLEGAL PROFIT WAS FOR 2010 AND REDUCING THAT TO HIS ACTUAL COMPENSATORY BENEFIT. THAT'S THE FIRST SLIDE. THAT'S, THAT'S SLIDE NUMBER 14.

SLIDE NUMBER 15 IS TAKING HIS OVERALL INCENTIVE-BASED COMPENSATION AND RUNNING THE PERCENTAGE OF PROFITABILITY CONTRIBUTED BY MR. MEGALLI'S ILLEGAL CONDUCT AS FOUND BY THE COURT. SO TAKING THE 648 GRAND PROFIT, ILLEGAL PROFIT, RUNNING THAT INTO THE OVERALL PROFITABILITY OF LEVEL GLOBAL, AND THEN MULTIPLYING THAT PERCENTAGE TIMES HIS BONUS. SO I THINK, EITHER WAY, WE COME UP WITH THE SAME NUMBER, JUDGE. WE'RE KIND OF TALKING ABOUT THE SAME TYPES OF FACTORS. BUT IT'S JUST A DIFFERENT WAY ANALYTICALLY TO LOOK AT IT, WHICH WE BELIEVE, MR. MEGALLI BELIEVES IS WELL SITUATED WITHIN THE DISGORGEMENT AUTHORITY.

GIVEN THE COURT'S COMMENTARY IN YOUR HONOR'S ORDER, WE HAVE RUN ANOTHER COMPUTATION, JUDGE, WHICH IS SLIDE 16.

Q. (BY MR. MONNIN) SO, MR. MEGALLI, WHY DON'T YOU TAKE THE

COURT THROUGH THE TOP LINE COMPUTATION.

A. SURE.

Q. WHAT ARE YOU DOING?

A. THE 648,000, AGAIN, IT'S THE PROFIT ON THE SHORT SALE FROM JULY OF 2010. THE 39.2 MILLION IS THE AMOUNT THAT MY CONSUMER DISCRETIONARY FUND RETURNED IN 2010. AND, THEREFORE, THE 648,000 WAS ABOUT 1.65 PERCENT OF THE PROFITS THAT WERE GENERATED IN MY CONSUMER-FOCUSED FUND THAT YEAR.

Q. AND WHEN YOU RUN -- SO WE'RE APPLYING THAT 1.65 PERCENT FIGURE AGAINST YOUR INCENTIVE COMP?

A. CORRECT.

Q. AND THE TOTAL IS 19,000?

A. CORRECT, YEAH, $19,790.00.

MR. MONNIN: SO, YOUR HONOR, WHAT WE HAVE ATTEMPTED TO DO, OR WHAT WE'VE DONE IN SLIDE 15 VERSUS SLIDE 16 IS, WE'VE TAKEN MR. MEGALLI'S ILLEGAL TRADING ACTIVITY AS FOUND BY THE COURT, AND WE'VE RUN IT THROUGH HIS PORTFOLIO'S INDIVIDUAL PROFITABILITY OF 40 MILLION, AS WELL AS THE OVERALL LEVEL GLOBAL PROFITABILITY OF 398 MILLION.

THE COURT: I KNOW YOU'VE GIVEN ME DISCRETIONARY INCENTIVE PAY IN 2009, ARE YOU JUST BASICALLY WIPING 2009 OUT OF THE PICTURE?

MR. MONNIN: YES, YOUR HONOR. FROM A DISGORGEMENT PERSPECTIVE, GIVEN OUR ARGUMENT THAT WHAT DISGORGEMENT IS GETTING AT IS, WHAT DID MY CLIENT PERSONALLY PROFIT FROM HIS

ILLEGAL ACTIVITY, AND WHAT WAS HIS PERSONAL COMPENSATORY BENEFIT, GIVEN THAT THE CASE LAW IS DIRECTED TO HOW ARE YOU GOING TO RETURN HIM TO THE POSITION PRIOR TO THE ILLEGAL ACTIVITY. AND OUR ARGUMENT WITH RESPECT TO THE 2009 TRADE IS THAT, BECAUSE HE DIDN'T GET ANY COMPENSATORY BENEFIT FOR IT, IT ESSENTIALLY REALLY DOESN'T FACTOR INTO THE DISGORGEMENT ANALYSIS.

I UNDERSTAND THAT THE COURT MAY WANT TO CONSIDER IT IN TERMS OF AN APPROPRIATE CIVIL PENALTY IN TERMS OF A FACTOR IN AGGRAVATION OR MITIGATION, WHICH IS A SEPARATE ISSUE. BUT OUR POSITION WITH RESPECT TO -- AND I'LL JUST SAY IT -- OUR POSITION WITH RESPECT TO APPROPRIATE DISGORGEMENT, YOUR HONOR, IS THE $1900.00 FIGURE, THE 1945.97 FIGURE, WHICH IS, WHAT DID MR. MEGALLI'S ILLEGAL CONDUCT IN 2010 CONTRIBUTE TO HIS PERSONAL COMPENSATION DURING THAT YEAR, AND THE WAY WE GET THERE IS THAT, SO MANY OF THE OTHER CONTRIBUTORS TO HIS COMPENSATION DURING 2010 WERE FIXED, REALLY DIDN'T -- HIS PERFORMANCE REALLY ONLY CAME INTO PLAY WITH RESPECT TO THE INCENTIVE-BASED COMPENSATION.

SO WE BELIEVE UNDER THE DISGORGEMENT CASE LAW, ALL HE SHOULD BE LIABLE FOR IN DISGORGEMENT IS WHERE, IS WHERE THAT TRADING ACTIVITY, THAT ILLEGAL TRADING ACTIVITY AS FOUND BY THE COURT ACTUALLY FACTORED IN AND HAD AN IMPACT ON HIS VARIABLE COMPENSATION. AND, CERTAINLY, YOU KNOW, WE WANT --

THE COURT: SO WHY THE FIGURE 1945 RATHER THAN 19,790

ON SLIDE 15.

MR. MONNIN: WELL --

THE COURT: CONCEPTUALLY.

MR. MONNIN: CONCEPTUALLY, JUDGE, I THINK THAT THE IDEA THERE IS THAT, IN REALITY, UNDER HIS EMPLOYMENT AGREEMENT, THE OPERATIVE FACTOR THAT GOVERNS WHAT HE WAS SUPPOSED TO BE PAID IS ACTUALLY LEVEL GLOBAL'S OVERALL PROFITABILITY, WHICH IS THE $398 MILLION FIGURE, AS OPPOSED TO HIS PERSONAL PROFITABILITY, WHICH WAS REALLY ONLY RELEVANT TO SETTING THE POINT TOTAL, THE THREE POINTS VERSUS THE FIVE POINTS UNDER SECTIONS 4(D) AND 4(E). SO WHAT WE'RE TALKING ABOUT, JUDGE, IS THAT THE 648 GRAND IN 2010 HAD A 1.65 PERCENT IMPACT ON MR. MEGALLI'S CONSUMER PORTFOLIO'S RETURN OF APPROXIMATELY 40 MILLION.

SO, YOU KNOW, WE WOULD CONTEND THAT THE REASONABLE INFERENCE FROM THAT MATH IS THAT THE VAST MAJORITY OF WHAT MR. MEGALLI WAS DOING DID NOT AT ALL RELATE TO CARTER'S, DID NOT AT ALL RELATE TO ANY CRIMINAL ACTIVITY, AND, REALLY, THE ONLY WAY THAT IT FACTORS INTO HIS PERSONAL COMPENSATORY BENEFIT IS IN SETTING THE POINT TOTAL UNDER SECTIONS 4(D) AND 4(E) OF HIS AGREEMENT.

WHEN YOU'RE REALLY LOOKING TO SEE WHAT HIS PERSONAL COMPENSATORY BENEFIT WAS IN TERMS OF RETURNING HIM TO THE STATUS QUO ANTE BEFORE HE ENGAGED IN THIS CONDUCT, YOU LOOK AT WHAT HE PUT IN HIS POCKET. AND OUR POSITION THERE IS THAT IT'S

THE 1945 FIGURE, AS OPPOSED TO THE 19,000 FIGURE. BUT, YOU KNOW, WE UNDERSTAND THAT IT MAY BE LOGICAL FOR THE COURT, AS AN ALTERNATIVE, TO SAY, WELL, YOU KNOW, HE IMPACTED HIS OWN PERSONAL PROFITABILITY OR HIS OWN CONSUMER PORTFOLIO PROFITABILITY TO THE TUNE OF 1.65 PERCENT. AND 1.65 PERCENT OF HIS BONUS IS THE $19,000.00 FIGURE.

ANOTHER THING THAT I'D LIKE TO POINT THE COURT TO AND, FRANKLY, ANOTHER ANALYTIC, JUDGE, IS --

Q. (BY MR. MONNIN) MR. MEGALLI, LET ME POINT YOU TO PARAGRAPH 4(F) OF YOUR EMPLOYMENT AGREEMENT. WERE YOU ENTITLED TO A MINIMUM AMOUNT OF COMPENSATION DURING 2010?

A. YES.

Q. AND PLEASE TELL THE COURT WHAT, WHAT THAT AMOUNT WAS.

A. THE MINIMUM COMPENSATION FOR CALENDAR YEAR 2010 SHALL BE NO LESS THAN $750,000.00.

Q. SO TELL THE COURT WHAT, WHAT'S BEING ILLUSTRATED IN SLIDE 17.

A. SLIDE 17 SHOWS THAT, IF YOU LOOK AT MY TOTAL COMPENSATION IN 2010, WHICH WAS ABOUT $1.65 MILLION --

Q. AND THAT'S NOT THE 1.2 INCENTIVE-BASED COMPENSATION.

A. CORRECT, BECAUSE THAT INCLUDES MY FIXED -- MY SALARY AND MY FIXED BONUS, MY SIGNING BONUS. BUT THAT'S MY ALL-IN COMPENSATION, INCLUDING FIXED AND VARIABLE. BUT IF YOU DEDUCT THE 750,000 GUARANTEE, THEN THAT LEAVES A REMAINDER OF $906,000.00, WHICH WAS ABOVE AND BEYOND WHAT MY GUARANTEE WAS

FOR THAT YEAR.
Q. SO, IN ESSENCE, WHAT'S BEING ILLUSTRATED IS THAT YOU HAD A MINIMUM AMOUNT OF COMPENSATION. AND THE DELTA BETWEEN WHAT YOU ACTUALLY MADE VERSUS THE MINIMUM AMOUNT IS 900 GRAND?
A. RIGHT.
Q. APPROXIMATELY? AND THEN WHAT ARE THE MULTIPLIERS THERE, THE .1627?
A. THESE ARE THE SAME ONES YOU JUST DISCUSSED. BUT THE .1627 PERCENT IS THE 648,000 FROM THE SHORT SALE, DIVIDED BY THE $398 MILLION OF TOTAL PROFITS FOR LEVEL GLOBAL. SO, IN OTHER WORDS, THE CARTER'S PROFITS REPRESENTED POINT SIX -- POINT 1627 PERCENT OF WHAT LEVEL GLOBAL MADE THAT YEAR. THE 1.65 PERCENT IS THE SAME $648,000.00 EXCEPT AS A PERCENTAGE OF WHAT MY CONSUMER FUND CONTRIBUTED IN PROFITS THAT YEAR, WHICH WAS $39.2 MILLION.
SO THESE ARE THE TWO DIFFERENT WAYS YOU JUST SUGGESTED LOOKING AT CARTER'S AS A PERCENTAGE OF PROFITS. THE FIRST WAY IS CARTER'S AS A PERCENTAGE LEVEL GLOBAL'S PROFITS. AND THE SECOND WAY IS CARTER'S AS A PERCENTAGE OF THE CONSUMER FUND PROFITS.
MR. MONNIN: SO, YOUR HONOR, WHAT WE'VE DONE BETWEEN SLIDES 14 THROUGH 17 IS, 14 THROUGH 16, WHAT WE'RE ACCOUNTING FOR IS MR. MEGALLI'S INCENTIVE-BASED COMPENSATION OF 1.2 MILLION FOR 2010. WHAT WE'RE ACCOUNTING FOR ON SLIDE 17 IS THAT HE HAD A MINIMUM AMOUNT OF COMPENSATION BY CONTRACT,

WHICH, BY THE WAY AND FOR THE RECORD --

Q. (BY MR. MONNIN) DID YOUR PERFORMANCE AS A PORTFOLIO MANAGER IN ANY WAY IMPACT WHETHER YOU WERE ENTITLED TO A MINIMUM AMOUNT OF 750 GRAND?

A. NO.

MR. MONNIN: SO WE'RE ESSENTIALLY FILTERING OUT EITHER MR. MEGALLI'S INCENTIVE-BASED COMPENSATION OF 1.2 MILLION OR HIS COMPENSATION ABOVE AND BEYOND WHAT HE WAS CONTRACTUALLY ENTITLED TO IN 2010 AND THEN EFFECTIVELY RUNNING THE SAME PERCENTAGES, HOW MATERIAL WAS HIS CRIMINAL CONDUCT OR HIS ILLEGAL TRADING ACTIVITY AS FOUND BY THE COURT, HOW MATERIAL WAS THAT AND WHAT IMPACT DID THAT HAVE ON WHAT HE PUT IN HIS POCKET. SO, LARGELY, THE SAME TYPE OF ANALYSIS, JUDGE, WHETHER YOU USE THE -- HIS CONSUMER PORTFOLIO PROFIT VERSUS LEVEL GLOBAL'S OVERALL PROFIT.

I'LL WRAP UP HOPEFULLY FAIRLY QUICKLY WITH THE LAST PART OF MY PRESENTATION, JUDGE, WHICH IS, WHAT WAS THE MATERIALITY OF THE CARTER'S TRADING ACTIVITY. AND THIS IS REALLY MORE DIRECTED TO THE CIVIL PENALTY DETERMINATION, ALTHOUGH, I DON'T KNOW, IT MAY HAVE SOME IMPACT ON THE COURT'S DISGORGEMENT ANALYSIS.

Q. (BY MR. MONNIN) BUT, MR. MEGALLI, WERE YOU ABLE TO OBTAIN EVIDENCE OF YOUR OVERALL TRADING ACTIVITY AT LEVEL GLOBAL IN THE COURSE OF THE CRIMINAL INVESTIGATION?

A. YES.

Q. AND HOW WAS THAT DOCUMENTATION SORTED?
A. THESE ARE THE DOCUMENTS THAT WE TALKED ABOUT EARLIER THAT SHOWED THE EIGHT MILLION PROFIT IN THE CONSUMER FUND IN '09 AND THE 39.2 MILLION OF PROFIT IN THE CONSUMER FUND IN 2010. IN THOSE DOCUMENTS, IT ALSO INCLUDES A LIST OF ALL OF THE STOCKS THAT I TRADED IN EACH OF THOSE YEARS.
Q. AND THE EXHIBIT NUMBER FOR 2009 IS WHAT?
A. FOR '09, IT'S EXHIBIT 4. AND FOR '10, IT'S EXHIBIT 5.
Q. SO THE COURT ASKED YOU ABOUT THIS EARLIER. CAN YOU POINT THE COURT TO WHERE THE CARTER'S TRADING IS REFLECTED IN EXHIBITS 4 AND 5?
A. YEAH. TOWARDS THE END OF THE DOCUMENT ON -- I DON'T THINK THESE HAVE PAGE NUMBERS, BUT IT'S ABOUT THE THIRD-TO-LAST PAGE.
Q. AND ARE YOU TALKING ABOUT EXHIBIT 4?
A. I'M TALKING ABOUT EXHIBIT 4.
Q. SO THIS IS THE LIQUIDATION OF THE LONG POSITION?
A. WELL, IT'S NOT THE LIQUIDATION, PER SE. IT'S THE SUM OF ALL OF THE PROFITS IN CARTER'S FOR THAT GIVEN YEAR. REALLY WHAT IT'S MEANT TO BE IS A SUMMARY OF ALL THE STOCKS YOU TRADED IN A GIVEN YEAR. AND I GUESS THE POINT HERE IS THAT THERE WERE 105 STOCKS THAT WERE ON THIS LIST IN 2009. AND IN THE SIMILAR DOCUMENT FOR 2010, EXHIBIT 5, THERE WERE 98 STOCKS THAT I TRADED. SO IT WAS ONE OUT OF ROUGHLY 100 STOCKS THAT I HAD TRADED IN EACH OF THOSE TWO YEARS.
Q. SO IN TERMS OF JUST THE OVERALL NUMBER OF ISSUERS THAT YOU

WERE TRADING IN, CARTER'S WAS BASICALLY ONE PERCENT?
A. CORRECT.
Q. AND YOU'RE GETTING -- THE BASIS FOR THAT IS EXHIBITS 4 AND 5, YOU JUST MANUALLY COUNTED?
A. CORRECT.
Q. LET'S TALK ABOUT THE CARTER'S TRADES.
THE COURT: WHAT ARE ALL THESE INITIALS HERE?
THE WITNESS: THOSE ARE STOCK TICKERS FOR DIFFERENT COMPANIES IN THE CONSUMER SPACE THAT I TRADED IN A GIVEN YEAR. SO, FOR EXAMPLE, COH IS COACH, THE HANDBAG COMPANY. GPS IS GAP STORES. YOU KNOW, THEY ARE TICKERS FOR STOCKS.
THE COURT: OKAY.
Q. (BY MR. MONNIN) AND THEY ARE ALPHABETICAL, CORRECT?
A. THEY ARE ALPHABETICAL, UH-HUH.
THE COURT: IS THAT THE SAME IN THE -- ALL THE INITIALS ON THE FIRST PAGE OF EXHIBIT 4 WHERE IT SAYS TOP FIVE SKEW PROSPECT COST WILL BE UTILIZED? WHAT ARE THOSE?
THE WITNESS: A SKEW IS A RISK-REWARD RATIO. SO, IN OTHER WORDS, IF I THINK A STOCK MIGHT BE WORTH SOMEWHERE BETWEEN 100 IN THE WORST CASE AND 200 IN THE BEST CASE, IF THE STOCK IS TRADING AT 150, YOU WOULD SAY THAT'S $50.00 OF DOWNSIDE RISK AND $50.00 OF UPSIDE POTENTIAL. SO THE RATIO THERE IS 1.0. IT'S ONE-TO-ONE UPSIDE VERSUS DOWNSIDE. SO WHEN I CREATE PRICE TARGETS FOR THESE CONSUMER NAMES, THIS IS LOOKING TO SEE WHICH HAS THE BEST AND WORST RISK REWARDS ON A

SHORT SIDE AND LONG SIDE.

MR. MONNIN: AND, JUDGE, WE HAVE OTHER HOPEFULLY MORE USER-FRIENDLY EXTENSIONS OF MATERIALITY. SO --

THE COURT: ASSUMING, MAKING NO ASSUMPTIONS WITH THE MATH SKILLS HERE, I APPRECIATE IT.

Q. (BY MR. MONNIN) LET'S MOVE ON TO SLIDE 19. SO LET'S TALK ABOUT --

MR. MONNIN: AND, JUDGE, I'M GOING TO REFER THE COURT AND MR. MEGALLI TO EXHIBIT 6 AND 7 FOR THE UNDERLYING DATA ON THIS SLIDE.

Q. (BY MR. MONNIN) SO DID YOU UNDERTAKE AN ANALYSIS OF HOW MANY TIMES YOU HAD POSITIONS OR TRADED POSITIONS IN CARTER'S VERSUS ALL OF YOUR CONSUMER PORTFOLIO TRADING?

A. YES.

Q. AND TELL THE COURT HOW YOU DID THAT, WHAT YOU REFERRED TO.

A. WELL, IN THE PARALLEL CRIMINAL INVESTIGATION, WE WERE PROVIDED WITH A MICROSOFT EXCEL SPREADSHEET, WHICH LISTED EVERY TRADE I DID OR THAT I WAS RESPONSIBLE FOR DURING THE ROUGHLY ONE-AND-A-HALF-YEAR PERIOD THAT I WORKED AT LEVEL GLOBAL. AND IT AMOUNTED TO 1861 INDIVIDUAL TRADES IN COMPANY STOCK.

Q. AND WAS THAT JUST -- REFERRING TO EXHIBIT 6, YOU JUST MANUALLY COUNTED THEM UP? I KNOW IT'S AN EXCEL SPREADSHEET AND IT WILL DO IT FOR YOU.

A. WELL, IN MICROSOFT EXCEL, IT WILL COUNT FOR YOU HOW MANY CELLS THERE ARE, SO, YES.

Q. AND THIS IS EXHIBIT 6?
A. UH-HUH.
Q. WHAT'S, WHAT'S BEING HIGHLIGHTED ON THE DOCUMENT?
A. EACH TIME THERE WAS A TRADE EXECUTED IN CARTER'S IN MY CONSUMER FUND.
Q. WHAT DOES LGMO REFER TO?
A. THAT'S LEVEL GLOBAL. I'M NOT -- SOMETHING ABOUT THE OPERATE -- IT'S AN OPERATIONAL TERM, LEVEL GLOBAL MANAGEMENT OPERATIONS. IT'S A TRADING BOILERPLATE TERM.
Q. SO IF THE COURT REFERS TO EXHIBIT 6, HAVE WE -- WHAT HAVE WE HIGHLIGHTED IN EXHIBIT 6?
A. TRADING IN CARTER'S. CRI IS THE TICKER.
Q. AND THEN HOW DID YOU BUILD ON EXHIBIT 6 TO CREATE EXHIBIT 7?
A. WELL, EXHIBIT 6 IS VERY HARD TO ANALYZE BECAUSE IT'S NOT SORTED BY COMPANY. IT'S SORTED BY TRADING DATE. SO I JUST TOOK EXHIBIT 6, AND I SORTED IT BY COMPANY SO THAT ALL OF THE CARTER'S STOCKS WOULD BE NEXT TO EACH -- ALL OF THE CARTER'S TRADES WOULD BE NEXT TO EACH OTHER; ALL OF THE MCDONALD'S TRADES WOULD BE NEXT TO EACH OTHER AND SO FORTH.
Q. SO EXHIBIT 7 REFLECTS CONTIGUOUSLY, IF YOU WILL, ALL OF THE CARTER'S TRADING.
A. RIGHT. SO, FOR EXAMPLE, IN EXHIBIT 7, WHICH IS, AGAIN, A SUMMARY OF EXHIBIT 6, IF YOU OWNED 100,000 SHARES OF CARTER'S AND YOU BOUGHT AN ADDITIONAL 100,000 SHARES OF CARTER'S, IT

WOULD SHOW AS OWNING 200,000 TOTAL CUMULATIVE SHARES OF CARTER'S. IN OTHER WORDS, IT WOULD KEEP TRACK OF THE TOTAL POSITION SIZE IN EACH OF THE NAMES.

Q. AND, JUST FOR THE RECORD AND SO THAT WE'RE CLEAR, TELL THE COURT, WHAT ARE THE THUMBNAILS OF THE TRADES THAT SHE'S FOUND YOU LIABLE FOR IN INSIDER TRADING? WHAT'S --

THE COURT: WHAT LINE IS THE BEGINNING PART OF THIS? BECAUSE I DON'T THINK GIVING ME -- THE HIGHLIGHTING DOESN'T APPEAR ON MINE.

MR. MONNIN: IT SHOULD BE EXHIBIT 7, YOUR HONOR.

THE COURT: YES. I'M ON SEVEN.

MR. MONNIN: SHOULD BEGIN ON PAGE SEVEN.

THE COURT: I SEE IT. THANK YOU.

Q. (BY MR. MONNIN) SO, REALLY, MARK, WHAT I AM ASKING YOU TO TELL THE COURT IS, DESCRIBE THE TWO TRADES. I MEAN, I'VE BEEN REFERRING TO A LONG POSITION. I'VE BEEN REFERRING TO SHORT SALES. JUST TELL THE COURT WHAT WE'RE TALKING ABOUT.

A. SURE. SO THE FIRST POSITION IN CARTER'S THAT I HAD I INITIATED ON SEPTEMBER 14TH OF 2009. AND THAT WAS THE LONG POSITION, MEANING WE BOUGHT STOCK IN THE COMPANY. AND WE LIQUIDATED THAT POSITION ABOUT A MONTH AND A HALF LATER. I THINK THE LAST SALE THERE WAS AROUND OCTOBER 26TH OF 2009. AND THAT POSITION ULTIMATELY BECAME A 350,000-SHARE POSITION, I BELIEVE. AND IT WAS -- WE SOLD OUT OF THAT POSITION AROUND THE END OF OCTOBER. AND THAT'S WHAT YOU COULD CALL THE LONG

POSITION IN CARTER'S BECAUSE THE SECOND TRADE YOU WERE ASKING ABOUT WAS A SHORT POSITION IN CARTER'S WHICH WAS INITIATED IN JULY OF 2010 AND COVERED -- WHICH MEANS GOTTEN OUT OF -- IN JULY, THE SAME MONTH, OF 2010.

Q. SO I'M SURE THE COURT PROBABLY WANTS TO KNOW, WHAT ARE THE INTERVENING CARTER'S TRADES?

A. WELL, THE INTERVENING CARTER'S TRADES WAS, AFTER THE STOCK WENT DOWN FOLLOWING THE ACCOUNTING ANNOUNCEMENT, WE BOUGHT BACK STOCK BECAUSE IT WAS VERY DEPRESSED AND HELD THAT STOCK FROM LATE OCTOBER OF 2009 THROUGH ABOUT MAY OF 2010. HOWEVER, THE PROFIT FROM THAT PERIOD OF TIME FOR PURPOSES OF TODAY WAS NOT ALLEGED TO HAVE WRONGLY TO BE ASSOCIATED WITH.

Q. SO WE ESSENTIALLY HAVE THREE BUCKETS OF TRADES.

A. RIGHT.

Q. THERE'S A FIRST LONG POSITION?

A. CORRECT.

Q. THERE'S A SECOND -- FIRST LONG POSITION INITIATED IN SEPTEMBER 2009, LIQUIDATED IN OCTOBER 2009.

A. CORRECT.

Q. SECOND LONG POSITION --

A. AND THAT RESULTED IN THE 2,034,000 OF LOSS AVOIDANCE PROFIT.

Q. SECOND LONG POSITION OCTOBER OF 2009 UNTIL WHEN?

A. APPROXIMATELY MAY OF 2010.

Q. AND SHORT POSITION --

THE COURT: WHERE DID THE SECOND ONE BEGIN?

MR. MONNIN: IT SHOULD BE OCTOBER 29.

THE WITNESS: THE SECOND ONE WOULD BE --

THE COURT: OCTOBER 29?

THE WITNESS: RIGHT, OCTOBER 29.

THE COURT: IT SAYS SHORT. YOU DON'T SAY LONG. OR AM I MISSING IT? IT SAYS SHORT ON MAY 28TH, 2010. I GUESS IT SAYS, SHOULD BE SHORT ON JULY 8TH, 2010.

THE WITNESS: RIGHT. SO --

THE COURT: HOW DO I DISTINGUISH?

THE WITNESS: SURE. RIGHT. SO WHEN YOU, WHEN YOU BUY STOCK IN A COMPANY, EFFECTIVELY YOU'RE BETTING THAT THE STOCK IS GOING TO RISE IN PRICE.

THE COURT: RIGHT.

THE WITNESS: AND SO THE TRADING TERMINOLOGY THERE IS BUY OR SELL. SO WHEN YOU ADD TO YOUR POSITION, YOU'RE BUYING STOCK IN THAT COMPANY. WHEN YOU'RE LIQUIDATING YOUR POSITION, YOU'RE SELLING STOCK IN THAT COMPANY. WHEN YOU SHORT A STOCK, YOU'RE BETTING THAT THE STOCK PRICE IS GOING TO DECLINE. AND SO WHEN YOU BUILD A POSITION, THAT'S CALLED SHORTING A STOCK. AND WHEN YOU'RE EXITING THAT POSITION, IT'S CALLED COVERING A STOCK.

THE COURT: RIGHT.

THE WITNESS: COVERING A SHORT. AND SO, FOR EXAMPLE, IF YOU BELIEVED THE STOCK WAS OVERVALUED AND IT WAS TRADING AT

$50.00 A SHARE AND YOU BELIEVED THAT IT WAS WORTH 40, YOU MIGHT SHORT IT AT 50. AND WHEN THE STOCK GETS TO 40, YOU MIGHT COVER IT. AND IN THAT CASE, YOU WOULD MAKE A $10.00 PROFIT. IT'S SORT OF THE FLIP SIDE OF BEING LONG IN STOCK. IT'S A BET THAT A STOCK WILL DECLINE.

MR. MONNIN: OKAY. AND, YOUR HONOR, WE'RE NOT HERE AT ALL TO CONTEST --

THE COURT: ALL RIGHT.

MR. MONNIN: -- THE LOSS AVOIDED WAS 2.034 MILLION ON THE INITIAL LONG POSITION, AND HIS PROFIT -- OR NOT HIS, BUT LEVEL GLOBAL'S PROFIT IN JULY 2010 WAS 648,000. WE'RE JUST TRYING TO DRIVE DOWN TO COMPENSATORY BENEFIT.

THE COURT: I UNDERSTAND. JUST TRYING TO UNDERSTAND THE DATA.

Q. (BY MR. MONNIN) WELL, AND JUST TO HIT THE HIGH POINT HERE, I MEAN, HOW OFTEN WERE YOU TRADING IN CARTER'S VERSUS THE OTHER CONSUMER PORTFOLIO STOCKS?

A. A TOTAL OF 46 TRADES IN CARTER'S RELATIVE TO 1861 TRADES OVERALL. NOW, LET ME THROW IN A CAVEAT, WHICH IS, SOMETIMES IF YOU PLACE AN ORDER TO SELL 100,000 SHARES, IT MIGHT TAKE THE TRADER TWO BLOCKS OF SHARES TO SELL THAT 100,000. SHE MIGHT SELL 50,000 AND THEN ANOTHER 50,000. THAT WOULD BE COUNTED AS TWO TRADES, EVEN THOUGH IT WAS ONLY ONE TRADING ORDER. SO I JUST WANT TO BE CLEAR. THERE WEREN'T 46 SEPARATE ORDERS TO TRADE CARTER'S, BUT THERE WERE 46 INSTANCES OF TRADING IN

CARTER'S.

Q. UNDERSTOOD. SO LET'S MOVE ON TO THE NEXT SLIDE. AND WE'RE DRIVING TOWARD THE END HERE. SO WE TALKED ABOUT THE INITIAL CARTER'S LONG POSITION IN ROUGHLY SEPTEMBER 2009?

A. RIGHT.

Q. WHERE DOES THAT FIT IN IN TERMS OF OVERALL SIZE IN TERMS OF THE OTHER CONSUMER PORTFOLIO LONG POSITIONS?

A. SO THIS IS A LIST OF NAMES WITHIN MY CONSUMER-FOCUSED FUND. AND IT SHOWS THEIR AVERAGE AND MAXIMUM POSITION SIZES. SO, FOR EXAMPLE, DOLLAR TREE WAS ABOUT A $33 MILLION POSITION ON AVERAGE AND GOT TO BE AS BIG AS A $68 MILLION POSITION. FOSSIL WAS 37 MILLION AND ULTIMATELY GOT TO BE AT ITS MAXIMUM POSITION 63.9 MILLION. AND THESE ARE EXAMPLES OF STOCKS THAT I WOULD SAY I WAS MORE FOCUSED ON, FRANKLY, THAN CARTER'S. CARTER'S WAS AT THE BOTTOM. I MEAN, THIS ISN'T A COMPREHENSIVE LIST, BUT THIS IS SORT OF A SAMPLING JUST TO PROVIDE SOME CONTEXT WHERE IT SHOWS THAT CARTER'S IN THAT FIRST PERIOD, THAT SEPTEMBER-OCTOBER OF '09 PERIOD, WAS ABOUT A $6 MILLION POSITION ON AVERAGE AND GOT TO BE ABOUT A $9.2 MILLION POSITION, ROUGHLY, AT ITS MAXIMUM POINT. SO I GUESS --

THE COURT: SO THIS IS '09, PAGE 20?

THE WITNESS: THIS IS '09, YEAH.

Q. (BY MR. MONNIN) AND YOU REFERENCED IT BRIEFLY, IT'S FAIR TO SAY THAT YOU WERE SPENDING THE MAJORITY OF YOUR ANALYTICAL ATTENTION ON THE BIGGER POSITIONS. RIGHT?

A. WELL, CORRECT. I MEAN, NOT ONLY WERE THEY BIGGER POSITIONS, I WOULD ALSO ADD ONE OTHER THING, JUST FOR CONTEXT, WHICH IS, SOMETIMES IF YOU REALLY WERE FOCUSED ON AN IDEA, YOU WOULD GO TO THE INVESTMENT MANAGER, MR. GANEK, AND YOU WOULD SUGGEST THAT HE ALSO BUY STOCK ALONG WITH YOU AND ISSUE IN A COMPANY. SO A LOT OF THOSE BIGGER NAMES, FOR EXAMPLE, LET'S TAKE MCDONALD'S, I HAD ABOUT A 30 -- 29 AND A HALF MILLION, $30 MILLION POSITION IN MCDONALD'S IN MY FUND. BUT DAVID ALSO HAD AN ADDITIONAL ROUGHLY $150 MILLION AT MCDONALD'S BASED ON MY RECOMMENDATION IN HIS FUND. AND IT WAS CALLED A CENTER BOOK WHERE HE CHERRY-PICKS EVERYONE'S BEST IDEAS. AND IF HE SOUNDS LIKE YOU'RE CONFIDENT AND, YOU KNOW, FOCUSED ON SOMETHING, HE WOULD BUY IT ALONG WITH YOU IN HIS OWN CENTER BOOK, IT WAS CALLED.

NOW, A LOT OF THOSE TOP NAMES THERE WERE NAMES THAT I WOULD PITCH TO DAVID GANEK TO GO INTO HIS CENTER BOOK. CARTER'S I NEVER PITCHED TO HIM BECAUSE IT JUST WASN'T A BIG FOCUS FOR ME.

Q. HOW ABOUT WITH RESPECT TO THE SECOND LONG POSITION THAT WAS INITIATED IN OCTOBER 2009?

A. NEVER PITCHED IT TO HIM. HE NEVER TRADED IN CARTER'S.

Q. DID YOU EVER PERSONALLY TRADE IN CARTER'S?

A. I NEVER PERSONALLY TRADED IN ANY STOCK WHEN I WAS AT LEVEL GLOBAL FOR MYSELF.

Q. INCLUDING THE CONSUMER STOCKS IN WHICH YOUR PORTFOLIO HAD

LARGER POSITIONS THAN CARTER'S.

A. CORRECT.

Q. NOW, LET'S DO ESSENTIALLY THE SAME ANALYSIS WITH RESPECT TO THE SHORT POSITION FROM JULY 2010. TELL THE COURT WHAT'S ILLUSTRATED.

A. SO THESE ARE SAME EXACT THING, EXCEPT THESE ARE SHORT POSITIONS RATHER THAN LONG POSITIONS. AND WHEN YOU LOOK AT -- AND THESE ARE IN BILLIONS OF DOLLARS, OBVIOUSLY. I GUESS I SHOULD SAY THAT. WHEN YOU LOOK AT A SHORT POSITION, TYPICALLY YOU LIST IT AS A NEGATIVE NUMBER. THAT'S WHY YOU SEE ALL THESE NEGATIVE NUMBERS THERE. BUT, FOR EXAMPLE, WITH TIFFANY'S, WE WERE SHORT IN MY FUND ABOUT $19 MILLION WORTH OF TIFFANY STOCK. AND THAT WAS A PRETTY BIG BET THAT TIFFANY WAS OVERVALUED AT THE TIME. AND IT WAS AS BIG AS A $35 MILLION BET IN MY ROUGHLY $500 MILLION PORTFOLIO.

AND CARTER'S, WHEN I SHORTED CARTER'S IN JULY OF 2010, IT WAS ABOUT A FIVE -- LOOKS LIKE SIX TO $7 MILLION POSITION AVERAGE IN MAXIMUM. SO, I MEAN, IT WAS SMALLER THAN OTHER NAMES I WAS SHORT.

Q. IS IT ACCURATE OR FAIR TO SAY THAT SHORT POSITIONS ARE RISKIER? THERE'S MORE RISK THAT'S INHERENT IN THEM BECAUSE YOU HAVE TO COVER?

A. CONCEPTUALLY YOU COULD ARGUE THEY ARE RISKIER BECAUSE YOU HAVE UNLIMITED LOSS. FOR MOST HEDGE FUND MANAGERS, YOU DON'T PARTICULARLY CONSIDER THEM TO BE RISKIER THAN A LONG BECAUSE

YOU'RE TRYING TO BALANCE ALL YOUR LONGS WITH ALL YOUR SHORTS, AND YOU NEED A COMBINATION OF BOTH. SO, FOR ME, I WAS PRETTY AGNOSTIC ON WHETHER I WAS GOING LONG SOMETHING OR GOING SHORTED. I WAS JUST TRYING TO FIND THINGS THAT WERE OVERVALUED OR UNDERVALUED.

Q. NOW LET'S TALK ABOUT AS THE LAST TOPIC THE PERCENTAGE OF THE CONSUMER PORTFOLIO CAPITAL THAT WAS ASSOCIATED WITH THE CARTER'S LONG AND SHORT POSITIONS.

A. WELL, BASED ON THOSE NUMBERS THAT WE JUST HAD ON THE SCREEN, WHEN I WAS LONG CARTER'S, IT WAS ABOUT A TWO AND A HALF POSITION, TWO AND A HALF PERCENT POSITION OUT OF MY CONSUMER FUND, AND IT GOT AS BIG AS A 3.67 POSITION, 3.67 PERCENT POSITION. AND ON THE SHORT SIDE, IT WAS ABOUT 1.15 PERCENT IN TERMS OF THE SIZE RELATIVE TO THE ASSETS I WAS MANAGING, AND THAT WAS ABOUT A ONE AND A HALF PERCENT POSITION AT ITS MAXIMUM.

Q. SO CARTER'S WAS NEVER -- ON THE LONG SIDE, CARTER'S WAS NEVER MORE THAN 3.7, 3.67 PERCENT OF YOUR CAPITAL?

A. FOR THAT LONG, YEAH, UH-HUH.

Q. AND THE SHORT POSITION WAS NEVER GREATER THAN 1.5 PERCENT OF THE SHORT POSITIONS?

A. CORRECT, FOR THAT SHORT, UH-HUH.

THE COURT: I'M NOT SURE WHAT YOU'RE SAYING WITH THIS PARTICULAR CHART, BECAUSE YOU'RE TALKING ABOUT IN TERMS OF CARTER'S, OR YOU'RE TALKING ABOUT IN TERMS OF SHORT, BECAUSE

GENERALLY, SHORT AND LONG, I'M JUST STARTING. SO WHEN YOU SAY INITIATED 9/14/09, IS THAT RELATING TO THE CARTER'S DEAL AT THAT POINT THAT WAS LONG?

THE WITNESS: THAT WAS THE FIRST DAY THAT I BOUGHT STOCK IN CARTER'S. SO, IN OTHER WORDS, I INITIATED A LONG POSITION IN IT, AND THEN I SOLD OUT OF THAT LONG POSITION ON OCTOBER 26TH.

THE COURT: UH-HUH.

THE WITNESS: SO DURING THAT ROUGHLY SIX-WEEK PERIOD, OF THE CAPITAL THAT I WAS MANAGING, IT WAS -- IT REPRESENTED ABOUT TWO AND A HALF PERCENT OF THE CAPITAL THAT I WAS SUPPOSED TO BE INVESTING.

THE COURT: OKAY.

THE WITNESS: SO WE CALL THAT A TWO AND A HALF PERCENT POSITION. AND IT GOT TO BE AS BIG AS A 3.7 PERCENT POSITION AT ITS MAXIMUM POINT.

MR. MONNIN: SO, YOUR HONOR, REALLY WHAT WE'RE TRYING TO GET TO HERE IS THAT IF -- IN CONNECTION WITH A CIVIL PENALTY OR A CIVIL PENALTY ANALYSIS OR POTENTIAL FACTORS IN AGGRAVATION ASSOCIATED WITH THE COURT'S LIABILITY FINDING, REALLY, CARTER'S WAS NOT A MEANINGFUL, MATERIAL, SIGNIFICANT AMOUNT OF THE CAPITAL THAT MY CLIENT HAD INVESTED, A SIGNIFICANT AMOUNT OF THE STOCK THAT MY CLIENT PURCHASED IN THE CONSUMER PORTFOLIO, AND CERTAINLY NOT A SIGNIFICANT PART OF THE PROFITABILITY, EITHER ON A PORTFOLIO BASIS OR CERTAINLY ON A FUND BASIS.

AND THOSE ANALYTICS ARE ALL IN THE LAST SLIDE THAT WE HAVE HERE, JUDGE, WHICH IS ESSENTIALLY A SUMMARY OF WHAT -- I KNOW I'VE BEEN ADVOCATING THROUGH THE COURSE OF THE HEARING. AND I APPRECIATE MR. HUDDLESTON'S CONSIDERATION ON THAT AND THE COURT'S CONSIDERATION AS WELL.

SO, AS I SAID AT THE OUTSET OF THE HEARING, WE BELIEVE, JUDGE, THAT MR. MEGALLI IN DISGORGEMENT SHOULD ONLY BE LIABLE FOR THE 2010 VARIABLE PERIOD AND REALLY, IN CONNECTION WITH THAT, ONLY AT A $1900.00 FIGURE, $1945.00 FIGURE.

WE UNDERSTAND THAT THERE ARE OTHER POTENTIAL MEASURES THAT ARE OUT THERE, AND WE'VE GONE THROUGH THOSE FOR THE COURT. CERTAINLY, AS A MAXIMUM, IF WE'RE TALKING ABOUT THE CONTRIBUTION OF THE ILLEGAL SHORT SALES IN JULY 2010 TO THE CONSUMER PORTFOLIO PROFITABILITY, AT A MAXIMUM, AT THE OUTER MARKER, WE BELIEVE THAT $19,000.00 IS APPROPRIATE.

AND THEN IN TERMS OF, REALLY, OUR POSITION, JUDGE, IS THAT THE COURT SHOULD REALLY ORDER NO CIVIL PENALTY HERE GIVEN THE DE MINIMIS IMPACT OF THE ILLEGAL TRADING ACTIVITY AND ALSO THE FACT THAT MY CLIENT WAS FAR MORE -- I MEAN, CERTAINLY A REASONABLE INFERENCE IS THAT HE WAS FAR MORE FOCUSED ON OTHER LEGITIMATE TRADING THROUGHOUT THIS TIME FRAME FROM 2009 TO 2010.

AS A HOUSEKEEPING MATTER, I JUST WOULD LIKE TO MAKE SURE THAT OUR EXHIBITS HAVE BEEN RECEIVED IN EVIDENCE. THOSE ARE EXHIBITS 1 THROUGH 7.

THE COURT: YES.

MR. MONNIN: AND, JUDGE, I GUESS, I BELIEVE THAT OUR SLIDES REALLY ARE JUST SUMMARY DOCUMENTATION FOR THE COURT'S REFERENCE. SO I WOULD LIKE TO MARK MY SLIDE DECK AS EXHIBIT 8. I GUESS I'D MOVE THAT INTO EVIDENCE, AS WELL, FOR THE HEARING.

MR. HUDDLESTON: I WON'T OBJECT, YOUR HONOR.

THE COURT: ALL RIGHT. EIGHT IS ADMITTED.

MR. MONNIN: THANK YOU. AND I APOLOGIZE FOR GOING LONG. AND I TENDER THE WITNESS.

THE COURT: NO. THAT'S QUITE ALL RIGHT. BUT I THINK WE SHOULD TAKE A TEN-MINUTE BREAK, ONLY BECAUSE OF THE NUMBER BASIS. FOR THAT I'D LIKE TO BE SURE I ABSORB WHATEVER YOU'RE GOING TO START. SO IT'S -- WE'LL JUST START BACK AT 25 OF. ALL RIGHT?

THE COURTROOM SECURITY OFFICER: ALL RISE. COURT IS IN RECESS FOR TEN MINUTES.

(WHEREUPON, A BRIEF RECESS WAS HAD FROM 3:25 P.M. TO 3:40 P.M.)

THE COURT: OKAY. HAVE A SEAT.

MR. HUDDLESTON, I DO APPRECIATE THAT YOU HAVE A TRIAL COMING UP, AND I APPRECIATE THAT YOU HAVE GOTTEN YOURSELF FOCUSED FOR THIS.

MR. HUDDLESTON: YES, YOUR HONOR, MY PLEASURE.

THE COURT: WELL, PROBABLY NOT, BUT NEVERTHELESS.

MR. HUDDLESTON: I CERTAINLY DON'T MIND. I'LL BE

GLAD TO HAVE THIS BEHIND US. THANK YOU SO MUCH.

I AM CERTAINLY HERE TO ELICIT EVIDENCE FOR YOUR HONOR TO CONSIDER.

THE COURT: ALL RIGHT.

MR. HUDDLESTON: BUT I SHOULD MENTION THAT I'M GOING TO TAKE IT IN REVERSE ORDER, CIVIL PENALTIES, DISGORGEMENT, AND THE INJUNCTIVE RELIEF.

THE COURT: THAT'S FINE. AND I WANT TO START OFF BY SIMPLY SAYING, I DID NOTE THE POINT THAT YOU ALL MADE ABOUT THE MULTIPLES. AND I DO RECOGNIZE THAT THE -- THAT FOR PURPOSES OF THE CIVIL PENALTY, I AM AUTHORIZED TO DO MORE THAN JUST SIMPLY BASED ON THE INDIVIDUAL'S PROFITS. I AM NOT MANDATED TO, BUT I DO UNDERSTAND THE POSITION THAT YOU'RE ADVOCATING AND THE BASIS OF THAT.

MR. HUDDLESTON: YES. THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. HUDDLESTON: I WOULD SUGGEST THAT SINCE DEFENSE COUNSEL AND THE SEC HAVE SUCH FUNDAMENTAL DISAGREEMENTS OVER WHAT SHOULD BE CONSIDERED FOR CIVIL PENALTY PURPOSES, WE ARE CERTAINLY WILLING AND IT MIGHT BE WISE TO GET SOME ADDITIONAL BRIEFING ON THAT. WE'RE CERTAINLY HAPPY TO DO THAT.

FOR EXAMPLE, STARTING AT THE END, I WILL TELL YOU THAT I DON'T BELIEVE THERE'S ANY AUTHORITY FOR THE PROPOSITION THAT MATERIALITY IS RELEVANT, MATERIALITY THAT THE ILLEGAL TRADES WERE ONE OF HUNDREDS, THAT THAT IS PROPER TO CONSIDER

FOR CIVIL PENALTY PURPOSES. SO JUST WITH THAT STATED, I WILL JUST OFFER THAT WE'D CERTAINLY LOVE TO PROVIDE MORE AUTHORITY TO SHOW THE COURT, IF NEEDED.

THE COURT: ALL RIGHT.

CROSS-EXAMINATION

BY MR. HUDDLESTON:

Q. ALL RIGHT. YOU HAVE THE DEFENDANT'S EXHIBITS IN FRONT OF YOU, SIR. IF YOU WOULDN'T MIND PULLING UP EXHIBIT NUMBER 2.

MR. HUDDLESTON: YOUR HONOR, DO YOU HAVE THAT THERE?

THE COURT: EXHIBIT 2?

MR. HUDDLESTON: YES.

THE COURT: THANK YOU VERY MUCH.

Q. (BY MR. HUDDLESTON) AND WHAT I WANT TO FOCUS ON, MR. MEGALLI --

THE COURT: YOU WANT TO PUT THEM UP?

Q. (BY MR. HUDDLESTON) WHAT I'D LIKE TO FOCUS ON, SIR -- THANK YOU SO MUCH -- IS THE BOTTOM PART THERE WHERE WE SEE, IT LOOKS LIKE PAYMENT DATE. AND IT'S A PAYMENT THAT'S IN 2011. COULD YOU EXPLAIN TO US WHAT THOSE ARE, PLEASE?

A. THOSE ARE THE INCENTIVE PAYMENTS, THE $1.2 MILLION THAT WE DISCUSSED FOR 2010. AND THEY WERE PAID OUT AT THE BEGINNING OF 2011, I BELIEVE, BECAUSE, FOR TAX PURPOSES, BONUSES MAY HAVE BEEN PAID THE BEGINNING PART OF THE FOLLOWING YEAR.

Q. THANK YOU. I JUST WANTED TO CLARIFY. SO THOSE SHOULDN'T BE MOVED UP HERE. ALL OF THESE ARE REFLECTED IN THIS COLUMN,

IN THE 2010 COLUMN?
A. THAT'S MY UNDERSTANDING.
Q. MY CONFUSION IS THAT I DON'T SEE ANY NUMBERS THAT MATCH UP, SIR. ARE YOU CERTAIN THAT YOU DID NOT RECEIVE THESE AMOUNTS IN 2011?
A. WELL, THE REASON THEY DON'T ADD IS BECAUSE YOU'RE -- IT'S BROKEN INTO 90 PERCENT AND TEN PERCENT. BUT IF YOU ADD THE 90 AND THE TEN TOGETHER TO GET TO 100 PERCENT, THEN IT WOULD ADD TO THE SAME NUMBERS. THEY PAID OUT 90 PERCENT IN FEBRUARY, BUT THE LAST TEN PERCENT WAS PAID OUT IN MARCH. DOES THAT MAKE SENSE?
Q. I THINK I UNDERSTAND, YES, SIR.
A. SO, IN OTHER WORDS, IF YOU LOOK AT THE 785 AND ADD IT TO THE 87, I'M GUESSING IT ADDS TO APPROXIMATELY 873,000.
Q. I UNDERSTAND. THANK YOU VERY MUCH. YEAH. THAT CLEARS THAT UP. THANK YOU.
A. SURE.
Q. LET'S TURN OVER TO EXHIBIT NUMBER 1 NOW, PLEASE. AND THAT IS YOUR EMPLOYMENT AGREEMENT, I BELIEVE? COULD WE PLEASE TURN OVER TO PAGE FIVE OF THAT AGREEMENT, PLEASE. AND I WANT TO LOOK AT THE -- TOWARDS THE BOTTOM, PARAGRAPH NUMBER SIX, WHERE IT SPEAKS OF TERMINATION OF EMPLOYMENT. DO YOU SEE THAT THERE?
A. YES, SIR.
Q. AND YOU WOULD AGREE WITH ME THAT THE AGREEMENT THAT YOU HAD WITH LEVEL GLOBAL DISTINGUISHES BETWEEN TERMINATIONS FOR

CAUSE AND TERMINATIONS WITHOUT CAUSE? YES?

A. RIGHT.

Q. IF WE CAN READ ALONG AS WE LOOK AT SUB- -- SUBPART A THERE AT THE BOTTOM OF PAGE FIVE. PLEASE MAKE SURE I GET THIS RIGHT. IN THE EVENT THAT YOUR EMPLOYMENT RELATIONSHIP WITH THE INVESTMENT MANAGER ENDS AT ANY TIME AS A RESULT OF YOUR TERMINATION FOR CAUSE AS DEFINED BELOW, ALL OBLIGATIONS OF THE INVESTMENT MANAGER AND ITS AFFILIATES TO, INCLUDING ANY VESTING OF ANY DEFERRED AMOUNTS OR OTHER COMPENSATION DESCRIBED IN PARAGRAPH FOUR -- TURNING OVER TO THE NEXT PAGE -- SHALL CEASE, PROVIDED THAT YOU SHOULD BE PAID ANY ACCRUED AND UNPAID BASE SALARY THROUGH YOUR LAST DATE OF EMPLOYMENT.

NOW, WHAT I WANT TO ASK, IS YOUR UNDERSTANDING OF THAT, DID THAT MEAN THAT IF YOU WERE TERMINATED FOR CAUSE, SIR, THAT ALL YOU WOULD BE ENTITLED TO FROM NOW ON OUT WAS ANY BASE PAY THAT YOU HAD COMING FOR THAT PAY PERIOD?

A. THAT WOULD BE MY UNDERSTANDING.

Q. OKAY. NOW, LET'S LOOK -- STAY ON PAGE NUMBER SIX, PLEASE. AND LET'S LOOK AT WHAT'S LAID OUT AS THE DEFINITION OF CAUSE FOR PURPOSES OF TERMINATION. AND, REALLY, WHAT I WANT TO GET TO, SIR, IS TO IDENTIFY HOW MANY OF THESE APPLIED. LET'S ASSUME -- LET'S TAKE YOUR GUILTY PLEA AND THE JUDGE'S FINDINGS REGARDING YOUR OCTOBER 2009 CONDUCT AS A GIVEN. I WANT TO FIND OUT, IF WE TAKE THOSE AS A GIVEN, HOW MANY OF THESE APPLY TO THAT CONDUCT AND WOULD HAVE BEEN CAUSE FOR, FOR TERMINATION.

SO, REFERRING TO YOUR OCTOBER 2009 TRADING -- WELL, FIRST OF ALL, LET ME ESTABLISH, DID LEVEL GLOBAL HAVE AN INSIDER TRADING POLICY?

A. I BELIEVE ALL HEDGE FUNDS ADDRESSED INSIDER TRADING COMPLIANCE GUIDELINES. I DON'T KNOW IF WE HAD A SPECIFIC POLICY THAT WAS SPECIFIC TO LEVEL GLOBAL.

Q. I SEE. BUT YOU WERE -- YOU UNDERSTOOD AT THE TIME THAT THE COMPANY PROHIBITED TRADING ON MATERIAL NONPUBLIC INFORMATION?

A. CORRECT.

Q. OKAY. SO LET'S TAKE A LOOK AT SUBPART ONE THERE. CAUSE INCLUDES YOUR VIOLATION OF THE INVESTMENT MANAGER'S CODE OF ETHICS OR REQUIREMENTS SET FORTH IN THE INVESTMENT MANAGER'S COMPLIANCE MANUAL AS MAY BE --

THE COURT: GO A LITTLE SLOWER SO THAT THE COURT REPORTER CAN GET THAT. I CAN READ IT, BUT --

MR. HUDDLESTON: I'M SORRY, ELIZABETH.

THANK YOU.

THE COURT: THANK YOU.

Q. (BY MR. HUDDLESTON) WE'RE PICKING UP, AS MAY BE AMENDED FROM TIME TO TIME, INCLUDING BUT NOT LIMITED TO THE FIRM'S INSIDER TRADING AND PERSONAL TRADING POLICIES. AND MY QUESTION IS, IF WE CREDIT THE JUDGE'S FINDING IN YOUR GUILTY PLEA AS TO OCTOBER 2009, WHETHER THE CONDUCT ALLEGED REGARDING THAT MONTH WOULD HAVE VIOLATED SUBPART ONE THERE?

A. I MEAN, YOU'RE ASKING ME TO SPECULATE. BUT I ASSUME IT WOULD.
Q. SO THAT UNDER THAT SUBPART, THAT WOULD HAVE BEEN REASON ENOUGH TO TERMINATE YOU FOR CAUSE IN OCTOBER 2009. RIGHT?
A. ASSUMING THAT I WERE CONVICTED OF AN INSIDER-TRADING-RELATED CRIME, I WOULD AGREE WITH YOU.
Q. I DON'T WANT TO QUIBBLE WITH YOU, SIR. BUT NUMBER ONE DOESN'T SPEAK OF CONVICTION.
A. RIGHT. I'M SORRY. YOU'RE CORRECT.
Q. MOVING DOWN TO NUMBER TWO, MATERIAL BREACH OF THIS AGREEMENT, I'LL SKIP OVER THAT ONE.
NUMBER THREE, RATHER THAN ME READ IT INTO THE RECORD, EVERYBODY'S GOT IT UP HERE, WHY DON'T YOU READ NUMBER THREE AND TELL ME WHEN YOU'RE FINISHED.
A. YOUR DISHONESTY, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT WITH RESPECT TO THE PERFORMANCE OF YOUR DUTIES FOR THE INVESTMENT MANAGER OR ITS AFFILIATES.
Q. AND MY QUESTION WOULD BE, WOULD YOUR OCTOBER 2009 CONDUCT, AS FOUND BY THE COURT AND PURSUANT TO YOUR GUILTY PLEA, HAVE BEEN CAUSE UNDER THAT SUBPARAGRAPH?
A. I DON'T KNOW HOW TO ANSWER THAT, SIR. I'M NOT TRYING TO OBFUSCATE YOU. I JUST DON'T KNOW. I CAN ASSUME THAT IT WOULD, BUT YOU'RE ASKING ME TO SPEAK ON BEHALF OF THE EXECUTIVES AT LEVEL GLOBAL WHO WOULD MAKE THAT DETERMINATION.
Q. WELL, NO. THIS IS -- YOU'RE ONE PARTY TO THIS AGREEMENT.

I'M ASKING FOR YOUR UNDERSTANDING.

LET'S DO IT THIS WAY. YOU PLED GUILTY TO WILLFUL MISCONDUCT. YES?

A. OKAY.

Q. YES?

A. I THINK I PLED GUILTY TO CONSPIRACY TO COMMIT SECURITIES FRAUD. I DON'T KNOW IF WILLFUL MISCONDUCT --

Q. WELL, YOU'RE AN ATTORNEY. WAS THERE A MENTAL ELEMENT TO THAT? WAS A MENS REA REQUIRED TO CONVICT YOU?

A. THERE WAS A MENS REA.

Q. AND IT REQUIRED AT THE MINIMUM THAT YOU ACT WILLFULLY. YES?

A. I ASSUME SO, YES.

Q. ALL RIGHT. READ NUMBER FOUR, IF YOU WOULD, PLEASE, SIR.

A. YOUR CONDUCT TENDING TO BRING THE INVESTMENT MANAGER, ITS AFFILIATES INTO SUBSTANTIAL PUBLIC DISGRACE OR DISREPUTE.

Q. THANK YOU. NOW, I'M CREDITING THE JUDGE'S FINDING AND YOUR GUILTY PLEA, COULD YOU HAVE BEEN TERMINATED FOR CAUSE AS YOU UNDERSTAND IT UNDER THAT SUBPARAGRAPH?

A. AS I UNDERSTAND IT, PROBABLY. BUT, AGAIN, I CAN'T SPEAK FOR THEIR FINAL DECISION.

Q. POINT TAKEN.

AND THEN THE NEXT ONE, NUMBER FIVE? WOULD YOU READ THAT, PLEASE?

A. UH-HUH. COMMISSION OF ANY FELONY, CRIME, OR FRAUD. I

WOULD AGREE WITH THAT.
Q. AND THAT WOULD -- AS YOU UNDERSTAND IT, YOUR OCTOBER 2009 CONDUCT WOULD BE INCLUDED IN THAT. YES?
A. THAT WOULD BE MY UNDERSTANDING.
Q. ALL RIGHT. AND SO WHAT I WANT TO GET TO IS, YOU COULD HAVE, HAD YOU CHOSEN TO, HAD YOU BEEN REMORSEFUL ABOUT 2009, YOU COULD HAVE GONE TO YOUR EMPLOYER AND SAID, GUYS, I'M VERY SORRY, BUT I HAVE VIOLATED THREE OR FOUR OF THESE. AND THEY COULD HAVE TERMINATED YOU FOR CAUSE. IS THAT RIGHT?
A. I'M GOING TO SAY YES. I'M NOT SURE. BUT, OKAY, I'LL GO WITH THAT.
Q. AND IF YOU HAD BEEN TERMINATED FOR CAUSE, YOU WOULD HAVE RECEIVED NONE OF THE COMPENSATION THAT WE'VE SEEN IN YOUR SLIDES FOR 2010. CORRECT?
A. HAD I BEEN TERMINATED FOR CAUSE, YEAH, I BELIEVE THAT'S CORRECT.
Q. FAIR ENOUGH.
THE WAY YOU DESCRIBE WHAT YOU DID AT LEVEL GLOBAL, DID I HEAR IT CORRECTLY THAT YOU SORT OF CREATED THIS CONSUMER DISCRETIONARY BUSINESS THERE?
A. I WOULDN'T CALL IT A SEPARATE BUSINESS, BUT I WAS RESPONSIBLE FOR THE CONSUMER DISCRETIONARY-RELATED TRADING AND INVESTMENTS THAT WENT ON AT LEVEL GLOBAL. IT WASN'T A SEPARATE BUSINESS.
Q. DID I HEAR YOU SAY THAT YOU HIRED THE ANALYSTS?

A. I RECOMMENDED ANALYSTS TO BE HIRED. IT WASN'T REALLY UP TO ME TO PULL THE TRIGGER FINALLY ON WHO WE HIRED. BUT I WOULD RECOMMEND TO DAVID GANEK, THE HEAD OF THE FIRM, LET'S HIRE THIS GUY, LET'S HIRE THAT GUY.

Q. AND DID HE TAKE THOSE RECOMMENDATIONS?

A. ULTIMATELY WHAT ENDED UP HAPPENING WAS, I USED AN INTERNAL ANALYST TO BE THE MAIN ANALYST WITHIN THE CONSUMER SECTOR. I THEN RECOMMENDED ONE OTHER GUY WHO WE DID END UP HIRING. BUT THOSE WERE THE ONLY TWO PEOPLE THAT WERE DIRECTLY ON MY TEAM.

Q. YOU ANTICIPATED MY NEXT QUESTION. SO HOW MANY ANALYSTS DID YOU HAVE REPORTING TO YOU? TWO?

A. TWO.

Q. AND TRADERS AS WELL, DID YOU -- WERE YOU RESPONSIBLE --

A. THERE WAS A SHARED TRADING DESK. I'M SORRY. I DIDN'T MEAN TO STOP YOU.

Q. THAT'S OKAY.

A. I BELIEVE THERE WERE FOUR TRADERS ON A SHARED TRADING DESK. AND THEY WOULD MAKE TRADES ON BEHALF OF WHOEVER WAS AN INVESTMENT PROFESSIONAL DIRECTING TRADES AT THE COMPANY.

Q. SO WERE YOU INVOLVED IN HIRING ANY OF THOSE PEOPLE?

A. NO, I WAS NOT.

Q. YOU ALSO MENTIONED ANOTHER CATEGORY, I BELIEVE, CONSULTANTS. CAN YOU TELL US ABOUT HOW MANY CONSULTANTS YOU WERE RESPONSIBLE FOR BRINGING IN.

A. I DON'T KNOW THE EXACT NUMBER OF CONSULTANTS. SO I DON'T

KNOW HOW TO ANSWER THAT QUESTION. THERE WERE MULTIPLE PEOPLE THAT WE WOULD USE FOR RESEARCH AND ANALYSIS THAT WERE THIRD PARTIES TO LEVEL GLOBAL WHO WERE EITHER SELL-SIDE STOCK RESEARCHERS OR THEY HAD CONSULTING COMPANIES AND SO FORTH. BUT YOU ASKED ME HOW MANY. AND I DON'T KNOW.

THE COURT: PEOPLE WHO WERE NOT EMPLOYEES.

THE WITNESS: CORRECT, UH-HUH.

Q. (BY MR. HUDDLESTON) WOULD YOU INCLUDE IN THAT CATEGORY ERIC MARTIN? WAS HE A CONSULTANT?

A. YEAH. HIS COMPANY WAS CALLED MELLON ADVISORS, SO IT WOULD INCLUDE MELLON AS A THIRD-PARTY EXTERNAL CONSULTANT.

Q. AND HE BROUGHT YOU -- YOU BROUGHT HIM IN AS A CONSULTANT FOR LEVEL GLOBAL. YES? HIS COMPANY, RATHER?

A. THAT'S CORRECT, YEAH. SUSAN REUBEN WAS OUR HEAD OF COMPLIANCE. AND WE HAD TO VET ANY RECOMMENDATIONS THROUGH THE COMPLIANCE DEPARTMENT. SO THEY WOULD CHECK TO MAKE SURE THAT A CONSULTANT WAS APPROPRIATE FOR OUR INVESTMENT PROCESS. ONCE THEY APPROVED IT IN COMPLIANCE, WE WOULD GO AHEAD AND SIGN A CONTRACT WITH WHOEVER THE PERSON WAS.

Q. VERY GOOD.

THE COURT: ON THE INTERNAL ANALYST, YOU USED ONE WHO WAS ALREADY EMPLOYED, AND THEN YOU HIRED ONE?

THE WITNESS: CORRECT.

Q. (BY MR. HUDDLESTON) CAN YOU BALL-PARK IT FOR US HOW MANY PEOPLE LIKE MR. MARTIN'S COMPANY YOU WERE RESPONSIBLE FOR

RECOMMENDING AND SUCCESSFULLY BRINGING IN AS CONSULTANTS FOR LEVEL GLOBAL?

A. YOU KNOW, I -- THERE WERE -- I'D HAVE TO GUESS BECAUSE I DON'T REMEMBER THE EXACT NUMBER. THERE WERE A FEW. THERE WERE A HANDFUL. THERE WAS ONE CALLED RETAIL EYE PARTNERS. THERE WAS ONE CALLED JANET J. KLOPPENBURG ADVISORS. THERE WAS ONE CALLED J AND K RESEARCH. SO THERE WERE MAYBE, I'M GOING TO GUESS, HALF A DOZEN OR SO LIKE THAT. BUT I DON'T KNOW THE EXACT NUMBER.

Q. I THINK EXHIBIT 6 AND 7, YOU DON'T NEED TO TURN THERE NOW, BUT I BELIEVE THAT THEY ARE LISTS OF SOME OF THE TRADES THAT WERE MADE INSIDE YOUR PART OF LEVEL GLOBAL. CORRECT?

A. CORRECT.

Q. NOW, I'D LIKE TO HAVE YOU JUST TAKE US INSIDE THE TYPICAL TRADE, IF YOU COULD. MY QUESTION TO YOU IS, IF THE IDEA COMES TO SOMEBODY, DID IT ALWAYS GENERATE WITH YOU, OR WAS IT ONE OF THE ANALYSTS COMING TO YOU?

A. ALL OF THE ABOVE. SOMETIMES IT CAME FROM ME AND SOMETIMES IT CAME FROM ONE OF MY ANALYSTS. AND SOMETIMES IT CAME FROM A THIRD-PARTY SALES-SIDE ANALYST, SOMEONE WHO MIGHT WORK AT A GOLDMAN SACHS OR A MORGAN STANLEY WHO WAS MAKING STOCK RECOMMENDATIONS TO WALL STREET. IT COULD HAVE BEEN ANY OF THOSE CATEGORIES, OR A CONSULTANT.

Q. THANK YOU.

OKAY. NOW, WERE THE ANALYSTS AUTHORIZED TO ORDER TRADES

ON THEIR OWN?
A. NO. NO.
Q. WHO DID THEY GO TO FOR PERMISSION?
A. THEY WOULD EITHER GO TO ME OR THEY WOULD GO TO DAVID GANEK OR THEY WOULD GO TO ONE OF THE OTHER INVESTMENT MANAGERS.
Q. ALL RIGHT. AND CAN YOU GIVE US WHAT THE TYPICAL SCENARIO WAS? WERE YOU THE PERSON WHO USUALLY CLEARED TRADES IN THE CONSUMER DISCRETIONARY SPACE?
A. IT DEPENDED. I MEAN, YES, GENERALLY. I WOULD SAY THAT'S FAIR. BUT SOMETIMES THE ANALYSTS WOULD GO DIRECTLY TO DAVID WITH AN IDEA THAT WAS WITHIN THE CONSUMER SPACE. AND DAVID MIGHT DO IT FOR HIS BOOK, AND THEN I MIGHT DO IT LATER WITHIN OUR FUNDS. SO IT REALLY VARIED. BUT --
Q. UNDERSTOOD.
OKAY. AND IF YOU HAD AN IDEA THAT DIDN'T GENERATE FROM THE ANALYST, DID YOU HAVE TO GO TO DAVID AND GET HIS PERMISSION BEFORE YOU ENTERED THAT TRADE?
A. YOU DIDN'T HAVE TO GO TO HIM TO GET PERMISSION. BUT HE WOULD ALMOST ALWAYS WANT TO DISCUSS WHAT YOUR THINKING WAS ON AN IDEA, FOR A COUPLE OF REASONS, SO HE COULD UNDERSTAND YOUR THOUGHT PROCESS AND SO HE COULD MAKE A DECISION WHETHER IT WAS SOMETHING HE WANTED TO TRADE FOR HIMSELF IN THE CENTER BOOK THAT I DESCRIBED.
Q. THE REASON I ASKED THOSE QUESTIONS, I'M TRYING TO GET TO THIS ISSUE OF CONTROL. MY QUESTION TO YOU WOULD BE, IS IT FAIR

TO SAY THAT YOU CONTROLLED THE TRADING FOR LEVEL GLOBAL UNDER THE CONSUMER DISCRETIONARY SPACE?

A. I THINK IT'S FAIR TO SAY I CONTROLLED IT. I DIDN'T HAVE ULTIMATE CONTROL IN THE SENSE OF, IF WE HAD A VIOLENT DISAGREEMENT, IT WAS REALLY UP TO HIM TO TAKE OFF A POSITION THAT HE JUST PLAIN DIDN'T AGREE WITH.

Q. UNDERSTOOD.

NOW, I WANT TO GET TO SOMETHING YOU DESCRIBED FOR US WITH REGARD TO YOUR EQUITY POINTS OR YOUR EQUITY PARTICIPATION. I BELIEVE IT WAS THREE PERCENT, CORRECT, IN 2010?

A. IT WAS THREE PERCENT FOR THE ONE YEAR OF 2010. AND THEN IT WAS NOTHING AFTER THAT.

Q. UNDERSTOOD. BUT I THINK I HEARD YOU SAY IT WAS THREE PERCENT ON THE WHOLE COMPANY'S BUSINESS, INCLUDING THE LEVEL RADAR. IS THAT RIGHT?

A. IT WAS THREE PERCENT OF THE COMPANY'S INCENTIVE FEES FOR LEVEL GLOBAL AND LEVEL RADAR, YEAH.

Q. AND I THINK I REMEMBER YOU SAYING YOU DIDN'T HAVE ANYTHING TO DO WITH LEVEL RADAR.

A. HARDLY ANYTHING TO DO WITH IT. I MEAN, MAY I EXPLAIN --

Q. YEAH, SURE.

A. -- FOR A SECOND? SO ANTHONY CHIASSON, IN ADDITION TO BEING THE COFOUNDER OF THE FIRM, WAS ALSO THE DIRECTOR OF RESEARCH. WE USED TO HAVE OCCASIONAL MEETINGS WHERE THE TOP TEN PEOPLE WOULD GET IN A ROOM OF THOSE 60 OR 70 PEOPLE, AND WE

WOULD TALK ABOUT THE MARKET, AND WE WOULD TALK ABOUT IDEAS AND SO FORTH.

WITHIN THE CONTEXT OF THOSE MEETINGS, ANTHONY MIGHT SAY, WE'RE BUYING SUCH-AND-SUCH A STOCK WITHIN RADAR. AND I WOULD BE PRIVY AND LISTEN TO MAYBE A DEBATE HE WOULD HAVE WITH ONE OF HIS TECH ANALYSTS. SO IN THAT SENSE, I MIGHT BE IN THE ROOM. BUT IN THE SENSE THAT I WOULD NEVER GO AND PITCH A CONSUMER STOCK TO BE BOUGHT OR SOLD WITHIN THAT RADAR FUND. IT WAS JUST SEPARATE FROM WHAT I WAS DOING. SO I'M NOT GOING TO SAY I WAS NEVER IN A MEETING WITH ANTHONY CHIASSON WHERE RADAR DIDN'T COME UP. BUT IT WASN'T REALLY MY ROLE TO INFLUENCE RADAR OR TO PITCH IDEAS TO RADAR.

Q. SO YOU WEREN'T RESPONSIBLE FOR THE SUCCESS OR FAILURE OF HOW RADAR DID. RIGHT?

A. NO.

Q. AND, YET, YOU GOT PAID. YOUR INCENTIVE COMPENSATION WAS INCLUDED IN THE INCENTIVE FEES THAT HAD BEEN EARNED ON THAT.

A. THAT'S CORRECT, BECAUSE THEY WANTED TO VIEW IT AS WHOLISTICALLY, THE PARENT, HOW IS THE PARENT COMPANY DOING, SO THAT INCLUDED BOTH OF THE FUNDS.

Q. AND WHAT I WANT TO GET TO IS, EVEN THOUGH YOU MAY NOT HAVE BEEN AN OWNER OF LEVEL GLOBAL, YOU WERE PAID AS IF YOU OWNED THREE PERCENT OF THE COMPANY IN 2010. YES?

A. I WAS PAID AS IF I HAD A THREE PERCENT POINT SHARING FOR THE ONE YEAR, YEAH, THAT'S RIGHT.

CAN I MAKE ONE OTHER CLARIFYING POINT?

Q. I THINK YOUR ATTORNEY IS GOING TO TALK TO YOU AFTER I'M FINISHED.

MR. HUDDLESTON: YOUR HONOR, WOULD YOU LIKE TO HEAR WHAT HE HAS TO SAY NOW?

THE COURT: IS IT ABOUT THIS TOPIC?

THE WITNESS: IT'S ON THE TOPIC OF OWNERSHIP. YEAH.

THE COURT: PROCEED.

THE WITNESS: I WAS JUST GOING TO SAY -- I'LL BE BRIEF -- AT SOME POINT IN 2010, LEVEL GLOBAL SOLD A PORTION OF THE COMPANY TO AN AFFILIATE OF GOLDMAN SACHS CALLED PETERSHILL. THEY SOLD ABOUT TEN TO 15 PERCENT OF THE COMPANY FOR, MY UNDERSTANDING WAS IT WAS ROUGHLY $50 MILLION. THAT MONEY WAS USED TO PAY OUT EQUITY OWNERS AND SENIOR PEOPLE AT LEVEL GLOBAL. I NEVER RECEIVED A DIME OF THAT BECAUSE I WAS NOT, IN FACT, AN EQUITY OWNER, NOR WAS I A SHAREHOLDER. I WAS A, YOU KNOW, BASICALLY A NEW -- IN MY TECHNICAL ROLE IN MY CONTRACT IS ANALYST. SO I'LL JUST USE THAT TERM. EVEN THOUGH I WAS AN INVESTMENT MANAGER, I WAS NOT A TRADITIONAL, WHAT YOU WOULD THINK OF AS AN EQUITY OWNER IN A BUSINESS OR A SHAREHOLDER WHERE, WHEN THE COMPANY GETS SOLD, YOU ARE ENTITLED TO RECEIVE A SHARE OF THOSE PROCEEDS.

Q. UNDERSTOOD. UNDERSTOOD.

NOW, LET'S GO BACK TO 2009, BECAUSE IF I UNDERSTOOD IT CORRECTLY, THERE WAS SOME -- YOU HAD A RIGHT TO ASK FOR SOME

DISCRETIONARY BONUS IN 2009, BUT YOU DID NOT ASK FOR IT. AM I GETTING THAT RIGHT?

A. YOU KNOW, IT SAID IN THE CONTRACT THAT -- I'M SORRY, THAT AT THE SOLE DISCRETION OF THE INVESTMENT MANAGER, HE COULD PAY OUT A 2009 DISCRETIONARY BONUS. IT WAS FRANKLY ASSUMED, AND THIS IS VERY FREQUENT ON WALL STREET BECAUSE PEOPLE MOVE AROUND FROM ONE FUND TO THE NEXT FUND PRETTY FREQUENTLY, WHEN YOU ARE IN A STUB YEAR, WHEN YOU ARE IN A HALF-YEAR, YOU'RE NOT GOING TO BE BONUSED ON THAT YEAR BECAUSE OF THE REASONS I SAID EARLIER. PEOPLE VIEW IT AS A LITTLE BIT, YOU'RE NEW. YOU ARE IN A STUB YEAR. YOU ARE NOT MEANT TO BE COMPENSATED ON THIS LITTLE PERIOD OF TIME. WE'LL FOCUS ON YOUR FIRST FULL YEAR.

AND THAT WAS MY UNDERSTANDING. AND THAT'S WHY I DIDN'T THREATEN, YOU KNOW, TO LEAVE OR MAKE A BIG ISSUE OUT OF THE FACT THAT, YOU KNOW, WHY WAS THIS PART OF MY CONTRACT NOT BEING EXERCISED. I HAD SORT OF ASSUMED THAT IT WOULD NOT BE, TO BE CLEAR.

Q. SO I JUST WANT TO GET CLEAR ON THAT. YOU ASKED FOR IT AND WERE TOLD YOU WOULDN'T BE PAID IT, OR DID THE TOPIC JUST NEVER COME UP?

A. I NEVER EVEN HAD A MEETING ABOUT IT. I SORT OF WAS WONDERING. AT SOME POINT YOU HAVE A MEETING TO GO OVER A REVIEW, LIKE A YEAR-END REVIEW, BECAUSE MOST OF THE COMPANIES I'VE WORKED FOR, IN DECEMBER, YOU GO AND MEET WITH THE HEAD OF THE COMPANY, AND THEY SAY, THIS IS WHAT YOU'RE DOING WELL, THIS

IS WHAT YOU'RE DOING POORLY. I NEVER REALLY HAD THAT MEETING. AND THAT WOULD BE THE TYPE OF MEETING WHERE THEY WOULD SAY, HERE'S WHAT YOUR SHARE OF THE PROFITS IS GOING TO BE FOR THE YEAR.

SO THAT MEETING NEVER EVEN REALLY OCCURRED. AND I NEVER WENT BACK AND, YOU KNOW, DEMANDED TO BE PAID OR REQUESTED TO BE PAID.

Q. AND IS IT THE FACT THAT YOU DID NOT MAKE THAT DEMAND THAT LEADS YOU TO SAY THAT YOU SHOULD NOT HAVE TO PAY ANY DISGORGEMENT ON THE TWO-MILLION-PLUS LOSS AVOIDED THAT OCCURRED IN 2009?

A. WELL, TO BE CLEAR, I MEAN, I THINK THE ARGUMENT IS TO SAY THAT NONE OF THE TWO MILLION FLOWED DIRECTLY INTO MY COMPENSATION OR INTO MY POCKET, I GUESS YOU COULD SAY.

Q. LET ME SEE IF I CAN SAY SOMETHING THAT I THINK IS FAIR. IS IT FAIR TO SAY THAT THE $2,034,000.00 IN LOSS AVOIDED, THAT THERE WERE PEOPLE ON THE OTHER SIDE OF THOSE TRADES, ON THE LOSING SIDE OF THOSE TRADES?

A. YOU MEAN LIKE OTHER TRADERS?

Q. WELL, THERE WAS A COUNTERPARTY FOR EACH --

A. COUNTERPARTY, YEAH, SURE.

Q. FOR EACH OF THE TWO HUNDRED -- I MEAN, $2,034,000.00, THERE WAS SOMEBODY WHO LOST THAT $2,034,000.00. RIGHT?

A. THEORETICALLY, YEAH.

Q. ALL RIGHT. AND THE SAME IS TRUE FOR THE, FOR THE PROFITS

MADE IN 2010. YOU MADE A SIX-HUNDRED-THOUSAND-DOLLAR-PLUS GAIN ON BY COVERING A SHORT POSITION. THERE WAS SOMEBODY WHO IS ON THE LOSING END OF THAT TRADE, RIGHT, OR THOSE TRADES?

A. YEAH. I'M NOT SURE I WOULD CHARACTERIZE IT AS SOMEONE. IT WAS PROBABLY, YOU KNOW, SPREAD ACROSS SORT OF THOUSANDS OF DIFFERENT TRADING.

Q. YES. NOT A SINGLE PERSON.

A. RIGHT.

Q. ON THAT POINT, IF YOU COULD TURN TO EXHIBIT NUMBER 7, PLEASE. I BELIEVE THAT IS THE -- A LIST THAT HAS THE HIGHLIGHTING. AM I RIGHT?

A. UH-HUH.

Q. WHAT I'M TRYING TO GET CLEAR ON IS JUST HOW MANY SEPARATE TRADES MAKE UP THE, THE TRADING ALLEGED IN OUR COMPLAINT AND THAT THE JUDGE HAS FOUND YOU LIABLE FOR? I BELIEVE IN OCTOBER 2009, WERE THERE TWO TRADES?

A. WELL, I WOULD CHARACTERIZE THE ORDER TO SELL THE 300,000 SHARES AS ONE TRADING ORDER.

Q. OKAY.

A. I THINK THAT WHEN I LOOK AT THE DATA, IT WAS -- IT TOOK TWO SEPARATE TRADES TO ACTUALLY SELL THE 300,000. AND THE REASON I SAY THAT IS BECAUSE IT SHOWS THAT 200,000 SHARES WERE SOLD ON OCTOBER 23RD, AND THE LAST HUNDRED THOUSAND SHARES WERE SOLD ON OCTOBER 26TH. IT WAS A -- FRIDAY WAS THE 23RD, AND MONDAY WAS THE 26TH. WHEN YOU GO BACK AND LOOK AT THE RECORD,

THAT WAS ACTUALLY ONE TRADING ORDER THAT WENT INTO THE TRADERS TO SAY, SELL THE 300. SOMETIMES IT TAKES A COUPLE DAYS. SO IT SHOWS UP AS TWO TRADES.

Q. OKAY. BUT IN TERMS OF THE NUMBER OF DECISIONS YOU MAKE --

A. ONE DECISION.

Q. IT AFFECTED THERE, IT WAS A SINGLE DECISION THAT GOT IT ROLLED OUT OF THE TWO DAYS.

A. YES AND NO. THE ONLY OTHER POINT I WOULD MAKE IS, IF YOU GO RIGHT ABOVE THAT, IT SHOWS THAT WE HAD 350,000 SHARES BEFORE, BEFORE I HAD EVEN SPOKEN TO ERIC MARTIN. AND --

THE COURT: I'M SORRY. IT'S GOING TO BE HELPFUL TO ME IF WE COULD PRETEND WE ARE DEALING WITH LINE NUMBERS, WHICH WE DON'T HAVE. WE'RE TALKING ABOUT THE LAST GROUP? I'M SORRY. I WANT TO KNOW WHERE WE ARE ON THIS PAGE.

MR. HUDDLESTON: 322 AND 323, I BELIEVE, YOUR HONOR. FAR LEFT COLUMN. UP HERE ON THE SCREEN.

THE COURT: I SEE. ALL RIGHT.

Q. (BY MR. HUDDLESTON) LET'S ACTUALLY MOVE DOWN TO THE BOTTOM OF THE PAGE NOW TO THE JULY SHORT --

A. WELL, CAN I JUST FINISH MY LAST POINT ON THAT?

Q. OF COURSE. GO AHEAD.

A. SO WE HAD -- YOU'RE ASKING ME ABOUT HOW MANY TRADING DECISIONS WAS IT. WE HAD 350,000 SHARES AT THE PEAK. AND THAT'S UNDER THE COLUMN CUMULATIVE SHARES. AND IT SHOWS AS 350,000 SHARES. I HAD STARTED LIQUIDATING THE POSITION AND HAD

ACTUALLY SOLD 50,000 SHARES BEFORE I HAD GOTTEN THE PHONE CALL FROM ERIC MARTIN.

Q. I WANT TO ASK YOU TO LIMIT THE ANSWER TO THE PHONE CALLS THAT ARE AFTER YOU SPEAK TO MR. MARTIN.

A. OKAY.

Q. WHAT I'M TRYING TO GET TO ARE THE THINGS THAT ARE DESCRIBED IN THE JUDGE'S ORDER.

SO THAT WOULD HAVE BEEN ONE TRADING DECISION.

A. CORRECT.

Q. AND IN JULY 2010, HOW MANY TRADING DECISIONS? BECAUSE AS I COUNT THEM, ONE, TWO, THREE, FOUR, AM I CORRECT THAT THERE ARE FOUR SHORT SALES AND ONE COVER?

A. FOUR SHORT SALES AND A COVER. IT'S NOT CLEAR TO ME. LIKE, FOR EXAMPLE, WHEN IT SAYS JULY 8TH AND JULY 12TH, I DON'T REMEMBER IF THAT WOULD HAVE BEEN ONE TRADING ORDER TO SHORT 200 THAT WAS BROKEN INTO 150 AND 50 OR IF THAT WAS TWO TRADING ORDERS. SO I DON'T KNOW.

Q. I BELIEVE THE WAY IT'S DESCRIBED IN THE PLEADINGS, WE'VE GOT AN INITIAL 150 THAT WERE SHORTED, FOLLOWED BY A DECISION TO ACCUMULATE A FURTHER SHORT POSITION UP TO 300. DOES THAT RING A BELL?

A. I BELIEVE THAT IS CORRECT. I'M NOT SURE. AND THE DECISION TO LIQUIDATE WOULD HAVE BEEN ONE DECISION TO COVER THE 300,000 SHARES.

Q. VERY GOOD. THANK YOU.

MR. HUDDLESTON: YOUR HONOR, WE MOVE NOW, IF I MAY, TO THE FACTORS RELEVANT TO DISGORGEMENT. AND I SHOULD SAY THAT THESE ARE ALSO FACTORS THAT ARE RELEVANT TO CIVIL PENALTIES, THE STEADMAN FACTORS.

Q. (BY MR. HUDDLESTON) WE'LL GO THROUGH THEM IN ORDER, IF WE COULD, MR. MEGALLI. THE FIRST FACTOR IS THE SERIOUSNESS OF THE VIOLATION. CAN WE AGREE THAT THE VIOLATIONS THAT THE JUDGE HAS FOUND YOU LIABLE FOR ARE SERIOUS VIOLATIONS?

A. OF COURSE. LOOK AT THE RESULT ON MY LIFE. SURE, IT FEELS VERY SERIOUS.

Q. AND THEN WE TALKED ABOUT THE REPEATED OR THE ISOLATED NATURE OF IT. AND THAT'S WHY I HAD YOU GO THROUGH THE NUMBER OF DIFFERENT DECISIONS. THIS ISN'T SOMETHING YOU DID ONLY ONCE, CORRECT?

A. WELL, I MEAN, I WOULD CONSIDER THERE TO BE TWO SEPARATE TRADING DECISIONS ULTIMATELY. ONE WAS TO SELL STOCK IN OCTOBER OF '09.

Q. RIGHT.

A. AND THE OTHER ONE WAS TO SHORT STOCK IN JULY OF 2010. BUT I WOULDN'T CONSIDER THE FACT THAT IT WAS BROKEN INTO THREE OR FOUR TRADES AS THREE OR FOUR SEPARATE SHORTING INCIDENTS.

Q. UNDERSTOOD.

A. BECAUSE THEY WERE WITHIN A COUPLE OF DAYS OF EACH OTHER, AND IT WAS MORE OR LESS IN MY MIND THE SAME DECISION TO SHORT THE STOCK.

Q. I SEE.

WHAT I AM TRYING TO GET TO IS THAT YOU UNDERSTOOD, AT LEAST, I BELIEVE YOUR TESTIMONY FROM YOUR SENTENCING HEARING IS THAT YOU UNDERSTOOD IN OCTOBER 2009 THAT THE INFORMATION YOU WERE GETTING WAS OVER THE LINE, AND YOU SHOULD NOT HAVE ACTED ON IT. YOU UNDERSTOOD THAT IN OCTOBER. YES?

A. WHAT I HAVE DESCRIBED, WHAT I DESCRIBED AT MY PLEA HEARING, I'M GOING TO NECESSARILY REPEAT THE FRAMEWORK OF THAT, WHICH IS THAT ERIC MARTIN ALLEGED THAT HE TOLD ME THERE WAS GOING TO BE AN ACCOUNTING ISSUE AT CARTER'S. THAT'S A LIE. HE DID NOT EVER TELL ME THERE WAS GOING TO BE AN ACCOUNTING PROBLEM THAT WAS ABOUT TO BE ANNOUNCED. HE DID HAVE A CHANGE IN OPINION ON HIS STOCK. AND WHEN HE CALLED TO SAY THAT HE NO LONGER LIKED THE STOCK, I HAD ALREADY BEEN IN THE PROCESS OF SELLING IT. AND HIS PHONE CALL ACTED AS A CATALYST FOR ME TO CONTINUE SELLING THE STOCK.

HE -- WHEN I PLED, WHEN I SAID I PLEAD GUILTY TO CONSCIOUS AVOIDANCE, WHAT THAT MEANT TO ME WAS, I WISH I HAD PROBED FURTHER TO ASK HIM, WHY ARE YOU CHANGING YOUR OPINION ON THE STOCK. I DIDN'T PROBE HIM ENOUGH. AND HAD I PROBED HIM, PERHAPS HE COULD HAVE SAID, I HAVE AN INSIDE SOURCE AT THE COMPANY WHO'S TELLING ME THERE'S GOING TO BE AN ACCOUNTING FRAUD. AND THAT WOULD HAVE HELPED ME AVOID THIS TRADE.

BY CONSCIOUSLY AVOIDING THE FACT THAT HE CHANGED HIS OPINION AND NOT PROBING HIM FURTHER, THAT ULTIMATELY LED TO

WHAT I PLED TO IN THE PARALLEL CRIMINAL PROCEEDING.
Q. ARE YOU SAYING NOW THAT YOU DO NOT BELIEVE YOU VIOLATED THE LAW IN OCTOBER OF 2010?
A. I AM NOT SAYING I DID NOT VIOLATE THE LAW. WHAT I AM SAYING IS, I JUST WANT TO BE CLEAR ABOUT WHAT I PLED TO BECAUSE WHEN YOU SAID IN THE OCTOBER '09 INSTANCE, WHEN HE GAVE ME INSIDE INFORMATION, I JUST WANT TO MAKE SURE THAT'S CHARACTERIZED PROPERLY.
Q. WHAT I WANT TO --
MR. MONNIN: YOUR HONOR, CAN I JUST -- I GUESS WHAT I'D LIKE TO SAY IS THAT I UNDERSTAND THAT THE SEC HAS AN INTEREST IN GETTING INTO THE UNDERLYING TRADING ACTIVITY FOR PURPOSES OF ADDRESSING ISSUES POTENTIALLY IN AGGRAVATION, FOR PURPOSES OF THE COURT'S CIVIL PENALTY ANALYSIS. MR. MEGALLI KNEW THIS GOING INTO THIS PROCEEDING THAT THESE ISSUES WOULD BE POTENTIALLY PUT TO HIM. THERE IS A PARALLEL 2255 PETITION THAT IS PENDING.
THE COURT: ALL RIGHT.
MR. MONNIN: THAT PETITION, WE HAVE STATED, AND MR. CHAIKEN, THE ASSISTANT UNITED STATES ATTORNEY WHO PROSECUTED MR. MEGALLI, IS HERE IN COURT. WE HAVE STATED IN THAT 2255 PETITION THAT -- LET ME STEP UP TO THE MICROPHONE.
THE COURT: THANK YOU.
MR. MONNIN: THAT WE ARE NOT AT ALL INTENDING TO REVISIT THE ISSUE OF MR. MEGALLI'S LIABILITY AS A MATTER OF

EXISTING 11TH CIRCUIT LAW OR AS A MATTER OF EXISTING LAW AT THE TIME OF HIS GUILTY PLEA. I DO, HOWEVER, BELIEVE THAT HE SHOULD NOT BE ASKED QUESTIONS THAT GET INTO HIS FAMILIARITY WITH THE RELATIONSHIP BETWEEN MR. POSEY, THE INSIDER, AND MR. MARTIN, THE INTERMEDIATE TIPPEE, WHO THEN BECAME MR. MEGALLI'S TIPPER. AND I DON'T BELIEVE THAT THE SEC IS INTENDING TO GET INTO THOSE INCREMENTAL ISSUES OF MR. MEGALLI'S KNOWLEDGE OF A POTENTIAL BENEFIT BETWEEN THOSE TWO INDIVIDUALS. AND IF --

MR. HUDDLESTON: THAT IS CORRECT.

MR. MONNIN: IF THAT'S TRUE, I DON'T NEED TO OBJECT ON FIFTH AMENDMENT GROUNDS OR INSTRUCT MY CLIENT NOT TO ANSWER.

I DO, HOWEVER, BELIEVE THAT MR. MEGALLI'S GUILTY PLEA PROCEEDING, THE POSITION THAT HE'S TAKEN IN HIS ANSWER, ALL THE OTHER BASES THAT THE COURT HAD TO FIND HIM LIABLE WHERE HE HAS ADMITTED TO THIS MISCONDUCT, ARE ALREADY A PART OF THE RECORD. AND I GUESS I'M NOT REALLY SURE WHY WE NEED TO GO MUCH FURTHER THAN THAT IN CONNECTION WITH THIS HEARING.

MR. HUDDLESTON: IF I MAY?

THE COURT: YES.

MR. HUDDLESTON: WE DON'T NEED TO GO MUCH FURTHER. WE ARE ADDRESSING THE SECOND FACTOR, WHICH IS WHETHER THE CONDUCT WAS ISOLATED OR REPEATED. HAD MR. MEGALLI NOT GIVEN SUCH A LONG ANSWER ABOUT THE OCTOBER TRADES, WE'D BE BEYOND IT NOW.

Q. (BY MR. HUDDLESTON) WHAT I AM TRYING TO ESTABLISH IS,

THIS IS NOT SOMETHING YOU DID ONCE, SIR. YOU DID IT TWICE. RIGHT?

A. I THINK THAT'S FAIR.

THE COURT: ALL RIGHT.

Q. (BY MR. HUDDLESTON) I BELIEVE AT YOUR SENTENCING HEARING YOU SAID THAT YOU KNEW IT WAS WRONG, YOU SHOULDN'T HAVE DONE IT. IS THAT TRUE THEN? IS THAT TRUE AT THE TIME?

A. YEAH. I SAID THAT, AND THAT IS TRUE.

Q. I WANT TO GET INTO WHETHER YOU THOUGHT ABOUT THE PEOPLE ON THE OTHER SIDE OF THE TRADE, EITHER IN OCTOBER 2009 OR JULY OF 2010.

A. I DIDN'T -- I DON'T THINK OF THEM NECESSARILY AS PEOPLE ON ANOTHER SIDE OF THE TRADE. YOU THINK OF IT AS A MARKETPLACE. SO I'M NOT QUITE SURE HOW TO ANSWER THAT QUESTION. IF YOU WERE SELLING A CAR TO YOUR COUSIN FRED, YOU MAYBE THINK ABOUT THAT PERSON AS A VICTIM OF A FRAUDULENT CAR SALE. I'M NOT SURE HOW YOU WOULD THINK ABOUT A MARKETPLACE THAT'S HUNDREDS OF THOUSANDS OF TRADERS.

Q. WELL, THAT'S WHAT I'M GETTING TO. WHAT I AM TRYING TO UNDERSTAND IS, IN YOUR MIND, WAS YOUR CONDUCT VICTIMLESS? DID YOU BELIEVE THAT AT THE TIME?

A. I MEAN, I GUESS. I THINK THAT WOULD PROBABLY BE A FAIR CHARACTERIZATION.

Q. DO YOU THINK OTHERWISE NOW?

A. WELL, I'VE LEARNED MORE ABOUT IT NOW. YOU KNOW, I CAN

DEFINITELY UNDERSTAND YOUR POSITION, WHICH IS THE OTHER SIDE, WHICH IS THAT THERE ARE PEOPLE WHO, WHEN YOU SELL STOCK AND THEY ARE BUYING THAT STOCK, THAT EVEN IF THEY END UP NOT BEING DIRECTLY HURT BECAUSE THEY SELL IT LATER TO SOMEONE ELSE, YOU'RE SETTING OFF SORT OF A CHAIN OF EVENTS THAT COULD RESULT IN SOMETHING BAD HAPPENING TO THAT COUNTERPARTY.

MR. HUDDLESTON: YOUR HONOR, THAT'S A MATTER --

Q. (BY MR. HUDDLESTON) AM I HEARING YOU SAY THAT YOU'RE GIVING JUDGE TOTENBERG ASSURANCES THAT YOU WON'T RE-OFFEND IN THIS MANNER?

A. THERE IS ZERO CHANCE OF ME RE-OFFENDING. IF YOU KNEW WHAT MY WIFE -- WHO'S BACK THERE -- AND I'VE BEEN THROUGH THE LAST THREE YEARS, YOU WOULD KNOW THAT IT'S BEEN SO DEVASTATING TO OUR FAMILY THAT THE IDEA THAT SOMETHING LIKE THIS WOULD EVEN HAVE A TENTH OF A PERCENT CHANCE OF HAPPENING AGAIN IS JUST IMPOSSIBLE.

Q. WHAT I WANT TO GET TO, THEN, IS YOU MADE CERTAIN ASSURANCES TO THE SENTENCING COURT ON THE DAY YOU WERE SENTENCED. RIGHT?

A. CORRECT.

Q. YOU REPRESENTED THAT YOU WOULD BE SETTLING WITH THE SEC. RIGHT? YOU HEARD YOUR ATTORNEY SAY THAT AT THE TIME?

A. I HEARD PAUL SAY THAT.

Q. WAS HE AUTHORIZED TO SPEAK FOR YOU AT THE TIME?

MR. MONNIN: YOUR HONOR, LET ME OBJECT TO THIS LINE

OF QUESTIONING. FIRST OF ALL, I SHOULDN'T BE MADE A WITNESS IN CONNECTION WITH THE PROCEEDING. WHAT WAS SAID PRIOR TO A FUNDAMENTAL CHANGE IN THE LAW WITH REGARD TO OUR SETTLEMENT POSTURE IS LEGAL ADVOCACY. IT'S NOT ANYTHING THAT SHOULD NEGATIVELY IMPACT MY CLIENT.

IT IS ABSOLUTELY TRUE THAT, AT THE TIME OF MY CLIENT'S SENTENCING, THE CASE LAW UNDER WHICH WE ARE RELYING FOR PURPOSES OF THE 2255 PETITION, AS WELL AS OUR SUMMARY JUDGMENT ARGUMENT WITH RESPECT TO THIS COURT, DID NOT EXIST. AND BY VIRTUE OF IT NOT EXISTING, THERE WERE CERTAIN REPRESENTATIONS MADE ABOUT THE FACT THAT MY CLIENT WOULD LIKELY BE SETTLING WITH THE SEC, WHICH IS CONSISTENT WITH HIS ANSWER, WHICH IS CONSISTENT WITH THE WAY THE PLEADINGS WERE FORMED IN THIS CASE, AS WELL AS HIS -- THE POSITION THAT I ADVOCATED ON HIS BEHALF IN CONNECTION WITH THE SENTENCING PROCEEDING.

JUDGE, THE LAW CHANGED, AND WE DIDN'T SETTLE AS A RESULT. AND NOW WE'RE HERE FOR PURPOSES OF ESTABLISHING WHAT DISGORGEMENT IN A CIVIL PENALTY MAY BE IN RELATION TO MY CLIENT'S MISCONDUCT, WHICH WAS NEVER A PART OF ANY SETTLEMENT DISCUSSION. AND I KNOW I'M NOT SWORN HERE, AND I'M NOT INTENDING TO MAKE MYSELF A WITNESS. BUT SETTLING MY CLIENT'S LIABILITY VERSUS SETTLING DISGORGEMENT IN A CIVIL PENALTY ARE TWO SEPARATE THINGS.

AND IF SETTLEMENT OF LIABILITY WAS DISCUSSED WITH JUDGE STORY, THAT'S ABSOLUTELY TRUE. THE LAW CHANGED. WE

BELIEVE THAT MY CLIENT IS NOT LIABLE FOR THAT, AND IT WAS NEVER A PART OF THE DISCUSSION WITH THE SEC THAT WE WOULD BE SETTLING ECONOMICALLY WITH THE SEC. WE WERE ALWAYS GOING TO LITIGATE THOSE ISSUES.

THE COURT: ALL RIGHT. WELL, MR. HUDDLESTON, LET ME JUST GIVE YOU NARROW RANGE HERE. YOU CAN ASK TWO OR THREE QUESTIONS, BUT LET'S NOT GET STUCK HERE.

MR. HUDDLESTON: UNDERSTOOD, YOUR HONOR. AND ASSISTANT U.S. ATTORNEY CHAIKEN IS HERE. AND IF THE JUDGE IS INTERESTED, HE CAN TELL YOU WHAT THE STATUS OF THE DISCUSSIONS WAS, WHICH WAS NOT UNKNOWN AT THE TIME.

THE COURT: I'VE READ THE TRANSCRIPT. I REMEMBER READING THE TRANSCRIPT. AND I UNDERSTAND YOU SPOKE FOR THE FACT I BELIEVE THAT IT HAD BEEN DISCUSSED AS WELL BUT HADN'T BEEN DECIDED AT THAT POINT BY THE SECOND CIRCUIT. IT WAS DECIDED A FEW DAYS LATER.

Q. (BY MR. HUDDLESTON) YOU WORKED ON WALL STREET FOR HOW MANY YEARS, SIR?

A. APPROXIMATELY TEN YEARS.

Q. YOU MET OTHER HEDGE FUND MANAGERS DURING THAT TIME?

A. I'M SORRY?

Q. YOU MET OTHER HEDGE FUND MANAGERS DURING THAT TIME?

A. OF COURSE, YEAH.

Q. OTHER ANALYSTS?

A. YES.

Q. YOU KNOW A LOT OF PEOPLE WHO ARE STILL IN THE BUSINESS.
A. NOT MANY THAT STILL TALK TO ME, BUT, YES, I DO KNOW PEOPLE.
Q. YOU DIDN'T FAIL TO KNOW THOSE PEOPLE AFTER THE JUDGE ENTERED AN ORDER OF LIABILITY. RIGHT?
A. I STILL KNOW THOSE PEOPLE AND THEY STILL KNOW ME, UH-HUH.
Q. AND YOU ARE AWARE THAT THE COURT IS NOT ALLOWED TO PROHIBIT YOU FROM EVER TRADING ON THE STOCK MARKET AGAIN. RIGHT?
A. THAT'S MY UNDERSTANDING.
Q. WHETHER OR NOT YOU DECIDE TO ENGAGE IN INSIDER TRADING LIABILITY IN THE FUTURE IS PURELY A MATTER THAT YOU WILL DECIDE IN YOUR JUDGMENT. YES?
A. LIKE I SAID, THE ODDS OF IT HAPPENING ARE ZERO. BUT THEORETICALLY YOU ARE CORRECT. IT WOULD BE WITHIN MY POWER TO DECIDE THAT.
Q. AND IS IT TRUE THAT MORE THAN THE AVERAGE PERSON, YOU KNOW PEOPLE WHO MIGHT BE IN POSSESSION OF MATERIAL NONPUBLIC INFORMATION?
A. I DON'T BELIEVE THAT'S TRUE BECAUSE I HAVEN'T SPOKEN TO PEOPLE WHO WORK ON WALL STREET SINCE THIS WHOLE THING HAPPENED. MAYBE A COUPLE. BUT I'M JUST SAYING OF YOUR NETWORK OF MAYBE THE DOZENS OF PEOPLE YOU ARE ENVISIONING, THOSE ARE NOT RELATIONSHIPS THAT CONTINUE TO THIS DAY. PEOPLE DON'T TALK TO SOMEONE WHO HAS GONE THROUGH A CRIMINAL PROCEEDING AND A CIVIL

PROCEEDING LIKE THIS.

Q. I'M JUST TALKING ABOUT, YOU KNOW THOSE FOLKS.

A. IN THE SENSE, YEAH, SURE, I KNOW WHO THEY ARE, THEY KNOW ME, SURE. BUT THESE ARE NOT ONGOING RELATIONSHIPS, I GUESS I WOULD SAY.

MR. HUDDLESTON: THAT'S ALL THE EVIDENCE WE'LL ELICIT ON THE APPROPRIATENESS OF INJUNCTIVE RELIEF, YOUR HONOR. IS THERE ANYTHING ELSE?

IF YOU GIVE ME JUST ONE MOMENT, PLEASE.

THE COURT: ALL RIGHT.

MR. HUDDLESTON: YOUR HONOR, THAT'S ALL WE HAVE, EXCEPT TO REITERATE OUR WILLINGNESS TO FURTHER BRIEF THE ISSUE OF CIVIL PENALTIES AND RELEVANT EVIDENCE.

THE COURT: SO WHAT WOULD YOU LIKE FROM ME IN TERMS OF CIVIL PENALTIES. I WOULD LIKE SOME CLARITY ABOUT THAT.

MR. HUDDLESTON: SPECIFICALLY I WANT TO ESTABLISH FOR YOU THAT THE MATERIALITY SLIDES THAT THE DEFENDANT PUT UP HAVE ABSOLUTELY NOTHING TO DO, THAT YOU DON'T CONSIDER THAT FOR PURPOSES OF THE CIVIL PENALTY. AND I THINK IT'S, IT'S A MISSTATEMENT OF THE LAW. AND I WANT TO MAKE SURE THAT THE JUDGE HAS THE CORRECT LAW IN FRONT OF HER WHEN SHE DECIDES.

THE COURT: AND IS THERE ANYTHING ELSE THAT YOU PARTICULARLY WANTED TO DISCUSS?

MR. HUDDLESTON: NOTHING OTHER THAN WHAT YOU'VE ALREADY ACKNOWLEDGED THAT YOU KNOW FULL WELL.

THE COURT: SO LET'S JUST -- LET ME ASK A FEW QUESTIONS TO YOU.

ARE WE THROUGH, OR DO YOU WANT TO ASK SOME OTHER QUESTIONS?

MR. MONNIN: JUST A COUPLE OF THINGS.

THE COURT: ALL RIGHT. WHY DON'T YOU SIT DOWN, AND HE'LL ASK YOU A FEW QUESTIONS. THANK YOU SO MUCH.

REDIRECT EXAMINATION

BY MR. MONNIN:

Q. MR. MEGALLI, WE HAVE UP ON THE SCREEN ESSENTIALLY THE TERMINATION FOR CAUSE PROVISIONS OF YOUR EMPLOYMENT AGREEMENT. YOU'VE SIGNED OTHER HEDGE-FUND-RELATED EMPLOYMENT AGREEMENTS, CORRECT?

A. I'VE SIGNED -- THE ONLY OTHER ONE I HAD SIGNED WAS A TERM SHEET AT BUCKINGHAM. IT WASN'T A FULL CONTRACT IN THE SENSE THAT IT HAD ALL THESE SORTS OF PROVISIONS. BUT, YES, I HAVE SIGNED THOSE TYPE.

Q. DID YOU HAVE AN UNDERSTANDING AT BUCKINGHAM THAT, IF YOU ENGAGED IN INSIDER TRADING OR OTHER ILLEGAL TRADING ACTIVITY, THAT YOU COULD BE TERMINATED?

A. YES.

Q. DID YOU UNDERSTAND THAT IN RELATION TO YOUR EMPLOYMENT AT LEVEL GLOBAL AS WELL?

A. YES.

Q. ARE THESE PROVISIONS THAT MR. HUDDLESTON TOOK YOU THROUGH,

ARE THOSE FAIRLY STANDARD IN THE INDUSTRY?
A. I WOULD CONSIDER THOSE TO BE STANDARD.
Q. NOW, TELL THE COURT, WHAT HAPPENED TO LEVEL GLOBAL IN 2011?
A. WELL, IN NOVEMBER OF 2010, THE FIRM WAS CHARGED -- IT WAS ACTUALLY RAIDED BY THE FBI. AND IT WAS CHARGED WITH VIOLATING INSIDER TRADING LAWS -- NOT THE FIRM, BUT ANTHONY CHIASSON, WHO I MENTIONED EARLIER, WHO WAS THE COFOUNDER AND THE DIRECTOR OF RESEARCH, WAS CHARGED WITH ILLEGAL TRADING IN SOME TECHNOLOGY-RELATED NAMES. AND AS A RESULT OF THAT, THE FIRM CLOSED DOWN AT THE BEGINNING OF 2011.
Q. WAS THERE A PARALLEL SEC INVESTIGATION AS WELL?
A. AGAINST ANTHONY CHIASSON?
Q. AGAINST LEVEL GLOBAL.
A. AGAINST LEVEL GLOBAL, YEAH, I BELIEVE THERE WAS, YEAH.
Q. DID YOU PARTICIPATE IN ANY WAY FACTUALLY IN THE SEC'S INVESTIGATION OF LEVEL GLOBAL?
A. NO, I DID NOT.
THE COURT: THERE WAS BOTH A CRIMINAL AND A CIVIL PROCEEDING?
THE WITNESS: I'M SORRY?
THE COURT: THERE WAS BOTH A CRIMINAL AND A CIVIL PROCEEDING?
THE WITNESS: THAT'S CORRECT.
THE COURT: AND THE CIVIL ONE WAS AGAINST THE FIRM OR

AGAINST MR. CHIASSON OR BOTH?

THE WITNESS: IT WAS AGAINST THE FIRM, WHICH SETTLED. AND IT WAS ALSO AGAINST MR. CHIASSON, WHICH IS STILL IN LITIGATION, I BELIEVE, BECAUSE OF THE OVERTURNING OF HIS CONVICTION IN NEWNAN.

Q. (BY MR. MONNIN) TO YOUR KNOWLEDGE, WAS LEVEL GLOBAL REPRESENTED IN THE SEC'S INVESTIGATION?

A. WAS LEVEL, WAS IT REPRESENTED --

Q. REPRESENTED BY COUNSEL?

A. BY COUNSEL, YES.

Q. HAS ANYONE, EITHER DIRECTLY FROM LEVEL GLOBAL OR AS AN AGENT OF LEVEL GLOBAL, EVER COME TO YOU SEEKING TO EXERCISE ANY TERMINATION RIGHTS?

A. NO.

Q. HAS ANYONE FROM LEVEL GLOBAL, EITHER DIRECTLY OR IN AN AGENCY CAPACITY, SOUGHT TO CALL BACK YOUR COMPENSATION?

A. NO.

Q. DO YOU HAVE ANY KNOWLEDGE AS YOU SIT HERE WHEN LEVEL GLOBAL SETTLED WITH THE SEC?

A. I BELIEVE -- I DON'T KNOW THE EXACT DATE. IT WOULD HAVE PROBABLY BEEN IN '11 OR '12, BUT I REALLY DON'T KNOW.

Q. DID ANYONE FROM -- LET ME STRIKE THAT AND ASK, WERE YOU EVER INVOLVED IN ANY WAY IN THE SEC'S INVESTIGATION OF LEVEL GLOBAL?

A. NO.

Q. WERE YOU EVER SUBPOENAED FOR TESTIMONY?
A. NO.
Q. WERE YOU EVER CONTACTED BY ANYONE AT A LAW FIRM?
A. NO.
Q. DO YOU KNOW THE ECONOMIC TERMS OF LEVEL GLOBAL'S SETTLEMENT WITH THE SEC?
A. IF I RECALL, I BELIEVE THEY PAID OUT ABOUT A $10 MILLION FINE PLUS ANOTHER TEN MILLION PENALTY. IT WAS ABOUT A $20 MILLION TOTAL SETTLEMENT. THAT'S MY UNDERSTANDING. BUT I'M NOT 100 PERCENT SURE.
Q. DO YOU KNOW IF YOUR TRADING ACTIVITY THAT THE COURT HAS FOUND YOU LIABLE FOR WAS INVOLVED AT ALL --
A. NO.
Q. -- IN THAT SETTLEMENT?
A. NO, IT WAS NOT.
Q. WHY DO YOU SAY THAT?
A. WELL, I DON'T KNOW. YOU ASKED ME DO I KNOW. I'M NOT -- I GUESS I'M NOT SURE. THE REASON I SAY I DON'T THINK IT WAS IS BECAUSE THAT SETTLEMENT SEEMED TO BE MORE FOCUSED ON THE CHIASSON AND TECHNOLOGY-TYPE TRADING.
Q. MR. MEGALLI, LET ME SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION AS EXHIBIT 9. DO YOU RECOGNIZE THAT?
A. I'D HAVE TO JUST LOOK AT IT. GIVE ME A MINUTE, PLEASE.
OKAY.
Q. SO MY QUESTION IS, DO YOU RECOGNIZE IT?

A. IT LOOKS LIKE THE SETTLEMENT AGREEMENT WITH LEVEL GLOBAL AND THE SEC.
Q. HAVE YOU REVIEWED THAT DOCUMENT BEFORE YOUR APPEARANCE HERE IN COURT TODAY?
A. I DON'T KNOW THAT I'VE REVIEWED THIS DOCUMENT, PER SE, BUT I KNOW THAT I SAW THE RESULTS OF THE SETTLEMENT IN THE PRESS AND SO FORTH.
Q. WHAT'S THE DATE OF THE SETTLEMENT IN THAT EXHIBIT?
A. THE 5/31/13 DATE OR --
Q. SO MAY 31ST OF 2013?
A. CORRECT.
Q. AND FOLLOWING MAY 31ST OF 2013, HAS ANYONE FROM THE SEC EVER SOUGHT TO RECOVER FROM YOU PERSONALLY OR DIRECTLY PURSUANT TO THAT SETTLEMENT AGREEMENT?
A. NOT PURSUANT TO THE DOLLARS IN THIS $21 MILLION REFERENCED IN THIS.
Q. SO, TO YOUR KNOWLEDGE, IS THE 20 MILLION, $21 MILLION THAT'S REFERENCED IN THE SETTLEMENT DOCUMENT, SPECIFICALLY ROMAN THREE AT PAGE THREE, DOES THAT INCLUDE ANY OF YOUR CARTER'S-RELATED TRADING?
A. WELL, AGAIN, I MEAN, MY, MY UNDERSTANDING IS THAT THIS SETTLEMENT HAD TO DO MORE WITH THE CHIASSON SORT OF TECHNOLOGY ARENA AND NOT CONSUMER OR CARTER'S. THAT'S MY UNDERSTANDING.
Q. OKAY. AND, REALLY, MY QUESTION IS -- AND I UNDERSTAND THAT THERE ARE OTHER INDIVIDUALS WHO ARE INVOLVED IN THE

SETTLEMENT WITH LEVEL GLOBAL, THERE WERE OTHER INDIVIDUALS WHO LITIGATED THAT. TO YOUR KNOWLEDGE, AS MARK MEGALLI, ARE YOU A PART OF THIS SETTLEMENT AGREEMENT AT ALL? IS YOUR CONDUCT FOR WHICH THE COURT HAS FOUND YOU LIABLE, IS IT A PART OF THE SETTLEMENT AGREEMENT?

A. I DON'T KNOW, BUT I DON'T THINK SO.

Q. WHEN DID THE INVESTIGATION IN RELATION TO YOU BEGIN SPECIFICALLY HERE IN ATLANTA?

A. THE INVESTIGATION WOULD HAVE BEGUN, I BELIEVE THE LAWSUIT WAS FILED THE SAME DAY AS MY PLEA HEARING, WHICH WOULD HAVE BEEN IN NOVEMBER OF 2013.

Q. ARE YOU AWARE, BASED ON YOUR REVIEW OF DOCUMENTATION THAT YOU RECEIVED IN DISCOVERY, CRIMINAL DISCOVERY, THAT THE INVESTIGATION BEGAN PRIOR TO YOUR CRIMINAL PLEA, IN THE FALL OF 2013?

A. YEAH. IT WOULD HAVE BEGUN PRIOR, SURE.

Q. DO YOU KNOW IF THE INVESTIGATION RELATED TO YOU BEGAN PRIOR TO MAY 2013?

A. WITH RESPECT TO THE SEC?

Q. YES.

A. I BELIEVE THAT IT DID, BECAUSE THE REASON I KNOW THAT ACTUALLY IS BECAUSE THE CRIMINAL INVESTIGATION, THE FIRST I HAD LEARNED OF IT WAS IN FEBRUARY OF 2012. AND I BELIEVE THAT I LEARNED OF THE SEC INVESTIGATION, YOU KNOW, SOMEWHAT SHORTLY AFTER THAT. IT WASN'T I DON'T THINK MORE THAN A YEAR AFTER

THAT.

MR. MONNIN: JUDGE, I DON'T HAVE A CERTIFIED COPY OF THE SETTLEMENT AGREEMENT. I CAN CERTAINLY OBTAIN ONE. I'D LIKE TO MOVE THE SETTLEMENT AGREEMENT INTO EVIDENCE. I UNDERSTAND --

THE COURT: FILED JUDGMENT, ARE YOU REFERRING TO THE SETTLEMENT?

MR. MONNIN: I'M SORRY, THE FINAL JUDGMENT.

THE COURT: THAT'S FINE.

ARE THERE ANY OBJECTIONS?

MR. HUDDLESTON: NO OBJECTION.

Q. (BY MR. MONNIN) NOW, LET'S, LET'S MOVE OVER TO YOUR -- THE 2009 DISCRETIONARY BONUS PROVISION OF YOUR EMPLOYMENT AGREEMENT, PARAGRAPH 4(C). I KNOW WE'VE BEEN OVER IT, AND I DON'T WANT TO BELABOR IT. DID YOU MAKE A CONSCIOUS CHOICE NOT TO SEEK A DISCRETIONARY BONUS PURSUANT TO THAT PROVISION?

A. I GUESS I WOULD SAY WHAT I SAID EARLIER. IT WAS ASSUMED THAT WHEN YOU'RE THERE FOR A STUB YEAR THAT YOU'RE NOT GOING TO BE GETTING BONUSED OUT ON THAT YEAR, AND BECAUSE MY CONTRACT REALLY OFFERED THESE PARTICIPATION POINTS FOR THE YEAR 2010, IT WAS UNDERSTOOD THAT THAT'S WHEN MY INCENTIVE PARTICIPATION WOULD REALLY BE KICKING IN, I GUESS.

Q. DID ANYONE TELL YOU ON THE FRONT END THAT YOU WERE INELIGIBLE FOR A DISCRETIONARY BONUS IN 2010?

A. I WOULDN'T SAY SOMEBODY -- I DON'T THINK THAT THAT

CONVERSATION OCCURRED AT ALL, WHETHER YOU'RE ELIGIBLE OR INELIGIBLE. I JUST STARTED WORKING, AND THEN THE YEAR FINISHED, AND WE STARTED 2010, AND WE MOVED ON TO THE NEXT YEAR.

Q. LAST FEW QUESTIONS. MR. HUDDLESTON WALKED YOU THROUGH THE SERIOUSNESS OF THE OFFENSE CONDUCT HERE AND WHAT YOU PLED GUILTY TO. CAN YOU JUST SUMMARIZE FOR THE COURT, FIRST OF ALL, HOW MUCH TIME DID YOU SERVE IN PRISON?

A. I WAS SENTENCED TO ONE YEAR AND ONE DAY AND ENDED UP SERVING EIGHT MONTHS AND ONE WEEK IN A PRISON AND ABOUT AN ADDITIONAL COUPLE OF MONTHS IN A HALFWAY HOUSE WHERE YOU'RE BASICALLY STILL INCARCERATED, SO TOTAL ABOUT TEN AND A HALF MONTHS.

Q. WHERE WAS YOUR FAMILY -- WHERE WERE YOU LOCATED DURING THIS TIME AND WHERE WAS YOUR FAMILY LOCATED?

A. I WAS IN PENSACOLA, FLORIDA, FOR THE PRISON PART OF IT AND A NEW ORLEANS HALFWAY HOUSE FOR THE HALFWAY HOUSE PART OF IT THE LAST COUPLE OF MONTHS.

Q. THE -- HOW ABOUT THE FINANCIAL --

THE COURT: YOU LIVE IN NEW YORK?

THE WITNESS: WELL, WE'RE ACTUALLY --

THE COURT: LIVING HERE, BECAUSE I KNOW YOU CAUGHT A PLANE.

THE WITNESS: WE'RE TEMPORARILY LIVING IN NEW ORLEANS SO MY WIFE CAN GET -- SHE'S A STUDENT AT TULANE. SHE'S TRYING

TO GET A MASTER'S IN ARCHITECTURE SO SHE CAN BECOME AN ARCHITECT. SO WE'RE TEMPORARILY IN NEW ORLEANS WHILE SHE DOES HER DEGREE.

Q. (BY MR. MONNIN) HOW ABOUT THE FINANCIAL SIDE OF THE CASE, WHAT DID YOU PAY IN RESTITUTION?

A. FIFTY THOUSAND DOLLARS IN RESTITUTION.

Q. AND SUFFICE IT TO SAY YOU'VE BEEN DEFENDED BY COUNSEL THROUGHOUT AND YOU'VE PAID SUBSTANTIAL LEGAL FEES?

A. THE LEGAL BILLS HAVE BEEN EASILY IN EXCESS OF A MILLION AND A HALF AND PROBABLY IN EXCESS OF $2 MILLION AT THIS POINT. MY COMPENSATION FOR THE LAST TWO YEARS SINCE I HAVEN'T BEEN EMPLOYED HAS BEEN ZERO. AND MY WIFE'S NOT EARNING MONEY. SO FROM A FINANCIAL POINT OF VIEW, IT'S BEEN OBVIOUSLY DEVASTATING.

Q. HAVE YOU FUNDED YOUR REPRESENTATION YOURSELF?

A. I HAVE, YEAH. WE DIDN'T HAVE INSURANCE.

Q. THE -- I KNOW THERE WAS A BACK-AND-FORTH IN TERMS OF SOME OBJECTIONS BEING INTERPOSED, BUT WAS SETTLING FINANCIALLY WITH THE SEC EVER A PART OF YOUR DEFENSE STRATEGY?

A. I WOULD HAVE LOVED TO HAVE SETTLED WITH THE SEC IF THEY WOULD HAVE BEEN AMENABLE TO SETTLE FOR AN AMOUNT I COULD PAY. BUT IF SOMEONE IS SUING YOU FOR MILLIONS OF DOLLARS, AND I DON'T HAVE THAT, I DON'T KNOW HOW -- IF THAT'S THE ONLY ANSWER THEY WILL ACCEPT, I DON'T SEE HOW I CAN DO THAT. IT'S -- SETTLEMENT HAS TO BE SOMETHING MANAGEABLE THAT YOU ACTUALLY

HAVE THE FUNDS TO SETTLE. SO I WOULD HAVE LOVED TO. SURE, I WOULD HAVE LOVED TO HAVE SETTLED. AND I THINK, AS I AM SURE YOU REMEMBER, WE DID TRY.

MR. MONNIN: YOUR HONOR, I THINK THAT'S ALL I HAVE. I APPRECIATE IT.

THE COURT: ANYTHING FURTHER FROM THIS WITNESS?

MR. HUDDLESTON: YES.

RECROSS-EXAMINATION

BY MR. HUDDLESTON:

Q. SINCE IT'S BEEN BROUGHT UP THAT YOU BELIEVED YOU TRIED TO SETTLE AND IT BROKE DOWN OVER MONEY, SIR, I'LL ASK YOU THE DATES OF THOSE CONVERSATIONS.

A. I DON'T KNOW THE EXACT DATES. BUT I BELIEVE THAT TOWARDS THE BEGINNING OF THE PROCESS -- AND I WAS NOT IN THESE CALLS, BUT, PAUL, MAYBE YOU CAN ADDRESS THIS BETTER THAN ME -- ATTEMPTS WERE MADE TO SETTLE. I DON'T KNOW THE EXACT DATES.

Q. BEFORE YOUR CRIMINAL CASE WAS RESOLVED, YOU MEAN?

A. BY THE CRIMINAL CASE BEING RESOLVED, YOU MEAN BEFORE MY SENTENCING HEARING?

Q. YES.

A. BEFORE THE SENTENCING HEARING, RIGHT.

Q. DO YOU RECALL AT THE SENTENCING HEARING JUDGE STORY FINDING IT SIGNIFICANT THAT YOU HAD AN UPCOMING SETTLEMENT WITH THE SEC AND THAT YOU WOULD BE EXPECTED TO PAY RESTITUTION AND THAT, AS A RESULT, HE WAS NOT GOING TO ORDER YOU TO PAY A FINE

OR COST OF INCARCERATION.
A. I DO RECALL THAT. THE OTHER THING, THOUGH, THAT I ALSO RECALL IS THAT HE MADE A POINT TO SAY HE BELIEVES THAT A REMOTE TIPPEE IS IN A VERY DIFFERENT POSITION THAN A TIPPER WHO STEALS COMPANY SECRETS, SUCH AS ERIC MARTIN AND RICHARD POSEY. AND, THEREFORE, HE SENTENCED THEM FIRST; SENTENCED ERIC MARTIN TO 24 MONTHS, SENTENCED RICHARD POSEY TO 15 MONTHS, AND THEN ULTIMATELY SENTENCED ME TO A YEAR AND A DAY. AND ALL OF THAT SENTENCING HAD HAPPENED BEFORE THOSE REPRESENTATIONS WERE MADE.
SO I AGREE THAT HE DID ELICIT THAT AS A FACTOR, BUT I JUST WANT TO BE CLEAR THAT WAS CERTAINLY NOT THE ONLY FACTOR THAT HE WAS RELYING ON.
THE COURT: THANK YOU.
Q. (BY MR. HUDDLESTON) SO I AM HANDING WHAT WE WILL MARK AS PLAINTIFF'S EXHIBIT 1. AND WE HAVE MARKED PAGE ON WHICH JUDGE STORY MAKES HIS COMMENTS. AND I'LL SHOW IT TO YOU SO -- HAND YOU EXHIBIT 1 NOW, IF YOU CAN SEE, STARTS, IN LIGHT.
A. YEAH. I REMEMBER THIS, UH-HUH.
Q. COULD YOU READ THAT INTO THE RECORD, PLEASE?
A. IN LIGHT OF THE RESTITUTION AND THE OTHER MATTERS THAT I FULLY EXPECT YOU ARE GOING TO HAVE TO DO WITH THE SEC, I WILL NOT IMPOSE A FINE OR COST OF INCARCERATION.
MR. HUDDLESTON: THAT'S ALL. WE'LL MOVE TO ADMIT NUMBER 1.
THE COURT: THAT'S FINE. I THINK IT'S REALLY PART OF

THE RECORD. IT'S PART OF THE RECORD ANYWAY IN THIS MATTER. BUT I'M HAPPY TO HAVE IT AS PART OF THE RECORD OF THIS HEARING.

ARE THERE ANY OBJECTIONS?

MR. MONNIN: NO, YOUR HONOR.

THE COURT: ALL RIGHT. IT'S ADMITTED.

MR. HUDDLESTON: THANK YOU, YOUR HONOR.

I BELIEVE YOU HAD SOME QUESTIONS FOR ME?

THE COURT: I DO. ALL RIGHT. I HAVE SOME QUESTIONS FOR THE DEFENDANT FIRST.

NOW, YOU SAID BASICALLY YOU PAID THE LEGAL FEES, PAID THE -- I DON'T KNOW. HAVE YOU PAID THE $50,000.00 RESTITUTION?

THE WITNESS: YES. YES, MA'AM.

THE COURT: ALL RIGHT. AND YOUR WIFE'S IN SCHOOL. WHAT HAVE Y'ALL BEEN LIVING ON, AND WHAT ARE THE FINANCIALS? OBVIOUSLY VERY DIFFERENT THAN WHAT THEY ONCE WERE.

THE WITNESS: YEAH. WE'VE BEEN LIVING ON OUR SAVINGS. AND SO, BASICALLY, I HAVE REALLY THREE THINGS OF ANY VALUE, I GUESS. ONE IS OUR LIQUID ASSETS, WHICH WOULD BE THINGS IN OUR CHECKING AND SAVINGS ACCOUNTS. AND MY UNDERSTANDING IS THAT IT'S APPROXIMATELY $800,000.00 BEFORE SOME UPCOMING LEGAL BILLS THAT I'M SURE WE'LL BE GETTING ANY DAY NOW. BUT AS OF TODAY, I BELIEVE THAT'S ABOUT $800,000.00.

AND THEN THE SECOND COMPONENT OF THAT I WOULD SAY IS IRA AND 401(K) KIND OF SAVINGS, RETIREMENT ACCOUNTS. AND THE TOTAL IN PRETAX DOLLARS IN THE TWO -- I BELIEVE I HAVE ACTUALLY

THREE ACCOUNTS -- IS APPROXIMATELY $400,000.00. BUT AS I'M SURE YOU KNOW, WHEN YOU LIQUIDATE AND PAY PENALTIES, IT'S PROBABLY HALF OF THAT IN TERMS OF AN AFTER-TAX LIQUIDATION VALUE.

AND THEN THE FINAL ASSET THAT WE HAVE IS OUR PRIMARY RESIDENCE, WHICH IS AN APARTMENT IN NEW YORK THAT I BOUGHT IN 2005 WITH MY WIFE, WHICH WE ARE HOPING NOT TO HAVE TO SELL.

THE COURT: ALL RIGHT. SO OF THE LIQUID ASSETS, THE $800,000.00, DO YOU HAVE ANY BALL PARK FIGURE OF WHAT PORTION OF THOSE LIQUID ASSETS THAT YOU POSSESSED AT THE POINT THAT YOU WENT TO WORK FOR LEVEL GLOBAL?

THE WITNESS: THAT'S -- LET ME THINK FOR A SECOND ABOUT THAT. SO I STARTED WORKING FOR THEM IN AUGUST OF 2009. AND I BELIEVE IT WAS SOMETHING IN THE MID-HUNDRED-THOUSAND-DOLLAR RANGE, IF I HAD TO GUESS. IT CERTAINLY WASN'T MILLIONS OF DOLLARS AT THE TIME, YOU KNOW, THAT I HAD STARTED --

THE COURT: WHEN YOU SAY MID-HUNDRED THOUSAND, DO YOU MEAN 150 OR YOU MEAN 500?

THE WITNESS: IN THE FIVE HUNDRED SORT OF THOUSAND-ISH RANGE. IF I RECALL CORRECTLY, I THINK THAT'S ABOUT WHERE WE WERE FINANCIALLY AT THAT TIME.

AND JUST TO BE CLEAR, SO THAT THOSE NUMBERS ADD UP, AFTER I LEFT LEVEL GLOBAL WHEN THE FIRM CLOSED DOWN AND I WENT BACK -- ACTUALLY I WENT BACK TO BUCKINGHAM, WHICH WAS MY

ORIGINAL EMPLOYER. AND IN 2011 AND 2012, I MADE ENOUGH MONEY AT BUCKINGHAM SO THAT I WAS ABLE TO OFFSET THE LEGAL BILLS THAT I CITED EARLIER. AND THAT'S WHY THAT NUMBER DIDN'T CHANGE THAT MUCH FROM THAT 800,000. IT SORT OF WENT UP AND THEN IT WENT STRAIGHT DOWN.

THE COURT: ALL RIGHT. SO WHAT WERE YOUR EARNINGS IN 2011 AND 2012?

THE WITNESS: IN 2011, I EARNED A TOTAL COMPENSATION OF 2.8 MILLION. AND IN 2012, I EARNED TOTAL COMPENSATION OF 2.0 MILLION. THAT'S BONUS PLUS SALARY. BUT ON AN AFTER-TAX BASIS, OF COURSE, AT THAT TAX BRACKET, YOU KEEP ABOUT HALF, ROUGHLY, OF THOSE PROCEEDS. SO THOSE PROCEEDS WERE USED TO PAY LEGAL EXPENSES AS WELL AS LIVING EXPENSES OVER THE LAST, YOU KNOW, TWO YEARS WHEN I HAVEN'T BEEN WORKING, ABLE TO WORK.

THE COURT: DO YOU HAVE ANY IDEA HOW MUCH YOUR ADDITIONAL FEES ARE?

MR. MONNIN: WELL, I DON'T, YOUR HONOR. I MEAN, CERTAINLY THIS PERIOD RELATED TO THIS HEARING HAS INVOLVED SOME LEGAL EXPENSES.

THE COURT: OKAY.

MR. MONNIN: AND I BELIEVE WE'LL CONTINUE TO BE BRIEFING THINGS.

THE COURT: ALL RIGHT. WELL, OBVIOUSLY, YOU AND YOUR WIFE ARE FUNDING HER EDUCATION. DO YOU HAVE ANY OTHER FAMILY OBLIGATIONS?

THE WITNESS: TUITION FOR OUR DAUGHTERS. WE HAVE TWO DAUGHTERS WHO WE PAY TUITION FOR.

THE COURT: FOR? ARE THEY IN PRIVATE SCHOOL?

THE WITNESS: THEY ARE IN PRIVATE SCHOOL IN NEW ORLEANS, CORRECT. YOU KNOW, OUR MAIN EXPENSES AT THIS POINT ARE THE COST OF KEEPING AN EMPTY APARTMENT IN NEW YORK THAT WE'RE HOPING TO GO BACK TO, THE COST OF RENTING OUR TEMPORARY SPACE IN NEW ORLEANS WHILE MY WIFE FINISHES OUT HER DEGREE.

THE COURT: THEN YOU'LL GO BACK TO NEW YORK.

THE WITNESS: THAT WILL BE IN ABOUT 18 MONTHS.

THE COURT: YOU HAVE NOT RENTED YOUR APARTMENT?

THE WITNESS: WE RENTED IT FOR A PERIOD OF TIME WHILE I WAS INCARCERATED. THE APARTMENT IS GETTING VERY WORN DOWN, AND WE WERE HAVING PROBLEMS WITH THE RENTERS, BECAUSE THEY SAID THE AIR CONDITIONING IS NOT WORKING, THINGS ARE BREAKING DOWN, AND SO THEY STOPPED THE LEASE. AND, YOU KNOW, IT'S A DIFFICULT APARTMENT TO RENT BECAUSE IT NEEDS SOME UPKEEP AT THIS POINT.

THE COURT: I DON'T WANT TO PUT YOUR ADDRESS ON THE RECORD.

THE WITNESS: NO, IT'S IN NEW YORK CITY.

THE COURT: IT'S IN NEW YORK CITY, THOUGH. ON THE UPPER WEST SIDE, THE UPPER EAST SIDE, THE LOWER WEST SIDE, SOHO?

THE WITNESS: IT'S NEAR GRAMERCY PARK.

THE COURT: OKAY. AND WHAT ARE YOUR FUTURE PLANS?

THE WITNESS: WELL, THAT'S WHAT I'M TRYING TO FIGURE OUT NOW. SO, FOR NOW, WHAT I'M DOING IS, I'M WORKING WITH MY BROTHER. MY BROTHER WAS AN EXECUTIVE AT MICROSOFT FOR SIX YEARS. HE HAD A BUSINESS IDEA THAT LED HIM TO LEAVE MICROSOFT EARLIER THIS YEAR.

AND WITHOUT GOING INTO THE SPECIFICS, IT HAS TO DO WITH AN ONLINE ENTREPRENEURIAL COMMUNITY KIND OF AN IDEA WHERE YOU'RE HELPING SMALL BUSINESS OWNERS WITH THEIR BUSINESSES. SO I'M WORKING WITH HIM. PRIMARILY I'M WORKING WITH HIM ON THIS STARTUP. WE DON'T HAVE REVENUES. WE HAVEN'T RAISED ANY CAPITAL. I THINK IT'S A GOOD IDEA, BUT IT'S SORT OF IN THE VERY EARLY STAGES AND WILL TAKE SOME TIME TO GET TO FRUITION, IF IT EVER DOES.

I'VE TRIED TO VOLUNTEER AT A NUMBER OF DIFFERENT COMMUNITY SERVICE ORGANIZATIONS TO FULFILL MY HUNDRED HOURS OF COMMUNITY SERVICE THAT JUDGE STORY REQUIRED. AND WHAT I FOUND IS THAT, EVEN ON A VOLUNTEER BASIS, IT'S VIRTUALLY IMPOSSIBLE TO GET WORK BECAUSE PEOPLE DON'T WANT TO BE ASSOCIATED WITH A CONVICTED FELON. AND THAT'S BEEN VERY PAINFUL. I'VE TRIED TO BE A GUARDIAN AD LITEM FOR A CHILDREN'S ORGANIZATION. I'VE TRIED TO WORK FOR THE INNOCENCE PROJECT AND A NUMBER OF OTHER THINGS. AND IT'S BEEN INTERESTING AND FRUSTRATING TO ME TO BE WILLING TO WORK FOR FREE AND HAVE PEOPLE SAY, WE CAN'T WORK WITH YOU, WE DON'T NEED THE ASSOCIATION. SO --

THE COURT: HOW LONG WAS YOUR SUPERVISED RELEASE

TERM?

THE WITNESS: THREE YEARS.

THE COURT: AND THE INNOCENCE PROJECT WOULDN'T LET YOU VOLUNTEER WITH THEM?

THE WITNESS: NO, IRONIC. BUT I HAVE FULFILLED THE 100 HOURS.

THE COURT: YOU HAVE DONE THAT?

THE WITNESS: I HAVE DONE THE 100 HOURS.

THE COURT: WHAT DID YOU END UP DOING?

THE WITNESS: I WORKED WITH A GROUP THAT ADVOCATES AGAINST SOLITARY CONFINEMENT CALLED SOLITARY WATCH. I USED TO WORK FOR RALPH NADER, AND HE PUT ME IN TOUCH WITH THEM. AND I'VE DONE A LOT OF LEGAL RESEARCH AND PUBLISHING FOR THEM.

I ALSO WORKED FOR A MELANOMA EDUCATION FOUNDATION. SO I'VE DONE ABOUT 80 HOURS WITH THAT GROUP. AND I AM ALSO GIVING A GUEST LECTURE AT YALE LAW SCHOOL NEXT MONTH. THAT'S ONLY GOING TO BE A FEW HOURS.

THE COURT: IS YOUR BROTHER-IN-LAW IN NEW ORLEANS?

THE WITNESS: MY BROTHER.

THE COURT: YOUR BROTHER, ACTUALLY.

THE WITNESS: YEAH. NO, HE LIVES IN SEATTLE.

THE COURT: AND HOW OLD ARE YOUR DAUGHTERS?

THE WITNESS: ELEVEN AND FIVE.

THE COURT: AND YOU WERE RELEASED WHEN?

THE WITNESS: I WAS RELEASED FROM PENSACOLA ON MAY

15TH OF THIS YEAR. AND I WAS RELEASED FROM THE HALFWAY HOUSE/ HOME CONFINEMENT JULY 22ND OF THIS YEAR.

THE COURT: WHEN DID YOUR FAMILY MOVE TO NEW ORLEANS?

THE WITNESS: NOT THIS PAST SUMMER BUT THE SUMMER OF 2014, JUST BEFORE I WENT TO PENSACOLA. MY SENTENCE STARTED THERE SEPTEMBER 8TH OF 2014.

THE COURT: ANY QUESTIONS?

MR. MONNIN: NO, YOUR HONOR.

MR. HUDDLESTON: NO, YOUR HONOR.

THE COURT: THANK YOU.

THE WITNESS: THANK YOU.

MR. HUDDLESTON: YOU CAN COME DOWN.

THE COURT: YOU CAN STEP DOWN.

ALL RIGHT. SO I UNDERSTAND YOUR POSITION ABOUT MATERIALITY. AND YOU PROBABLY JUST GIVE ME A FEW CASES ON THAT AS MUCH AS ANYTHING ELSE, JUST YOUR VIEWPOINT. I DON'T KNOW THAT WE NEED TO HAVE EVERYONE DO A LOT MORE BRIEFING IF THAT'S THE FOCUS.

I GUESS MY QUESTION REALLY IS, AS TO THE OTHER ITEMS, IS YOUR GENERAL THEORY THAT BASED ON THE TERMINATION PROVISION, OR IS IT SIMPLY BASED ON THE TOTALITY OF GLOBAL'S PROFITS? I JUST WOULD LIKE YOU TO RE-ARTICULATE TO ME YOUR THEORY --

MR. HUDDLESTON: SURE.

THE COURT: -- FOR HOW I SHOULD -- THE BASIS HERE OF DISGORGEMENT AND THE CIVIL PENALTY, JUST SO I CAN HEAR IT AGAIN

BASED ON THE EVIDENCE.

MR. HUDDLESTON: SURE, YOUR HONOR.

THE COURT: GIVE THE OPPORTUNITY TO MR. MONNIN TO RESPOND IF YOU NEED FURTHER REPLY. I JUST THINK IT WOULD PROBABLY BE MORE USEFUL SINCE I'VE GOT YOU HERE AND I CAN DO SOME LIVE EDUCATION RATHER THAN READING EDUCATION.

MR. HUDDLESTON: THERE YOU GO. WELL, I'LL DO MY BEST.

WE'LL START WITH THE, THE POINT THAT WE BELIEVE THAT THE CONTORINIS DECISION FROM THE SECOND CIRCUIT IS GOOD LAW AND THAT THE CASE OUT OF THE FIFTH CIRCUIT, THE OLD FIFTH CIRCUIT, BLATT, THAT YOUR HONOR CITED, NEED NOT BE READ TO CONTRADICT CONTORINIS. BLATT WAS NOT AN INSIDER TRADING CASE. THERE WERE SPECIAL CONSIDERATIONS REGARDING DISGORGEMENT IN INSIDER TRADING CASES. AND BLATT STANDS FOR THE PROPOSITION THAT YOU CAN'T MAKE SOMEBODY DISGORGE ASSETS THAT HAVE NOTHING TO DO WITH THE FRAUD.

THAT'S NOT THE SITUATION WE FIND OURSELVES IN HERE. AND SO WE WOULD URGE THE COURT TO LOOK AT CONTORINIS, WHICH PROVIDES FOR HEDGE FUND MANAGERS, SPECIFICALLY A HEDGE FUND MANAGER BEING ORDERED TO DISGORGE THE TRADES THAT HE ORDERED.

I WOULD ALSO MAKE THE POINT, IT'S WELL SETTLED LAW, ALTHOUGH I DON'T BELIEVE THE 11TH CIRCUIT HAS RULED SPECIFICALLY, THAT A TIPPER CAN BE RESPONSIBLE FOR THE TIPPEE'S PROFITS. OTHERWISE, IT'S JUST WAY TOO EASY TO AVOID LIABILITY

AND THE FINANCIAL CONSEQUENCES THAT GO WITH VIOLATING THE INSIDER TRADING LAW.

IN THIS CASE, WHEN WE GET DOWN TO IT, MR. MEGALLI WAS THE TIPPER. LEVEL GLOBAL WAS THE TIPPEE. AND IT'S PERFECTLY IN CONFORMITY WITH ALL THE AUTHORITIES THAT HE SHOULD BE RESPONSIBLE FOR HIS TIPPEE'S PROFITS, THAT THERE BE JOINT AND SEVERAL RESPONSIBILITY FOR THOSE.

NOW, THERE WAS A LOT OF TALK ABOUT THE LEVEL GLOBAL SETTLEMENT WITH THE SEC. YOUR HONOR, I CAN REPRESENT TO YOU THAT THAT CASE DID NOT INVOLVE TRADES IN CARTER'S SECURITIES. IT DID NOT INVOLVE MR. MEGALLI'S MISCONDUCT. THEY ARE TWO SEPARATE THINGS.

THE COURT: WHAT WAS THE SCOPE OF THE MONIES CLAIMED BY THE SEC THERE, I GUESS, JUST IN TERMS OF SHEER EQUITY AND PARITY AND THINKING ABOUT PROPORTIONALITY ISSUES. IT -- SHOULDN'T I BE CONCERNED AT ALL ABOUT WHAT THE SUM OF THE PROFITS WERE THAT GLOBAL MIGHT HAVE OBTAINED IN THIS OTHER CASE WITHOUT, I MEAN, I CAN OBVIOUSLY GO BACK TO THE RECORD.

MR. HUDDLESTON: AS A PRECEDENT FOR HOW MUCH TO --

THE COURT: WELL, POTENTIALLY, YES.

MR. HUDDLESTON: WELL, I'M NOT SURE THAT THE DOCUMENT WE HAVE IN FRONT OF YOU LAYS OUT THE FACTORS AND ANALYZES THE FACTORS THAT ARE RELEVANT. SO I'M NOT SURE I CAN COMMENT, JUDGE. I DIDN'T WORK ON THE LEVEL GLOBAL CASE, SO I DON'T KNOW.

THE OTHER POINT I WOULD MAKE IS THAT I THINK YOU WILL REMEMBER THAT MR. MEGALLI ADMITTED THAT IT WAS FAIR TO SAY HE CONTROLLED THE TRADING OF THE CONSUMER DISCRETIONARY SPACE, THAT IT WAS HIS TO RUN, THAT BEFORE HE GOT THERE, THE FIRM WAS LARGELY A TECHNICAL ORGANIZATION AND THAT HE'S THE PERSON THAT THEY GAVE THAT KIND OF TRADING TO. THERE ARE PROVISIONS IN THE SECURITIES LAW FOR CONTROL OF PERSONAL LIABILITY. THAT'S WHY I BROUGHT OUT THE FACT THAT HE WAS PAID, AT LEAST IN 2010, AS IF HE OWNED THREE PERCENT OF THE COMPANY. I UNDERSTAND THAT HE WASN'T ON THE ARTICLES OF INCORPORATION, NOT LISTED AS AN OWNER. BUT THE TRUTH IS, HE WAS PAID AS AN OWNER AND NOT JUST ON HIS OWN PROFITS. YOU WILL REMEMBER HE WAS PAID ON THE LEVEL RADAR PROFITS, AS WELL, WHICH HE HAD NOTHING TO DO WITH. AND SO WE WOULD SAY HE WAS PAID LIKE AN OWNER. HE HAD CONTROL OF THAT TRADING. THEREFORE, HE SHOULD BE HELD RESPONSIBLE FOR THE DISGORGEMENT THAT LEVEL GLOBAL MADE.

BY THE WAY, IT WAS HIM.

THE COURT: I DON'T REALLY KNOW WHAT THE OWNERS MADE.

MR. HUDDLESTON: WHAT THE FIRM MADE.

THE COURT: RIGHT.

MR. HUDDLESTON: YEAH.

THE COURT: EQUITY SHAREHOLDERS. I MEAN, I DON'T KNOW WHAT PERCENTAGE THEY MADE OR WHETHER THEY GOT EXTRA BENEFITS.

MR. HUDDLESTON: WELL, WE KNOW THAT THEY GOT THE TWO

MILLION LOSS AVOIDED IN 2009 AND THE $600,000.00 OF PROFIT IN 2010, SO WE BELIEVE THAT IS THE PROPER MEASURE OF DISGORGEMENT HERE. THOSE, THOSE ARE AS TO THE DISGORGEMENT ISSUES.

LET ME SEE IF THERE'S SOMETHING THAT I'M FORGETTING.

I MENTIONED THE CONTROL. I MENTIONED TIPPER RESPONSIBLE FOR THE TIPPEE'S LIABILITY.

OH, THE OTHER THAT YOU ASKED ME ABOUT BRINGING IN THE EMPLOYMENT AGREEMENT. OBVIOUSLY DISGORGEMENT IS AN EQUITABLE REMEDY AND THAT RESTS WITHIN THE SOUND DISCRETION OF THE COURT.

AND SO THE REASON I BROUGHT THAT OUT, JUDGE, IS THAT THE MAN KNEW IN OCTOBER 2009 THAT HE HAD ACTED WRONGFULLY. HE KNEW, IF HE HAD READ HIS EMPLOYMENT AGREEMENT, THAT HIS CONDUCT WOULD HAVE BEEN GROUNDS FOR TERMINATION FOR CAUSE, WHICH WOULD HAVE CUT OFF EVERY FINANCIAL BENEFIT HE RECEIVED THEREAFTER.

WE OFFERED THAT, MUCH AS MR. MONNIN OFFERED HIS SLIDE DECK AS AN ALTERNATIVE THING FOR THE COURT TO CONSIDER, WE OFFERED THAT AS A WAY FOR THE COURT TO CONSIDER THE INEQUITY HE OUGHT TO BE -- HE OUGHT TO PAY BACK EVERYTHING HE RECEIVED AFTER THAT FIRST VIOLATION.

SO THAT'S WHAT I HAVE TO SAY ABOUT DISGORGEMENT. IF YOU WANT ME TO GO ON ABOUT CIVIL PENALTIES --

THE COURT: SURE.

MR. HUDDLESTON: OKAY. THE CIVIL PENALTIES, THE FACTORS TO BE CONSIDERED ARE VERY SIMILAR TO THOSE TO BE CONSIDERED FOR WHETHER TO IMPOSE INJUNCTIVE RELIEF. THERE'S

ONLY ONE THING THAT'S DIFFERENT THERE.

SO YOU'VE GOT, YOU KNOW, THE SERIOUSNESS OF THE VIOLATION THAT YOU GOT. WAS IT ISOLATED. WAS IT REPEATED. YOU'VE GOT THE LEVEL OF SCIENTER. YOU'VE GOT THE ASSURANCES AGAINST MISCONDUCT AND HOW MUCH WEIGHT YOU CAN PUT ON THAT. AND YOU'VE GOT WHETHER THE DEFENDANT'S AGE AND OCCUPATION MIGHT GIVE HIM ADDITIONAL OPPORTUNITY FOR SIMILAR MISCONDUCT. AND SO I WENT THROUGH THOSE, THE EVIDENCE THERE.

WHAT I WOULD SAY, YOUR HONOR, IS THAT ALL OF THEM CUT IN FAVOR OF ENTERING AN INJUNCTION HERE. AND THE REASON I GO BACK TO THE -- WHICH IS ALSO CIVIL PENALTIES. THE ONE THING THAT'S DIFFERENT IN THE CIVIL PENALTIES ANALYSIS IS THAT YOU ADD ONE ELEMENT, WHICH THE JUDGE HAS BROUGHT OUT, AND THAT IS THAT THE DEFENDANT CAN COME FORWARD WITH EVIDENCE THAT HE CANNOT PAY. RIGHT? IT'S NOT OUR BURDEN TO PROVE THAT, BUT THE DEFENDANT CAN COME IN AND MAKE THAT RELEVANT. THERE IS NO FACTOR STATED LIKE MATERIALITY OR WAS HIS MISCONDUCT JUST A LITTLE DROP IN A BIGGER POOL. THAT'S NOT WHAT THE LAW IS.

SO, REGARDING THE INJUNCTIVE RELIEF, THE REASON I BRING OUT WHAT HAPPENED AT THE SENTENCING HEARING, JUDGE, AND YOU MADE THE POINT THAT IT'S PART OF THE RECORD, IN THE SENTENCING MEMORANDUM, WHICH I DIDN'T ASK HIM TO READ, IT'S IN THE BRIEFING, MR. MONNIN MADE THE POINT TO JUDGE STORY THAT THIS GUY IS GOING TO BE BARRED FROM THE SECURITIES INDUSTRY. WE STARTED THIS HEARING TODAY WITH US MAKING IT CLEAR THAT WE

DIDN'T EVEN PLEAD THAT. AND SO WE BELIEVE THAT THIS MAN WAS SENTENCED, GOT AN UNDULY LIGHT SENTENCE BECAUSE OF MISREPRESENTATIONS HE HAD MADE ABOUT THE RELIEF THE SEC WAS SEEKING AND ABOUT THE DEFENDANT'S INTENT TO ENTER INTO A SETTLEMENT WITH THE SEC.

AND SO WE THINK THAT GOES TO BOTH THE ASSURANCE OF, YOU KNOW, GOOD BEHAVIOR IN THE FUTURE, GIVEN THE ASSURANCES HE MADE TO THE SENTENCING COURT, AND TO CIVIL PENALTIES. AND, GIVEN THE FACT THAT WE ARE NOT SEEKING TO BAR THE MAN FROM THE SECURITIES INDUSTRY, NOR ARE WE SEEKING AN ORDER TO BAR HIM FROM BEING AN OFFICER OR DIRECTOR OF A PUBLIC COMPANY, WHICH IS ON THE TABLE IN SOME OF OUR CASES, WE BELIEVE THAT INJUNCTIVE RELIEF IS EVEN MORE PROPER IN THIS CASE AS IT WILL BE THE ONLY COURT ORDER THAT HAS A CHANCE OF RESTRAINING HIM. THERE'S NOTHING ABOUT INSIDER TRADING THAT REQUIRES A SPECIAL OCCUPATION OR SPECIAL LICENSE. IT REQUIRES ACCESS TO THE INFORMATION, AND THAT'S IT.

THE COURT: SO REMIND ME WHAT, IF YOU SUBMITTED THE PROPOSED TERM OF INJUNCTIVE RELIEF HERE, THE LANGUAGE THAT YOU ARE SEEKING.

MR. HUDDLESTON: WELL, WE'RE SEEKING A PERMANENT INJUNCTION, SO IT WOULD BE --

THE COURT: A PERMANENT INJUNCTION THAT STATES WHAT?

MR. HUDDLESTON: THAT STATES THAT HE IS ENJOINED FROM FUTURE VIOLATIONS OF SECTION 10B OF THE EXCHANGE ACT AND RULE

10B-5 THEREUNDER, SECTION 17(A) OF THE SECURITIES ACT AND ALL PROVISIONS OF THAT. AND THEN BECAUSE OF THE GOBLE CASE FROM THE 11TH CIRCUIT, TYPICALLY WE PUT IN SOME SPECIFICS AS TO INSIDER TRADING AND THAT SPECIFICALLY HE IS NOT ALLOWED TO TRADE WHILE IN POSSESSION OF MATERIAL NONPUBLIC INFORMATION.

THE COURT: WELL, LET'S DEAL WITH THE EASY ISSUE. MR. MONNIN, ARE YOU OBJECTING TO THAT?

MR. MONNIN: OF COURSE I AM. MY CLIENT HAS ALREADY TESTIFIED THAT HE --

THE COURT: ALL RIGHT. WELL, FIRST OF ALL, AGAIN, GET THROUGH, WHY DON'T YOU SUBMIT THE PROPOSED INJUNCTIVE PROVISIONS THAT YOU ARE SEEKING, BECAUSE THAT DOESN'T SEEM TO BE IN DISPUTE.

MR. MONNIN: WILL DO.

MR. HUDDLESTON: WILL DO.

THE COURT: AND SO, IN TOTAL, JUST REMIND ME, WHAT IS THE SUM THAT YOU'RE LOOKING AT IN DISGORGEMENT, AND WHAT ARE YOU SEEKING IN CIVIL PENALTIES?

MR. HUDDLESTON: WELL, THE DISGORGEMENT IS THE $2,034,000.00 FROM THE OCTOBER 2009 TRADES. AND THEN I DON'T HAVE THE FIGURE RIGHT IN FRONT OF ME, THE 685,000.

THE COURT: THIS IS THE --

MR. HUDDLESTON: YEAH, IT'S IN THE BRIEFING.

THE COURT: ALL RIGHT. IT'S ROUGHLY 685,000.

MR. HUDDLESTON: EXACTLY. AND AS TO CIVIL PENALTIES,

JUDGE, AS YOU CORRECTLY STATED, YOU ALLOWED AN AWARD UP TO THREE TIMES IN THAT AMOUNT IN CIVIL PENALTIES. YOU KNOW, I'M NOT IN A POSITION TO GIVE YOU A NUMBER OTHER THAN THE MAXIMUM BECAUSE THAT HAS TO BE CLEARED FIRST WITH MY CLIENT IN WASHINGTON.

THE COURT: DISGORGEMENT, YOU WANTED BOTH ESSENTIALLY THAT BOTH THE TWO MILLION PLUS AND 685 ORIGINALLY --

MR. HUDDLESTON: CORRECT.

THE COURT: -- THAT ARE AT ISSUE. AND YOU WANTED THE CIVIL PENALTIES. AT THIS POINT, YOU'RE SAYING UP TO THE MAXIMUM, WHICH WAS THREE TIMES THAT AMOUNT. IS THAT WHAT YOU'RE SAYING?

MR. HUDDLESTON: THAT'S CORRECT, YOUR HONOR. WE MAKE THE POINT THAT THIS IS A YOUNG, HIGHLY-EDUCATED MAN WITH LOTS OF CONTACTS, A VERY BRIGHT FELLOW WHO IS GOING TO DO VERY WELL.

THE COURT: THANK YOU VERY MUCH.

DID YOU WANT TO RESPOND TO ANY OF THAT, MR. MONNIN?

MR. MONNIN: YES, I WOULD, YOUR HONOR. A NUMBER OF THINGS.

WITH RESPECT, JUDGE, THE SEC ALREADY MADE THE SAME ARGUMENT AND MADE THE SAME CONTENTIONS WITH REGARD TO DISGORGEMENT IN A CIVIL PENALTY IN CONNECTION WITH THE SUMMARY JUDGMENT BRIEF. AND I BELIEVE THAT WHAT THE COURT HAS STATED IN ITS ORDER IS THAT THE CONTORINIS CASE FROM THE SECOND CIRCUIT -- AND I'LL BYPASS THE IRONY OF THE SEC VOCIFEROUSLY

OBJECTING TO APPLICATION OF NEWMAN IN CONNECTION WITH THE LIABILITY, BUT THEN ONCE DISGORGEMENT COMES AROUND, THEY ARE RELYING ON A SECOND CIRCUIT CASE. SO YOU CAN'T RELY ON THE SECOND CIRCUIT FOR PURPOSES OF LIABILITY BUT YOU CAN WHEN IT HELPS YOU OUT WITH DISGORGEMENT.

AND ON THE ISSUE OF DISGORGEMENT, JUDGE, AT PAGE 23, 24, AND OVER THROUGH TO 25 OF THE COURT'S OPINION, THE COURT HAS ALREADY FOUND -- I MEAN, IF YOU RECALL, I MADE A MOTION WITH THE COURT THAT WE SHOULD BIFURCATE BRIEFING OF LIABILITY AND FINANCIAL REMEDIES. WE DID NOT DO THAT. SO WE ADDRESSED FINANCIAL REMEDIES. THE COURT'S RULING WITH REGARD TO DISGORGEMENT IS THAT THE BLATT CASE IS CONTROLLING WITH REGARD TO THE MEASURE, THE APPROPRIATE MEASURE OF DISGORGEMENT BEING WHAT MR. MEGALLI PERSONALLY REALIZED IN TERMS OF HIS TRADING PROFIT.

AND WHAT WE'VE SHOWN THE COURT OVER THE HOUR AND A HALF OR THE HOUR AND 20 MINUTES OR SO THAT I WAS BEFORE THE COURT IS A COUPLE OF THINGS. FIRST OF ALL, MR., MR. MEGALLI DIDN'T HAVE A THREE PERCENT INTEREST IN THE PROFITS OF LEVEL GLOBAL. HE HAD A THREE-THOUSANDTHS PERCENT INTEREST. IT'S .003 INTEREST, MEANING .3 PERCENT INTEREST IN THE PROFITABILITY OF LEVEL GLOBAL.

AND HE DIDN'T MAKE ANYTHING, AS A MATTER OF LAW, AS A MATTER OF CONTRACT, AND AS A MATTER OF FACT, BASED ON THE LIQUIDATION OF THE OCTOBER -- THE INITIAL LONG POSITION FROM

SEPTEMBER THROUGH OCTOBER 2009. THAT POSITION WAS LIQUIDATED IN OCTOBER 2009. IT GENERATED A LOSS AVOIDED OF 2.053 MILLION. AND HE GOT NONE OF THAT.

AND I THINK THAT WE HAVE COMPLETELY ESTABLISHED THAT, JUDGE. AND YOUR RULING IS THAT HE SHOULD ONLY BE LIABLE IN DISGORGEMENT. AND EVERY CASE IN THIS COURT, IN OTHER DISTRICT COURTS OF THE NORTHERN DISTRICT OF GEORGIA AND THE 11TH CIRCUIT, ALL OF THE CASES THAT ARE BINDING AND CONTROLLING ON THIS COURT SAY THAT MR. MEGALLI SHOULD ONLY BE LIABLE IN DISGORGEMENT FOR WHAT HE PERSONALLY REALIZED.

AND THAT'S WHY WE CAME IN HERE TO PUT THE EVIDENCE BEFORE THE COURT THAT THIS IS WHAT HE PERSONALLY REALIZED BASED ON THIS ADMITTEDLY ILLEGAL TRADING ACTIVITY THAT THE COURT HAS FOUND HIM LIABLE FOR.

SO WITH REGARD TO DISGORGEMENT, I REALLY DON'T UNDERSTAND WHY THE SEC SHOULD HAVE A SECOND BITE AT THE APPLE WHEN THE COURT HAS ALREADY RULED IN ITS ORDER, AND I QUOTE, IN BLATT, THE COURT IMPOSED DISGORGEMENT, BUT ONLY TO THE EXTENT OF THE AMOUNT OF THE FEE REALIZED BY EACH DEFENDANT FOR HIS ASSISTANCE IN EXECUTING THE FRAUD. SINCE BLATT, DISTRICT COURTS IN THE 11TH CIRCUIT SEEM TO HAVE BEEN CAREFUL IN NOT IMPOSING DISGORGEMENT ABOVE AND BEYOND A, QUOTE, REASONABLE APPROXIMATION OF THE DIRECT GAIN ACCRUING TO THE WRONGDOER.

AND THERE'S NO -- HOLDING MR. MEGALLI LIABLE IN DISGORGEMENT FOR THE FULL LOSS AVOIDED AND GAIN ASSOCIATED WITH

THE TWO TRANSACTIONS THAT WE'RE TALKING ABOUT HERE, IS IN NO WAY A REASONABLE APPROXIMATION OF WHAT HE MADE. AND THE COURT HAS ALREADY, HAS ALREADY FOUND THAT.

THE COURT: BUT THEN YOU SHIFT THE THING TO THE QUESTION OF CIVIL PENALTIES.

MR. MONNIN: SURE.

THE COURT: AND THAT'S THE MORE DIFFICULT ISSUE.

MR. MONNIN: SURE.

THE COURT: I MEAN, I UNDERSTAND THE DISTINCTION THAT THE MR. HUDDLESTON IS DRAWING MY ATTENTION TO, HIS PERSPECTIVE AS TO THE DISGORGEMENT. BUT LET'S GET TO THE MORE DIFFICULT QUESTION ABOUT THE CIVIL PENALTY.

MR. MONNIN: SURE.

THE COURT: DRAWS US BACK IN THE SAME WEB OF PROBLEMS.

MR. MONNIN: WHAT I'D LIKE TO DO IS SHOW THE COURT THE STATUTE THAT WE'RE TALKING ABOUT HERE, WHICH IS SECTION 78, LITTLE U, DASH ONE OF TITLE 15 OF THE FEDERAL CODE, WHICH IS SECTION 21(A) OF THE EXCHANGE ACT OF 1934. SO THIS IS THE CIVIL PENALTIES PROVISION THAT IS IN ISSUE WITH RESPECT TO THIS INSIDER TRADING ACTIVITY. IT RELATES TO CIVIL PENALTIES FOR INSIDER TRADING.

AND I THINK THAT THE ISSUE THAT MR. HUDDLESTON AND THE SEC HAS RECOMMENDED BE BRIEFED -- AND WE REALLY DON'T THINK THAT IT SHOULD BE AN ISSUE, JUDGE -- IS SPECIFICALLY PARAGRAPH

(A)(2). AND THIS IS REALLY THE QUESTION, JUDGE.

SO WHAT THE STATUTE IS REFERRING TO IS, WHAT WAS THE OVERALL PROFIT GAINED OR LOSS AVOIDED AS A RESULT OF THE UNLAWFUL PURCHASE, SALE, OR COMMUNICATION IN FURTHERANCE OF THE INSIDER TRADING. SO THE QUESTION BECOMES, WHAT IS THE APPROPRIATE MEASURE OF THE CIVIL PENALTY. IS IT MR. MEGALLI'S PERSONAL GAIN, OR IS IT LEVEL GLOBAL'S INSTITUTIONAL GAIN.

AND I THINK THAT WHAT WE HAVE, JUDGE, IS THAT YOU DERIVED A FOOTNOTE IN YOUR ORDER, SPECIFICALLY FOOTNOTE NINE AT PAGE 26 OF YOUR ORDER, I MEAN, YOU CAN READ IT FOR YOURSELF, THAT THE APPROPRIATE MEASURE OF THE CIVIL PENALTIES HERE --

THE COURT: WELL, I UNDERSTAND THAT. BUT I ALSO UNDERSTAND THE OBJECTION OF THE GOVERNMENT. AND I WILL TAKE NOTE THAT I ASSUME WITHOUT DECIDING. SO I THINK WHAT THAT NORMALLY SAYS IS, YOU KNOW, THAT'S AN ASSUMPTION. I HAVEN'T DECIDED.

MR. MONNIN: SO YOU HAVEN'T DECIDED. SO REALLY THE ISSUE I THINK THAT WE'RE TALKING ABOUT, JUDGE, WHAT'S CURRENTLY BEING LITIGATED IN COURTS, CERTAINLY UP IN NEW YORK, IS THE ISSUE OF, UNDER PARAGRAPH (A)(2) OF TITLE -- OR OF SECTION 21(A), WHAT IS THE APPROPRIATE LOADSTAR THAT YOU'RE SUPPOSED TO LOOK AT. IS THE APPROPRIATE LOADSTAR INSTITUTION OR PERSONAL GAIN. OUR POSITION IS CERTAINLY THAT IT IS ONLY PERSONAL GAIN.

AND, JUDGE, THE REASON THAT I SAY THAT AND WHAT WE WOULD BRIEF FOR THE COURT IS THAT MORRISON AND FOERSTER, THE

LAW FIRM, HAS -- CREATES A MONOGRAPH EACH YEAR. IT'S AN INSIDER TRADING MONOGRAPH. AND I'M NOT SUBMITTING THAT THIS IS EVIDENCE, BUT I BELIEVE, GIVEN THAT THE COURT IS GOING TO GO THROUGH -- HAS TO GO THROUGH FACTORS IN AGGRAVATION AND MITIGATION, AND I AGREE WITH MR. HUDDLESTON ON THIS, THAT THIS IS VERY MUCH LIKE A SENTENCING PROCEEDING WHERE YOU LOOK AT SCIENTER AND YOU LOOK AT AGGRAVATING AND MITIGATING FACTORS. WHAT THE COURT SAID AND ADDRESSED, THE ISSUE OF DISGORGEMENT IN THE CIVIL PENALTY HAVE DONE IS THAT IN THE VAST MAJORITY OF CASES, OUT OF 326 TOTAL CASES FROM 2010 TO 2014, THE COURT HAS EITHER HELD --

THE COURT: IS THIS JUST FOR THE SECOND CIRCUIT OR IS THIS THE SOUTHERN DISTRICT OF NEW YORK OR NATIONAL?

MR. MONNIN: THIS IS NATIONAL, JUDGE. SO IN THE 326 CASES, IN 43 PERCENT OF THE TIME, THE COURT HAS CONCLUDED THAT THE CIVIL PENALTY AND THE DISGORGEMENT FIGURE SHOULD BE THE SAME. NOW, IF DISGORGEMENT IS LIMITED TO A PERSONAL BENEFIT OR PERSONAL GAIN, IT NECESSARILY FOLLOWS THAT THE COURTS HAVE CONCLUDED THAT THE CIVIL PENALTY, THE LOADSTAR FOR A CIVIL PENALTY SHOULD BE PURELY PERSONAL GAIN AS WELL.

THE COURT: LET'S LOOK AT THE OTHER ONE.

MR. MONNIN: SO THE OTHER ONE, WHAT YOU HAVE IS THAT CIVIL PENALTY IS ZERO IN 27 PERCENT OF THE CASES. AND WHAT THE COURTS ARE GETTING AT THERE IS, DOES THE DEFENDANT HAVE THE ABILITY TO PAY A CIVIL PENALTY.

BUT I SUBMIT TO THE COURT THAT IF WE'RE TALKING ABOUT 43 PERCENT OF THE TIME, YOU KNOW, VIRTUALLY HALF OF THE TIME WHERE DISGORGEMENT AND THE CIVIL PENALTY ARE THE SAME, THAT THE IDEA THERE IS THAT THE COURTS WANT TO PROMOTE DISGORGEMENT. SO THEY ARE ENSURING THAT THE DEFENDANT IS GOING TO BE ABLE TO PAY DISGORGEMENT. SO EFFECTIVELY 70 PERCENT OF THE TIME, JUDGE, 27, 27 PLUS 43, WHAT THE COURTS HAVE CONCLUDED IS THAT EITHER A CIVIL PENALTY IS NOT IN ORDER OR THE CIVIL PENALTY SHOULD EQUATE TO DISGORGEMENT. I THINK WHAT THE --

THE COURT: AND WHAT DO THE OTHER HEADINGS SAY?

MR. MONNIN: THE OTHER HEADINGS ARE WHERE 17 PERCENT OF THE TIME CIVIL PENALTY IS LESS THAN DISGORGEMENT.

THE COURT: ALL RIGHT.

MR. MONNIN: AND 13 PERCENT OF THE TIME CIVIL PENALTY IS GREATER THAN DISGORGEMENT.

I AGREE WITH MR. HUDDLESTON. I THINK THAT WE SHOULD BE BRIEFING THE ISSUE OF THE APPROPRIATENESS OF A CIVIL PENALTY. BUT I THINK WHAT THE SEC IS SAYING HERE IS THAT, FIRST OF ALL, IT'S REVISITING THE LAW OF THE CASE AND SAYING THAT MR. MEGALLI SHOULD BE LIABLE FOR THE FULL TWO MILLION PLUS $648,000.00 ON DISGORGEMENT, WHEN MR. MEGALLI TOUCHED NONE OF THAT. I MEAN, HE TOUCHED NONE OF IT ON THE TWO MILLION, AND HE ONLY TOUCHED 2,000 OF IT ON THE $648,000.00.

SO WE BELIEVE, LEGALLY, THE COURT HAS ALREADY RULED. AND THE COURT ORDERED US TO BRIEF THIS ISSUE AND HAS ALREADY

RULED IN SUMMARY JUDGMENT AND WOULD HAVE TO REOPEN THAT RULING. I MEAN, THAT'S NOT A FOOTNOTE ON DISGORGEMENT, JUDGE. I BELIEVE THAT YOU ALREADY CONCLUDED THAT MY CLIENT'S DISGORGEMENT LIABILITY IS TIED INTO HIS PERSONAL GAIN.

NOW, WHETHER THAT IS 2,000, BECAUSE IF YOU'LL RECALL, THE NEXT THING YOU SAID IS, I DON'T KNOW THAT 2,000 IS REASONABLE; GIVE ME SOMETHING ELSE TO GO ON HERE. AND THAT'S WHY WE CAME INTO COURT TO PRESENT TO YOU AS WE DID.

BUT WITH RESPECT TO A CIVIL PENALTY, WHAT THE SEC IS SAYING IS IS THAT THE CIVIL PENALTY STATUTORILY SHOULD BE UNTETHERED FROM THE DISGORGEMENT ANALYSIS, BECAUSE WHILE DISGORGEMENT IS BASED ON INDIVIDUAL OR PERSONAL GAIN, THE CIVIL PENALTY MAY BE BASED ON THE OVERALL EMPLOYER GAIN, WHICH WE SUBMIT IS NOT AT ALL WHAT WE'RE TALKING ABOUT WITH RESPECT TO WHAT'S APPROPRIATE IN TERMS OF THE MAXIMUM CIVIL PENALTY AMOUNT.

SO I HAVE TWO ARGUMENTS, JUDGE. ONE IS, WHAT SHOULD BE BRIEFED TO YOU IS THE ISSUE OF WHETHER IT'S APPROPRIATE STATUTORILY FOR THIS ITEM TO BE INSTITUTIONAL VERSUS PERSONAL. AND I THINK I KNOW THE COURT UNDERSTANDS THAT.

AND, SECONDARILY, THESE ARE THE FACTORS THAT MR. HUDDLESTON WAS REFERRING TO IN TERMS OF THE, THE FACTORS IN AGGRAVATION AND MITIGATION THAT INFORM THE COURT'S DISCRETION. SO MY SECOND ARGUMENT IS, LOOK, EVEN IF THE COURT CONCLUDES THAT MR. MEGALLI MAY BE LIABLE OR COULD CONCEIVABLY BE LIABLE

IN A CIVIL PENALTY BASED ON INSTITUTIONAL GAIN, THE COURT SHOULD STILL EXERCISE ITS DISCRETION TO LOOK AT THE FACTORS IN AGGRAVATION AND MITIGATION.

AND THE MAJOR FACTORS IN MITIGATION ARE CERTAINLY THAT MY CLIENT HAS ALREADY BEEN SIGNIFICANTLY PUNISHED. THERE WAS A PARALLEL CRIMINAL CASE. THIS IS NOT -- THIS IS ISOLATED CONDUCT. I MEAN, MR. HUDDLESTON SAID REPEATEDLY, THE MATERIALITY HAS NOTHING WHATSOEVER TO DO WITH THE FACTORS IN AGGRAVATION AND MITIGATION.

WELL, HOW DO YOU GET INTO THE EGREGIOUSNESS OF THE DEFENDANT'S CONDUCT WITHOUT TALKING ABOUT THE MATERIALITY OF THE TRADING ACTIVITY TO HIS OVERALL PORTFOLIO. I DON'T GET THAT. OF COURSE, MATERIALITY IS RELEVANT TO EGREGIOUSNESS. THE DEGREE OF HIS SCIENTER, WHAT WAS HE DOING WITH THE REST OF HIS TIME, WHETHER THE DEFENDANT'S CONDUCT CREATED SUBSTANTIAL LOSSES. YOU KNOW, OF COURSE YOU GET INTO MATERIALITY AND WHAT HIS OVERALL TRADING ACTIVITY WAS.

SO I SUBMIT TO THE COURT, NUMBER ONE, MR. MEGALLI'S ONLY LIABLE IN THE CIVIL PENALTY. THE MAXIMUM SHOULD BE THREE TIMES WHATEVER HIS PERSONAL GAIN WAS, WHATEVER THE COURT CONCLUDES. AND THEN IT CAN EXERCISE ITS DISCRETION THERE. AND THE STATISTICS SHOW THAT HE SHOULD BE LIABLE NOT AT ALL BASED ON WHAT OTHER COURTS HAVE CONCLUDED 27 PERCENT OF THE TIME, OR JUST FOR A ONE-TIME CIVIL PENALTY BASED ON WHAT COURTS HAVE CONCLUDED 43 PERCENT OF THE TIME BASED ON THE STATISTICS, WHICH

WE CAN CERTAINLY BRING FORWARD.

BUT, JUDGE, EVEN IF YOU WERE TO CONCLUDE THAT MR. MEGALLI COULD BE LIABLE FOR, SAY, THREE TIMES THE LOSS AVOIDED AND THE PROFITS FROM THE LIQUIDATION OF THE LONG POSITION AND THE SHORT SALES, IT'S VERY SIMILAR TO WHAT YOU HAVE IN A ROUTINE CRIMINAL PROCEEDING WHERE DEFENDANTS COME BEFORE YOU POTENTIALLY BEING LIABLE CONSECUTIVELY. SAY THEY ARE CONVICTED OF TWO 20-YEAR STATUTES. THEY ARE POTENTIALLY EXPOSED TO 40 YEARS. NOW, THE COURT IS NOT ROUTINELY IMPOSING 40-YEAR SENTENCES. WHAT YOU DO IS YOU EXERCISE THE 3553(A) FACTORS, WHICH ARE THE EXACT SAME FACTORS I HAVE UP HERE ON THE SCREEN, TO REDUCE THE CIVIL PENALTY TO REALLY CORRESPOND TO WHAT MR. MEGALLI ACTUALLY DID AND WHAT IS HE DESERVING OF PUNISHMENT FOR.

AND I'LL WRAP UP BY SAYING, WHAT HE ACTUALLY DID, HE RECOGNIZES THE SERIOUSNESS OF IT. HE RECOGNIZES THAT IT'S MISCONDUCT. BUT HE'S PAID VERY DEARLY FOR IT. I MEAN, HE'S GONE TO PRISON. HE'S PLED GUILTY. HE'S GOING TO BE OUT OF THE INDUSTRY.

THE OTHER COMPONENT OF IT IS THAT, IF YOU LOOK AT THE ACTUAL TRADING DATA AND IF YOU LOOK AT THE TRADES, THEY ARE VERY ISOLATED, BOTH WITHIN THE OVERALL WORLD OF CARTER'S AS WELL AS WITH REGARD TO THE CONSUMER PORTFOLIO AND CERTAINLY WITH REGARD TO THE PROFITABILITY OVERALL OF LEVEL GLOBAL AND LEVEL RADAR.

RECALL, WE'RE GIVING THE SEC THE BENEFIT OF THE DOUBT IN THAT, BECAUSE MR. MEGALLI WAS BONUSED FOR LEVEL RADAR, THAT WE'RE NOT SEEKING TO EXCLUDE THAT. I MEAN, HIS TRADING ACTIVITY IN CARTER'S HAD NOTHING WHATSOEVER TO DO WITH WHETHER HE WAS GOING TO GET BONUSED FOR LEVEL RADAR. BUT WE ARE NOT SEEKING TO EXCLUDE, I THINK IT'S $500,000.00 OR 300,000. IT'S $326,000.00 WORTH OF LEVEL RADAR PROFITABILITY THAT WE'RE NOT TRYING TO EXCLUDE FROM THE COURT'S COMPUTATION OF DISGORGEMENT OR POTENTIALLY A CIVIL PENALTY HERE.

SO I THINK, JUDGE, IF YOU RETIRE TO CHAMBERS AND YOU LOOK AT -- WELL, SORRY.

THE COURT: THAT'S ALL RIGHT. I JUST LIKE THE IDEA OF RETIRING.

MR. MONNIN: WELL, I KNOW.

IF YOU GO BACK TO CHAMBERS, I GUESS I SHOULD SAY, AND YOU REALLY LOOK AT HOW, HOW MUCH WHAT MY CLIENT DID THAT WAS WRONG AND THAT THE COURT HAS CONCLUDED WAS WRONG WAS REALLY PART OF HIS DAY-IN-AND-DAY-OUT ACTIVITY, YOU'RE GOING TO CONCLUDE THAT IT WASN'T VERY SERIOUS IN TERMS OF -- IT'S SERIOUS IN ISOLATION. HE WENT TO JAIL FOR IT. HE'S PAID DEARLY FOR IT. BUT IN TERMS OF EVERYTHING ELSE THAT HE WAS DOING, IT'S NOT VERY SIGNIFICANT TO THAT. HE'S NOT LIABLE IN DISGORGEMENT FOR FIGURES BEYOND HIS PERSONAL GAIN. HE SHOULDN'T BE LIABLE IN A CIVIL PENALTY AT ALL. I MEAN, OUR POSITION IS THAT HE SHOULDN'T BE LIABLE IN A CIVIL PENALTY AT

ALL. BUT IF YOU ARE GOING TO FIND A CIVIL PENALTY, THE LOADSTAR FOR THAT SHOULD BE HIS PERSONAL PROFIT, HIS PERSONAL COMPENSATION, AS OPPOSED TO ANYTHING RELATED TO LEVEL GLOBAL.

AND I GUESS WHAT I WOULD SAY IS, I WOULD VERY MUCH APPRECIATE THE COURT'S, I GUESS, INDULGENCE IN TERMS OF LETTING US KNOW WHERE YOU ARE ON THAT, BECAUSE WE'RE PERFECTLY WILLING TO BRIEF IT. I CAME INTO THIS HEARING BELIEVING THAT DISGORGEMENT WAS REALLY DONE IN TERMS OF THE LAW, AND WE'VE PROVEN UP THE FACTS RELATED TO IT. AND THE CIVIL PENALTY I GET. BUT THERE'S NO CIVIL PENALTY THAT SHOULD BE AN ISSUE HERE.

THE COURT: ALL RIGHT. WELL, LET ME SAY, FIRST OF ALL, I -- MY UNDERSTANDING IS THAT MR. HUDDLESTON'S TRIAL IN FRONT OF JUDGE MAY IS IN THE RANGE OF TWO WEEKS OR EVEN MORE. SO OBVIOUSLY HE IS NOT WRITING A BRIEF. HE'S HAD ENOUGH TIME WITH ME FOR THE IMMEDIATE FUTURE. SO WE'LL TAKE -- WE'LL TALK ABOUT IT AND SEE WHETHER THERE'S ANYTHING FURTHER THAT WE NEED, OTHER THAN THE -- IF, IF YOU HAD YOUR DRUTHERS, OBVIOUSLY, SOMEBODY HERE WANTS TO WRITE A BRIEF, APPARENTLY. IS THAT YOUR PREFERENCE, TO BE ABLE TO WRITE A BRIEF, RATHER THAN JUST GIVE ME SOME CITATIONS AS TO MATERIALITY?

MR. HUDDLESTON: YES, YOUR HONOR.

THE COURT: ALL RIGHT. IS THAT YOUR PREFERENCE AS WELL, OR NOT?

MR. MONNIN: I GUESS MY QUESTION, JUDGE, IS, IS IT AN

OPEN ISSUE FOR THE COURT WHETHER THE APPROPRIATE MEASURE OF A CIVIL PENALTY SHOULD BE LEVEL GLOBAL, AS OPPOSED TO MY CLIENT?

THE COURT: FOR DISGORGEMENT OR FOR ANYTHING?

MR. MONNIN: I THINK YOU'VE ALREADY DECIDED ON DISGORGEMENT.

THE COURT: WELL, FOR ANYTHING, I THINK I HAVE TO GO BACK AND LOOK IN LIGHT OF THIS EVIDENCE, SO I CERTAINLY CAN LET YOU KNOW. BUT, OBVIOUSLY, THAT'S THE SINE QUA NON QUESTION HERE.

MR. MONNIN: SURE.

THE COURT: BUT, BUT, YOU KNOW, IF THERE'S SOMETHING ELSE THAT YOU THINK WILL BE HELPFUL, YOU KNOW, AS TO THAT ISSUE OR ANYTHING ELSE, I'M WILLING TO POTENTIALLY THINK ABOUT IT. BUT I NEED TO GO BACK AND LOOK AT MY ORDER, THINK ABOUT THE EVIDENCE, REVIEW SOME OF THE CASES.

I THINK THE ONE THING THAT I WONDERED ABOUT, WHICH WAS SOMETHING COMPLETELY DIFFERENT, IT'S LIKE THE JURY GOING OFF ON YOU, IF ONE THING MR. HUDDLESTON ARGUES, HE IS NOT REALLY A TIPPEE, THAT THE DEFENDANT IS NOT A TIPPEE, IS REALLY A TIPPER, BECAUSE GLOBAL WAS THE TIPPEE, YOU WOULD TAKE THAT PROPOSITION. IF YOU DON'T, IS THIS A MATTER OF FACT OR IS IT A MATTER OF LAW?

MR. MONNIN: YOUR HONOR, FIRST OF ALL, OF COURSE, WE DON'T ACCEPT THAT STANDARD. I BELIEVE THAT IT IS AN ISSUE OF LAW. THE CONTORINIS CASE THAT WE BRIEFED AND THAT MR.

HUDDLESTON ARGUED, THE ESSENTIAL, I WOULD PUT IT, FICTION OF THAT HOLDING WAS THAT THE WAY, THE ONLY WAY THAT YOU CAN, THE ONLY WAY THAT YOU CAN HOLD AN INSIDER TRADER AS A TIPPEE LIABLE FOR FUNDS THAT HE NEVER PERSONALLY POSSESSED, HIS EMPLOYER'S FUNDS, IS TO GO THROUGH THE FICTION OF SAYING THAT THAT TRADER IS JOINTLY AND SEVERALLY LIABLE WITH HIS EMPLOYER. AND THE ONLY WAY THAT YOU CAN GET THERE IS TO SAY THAT THE TIPPEE, MR. MEGALLI, BECAME THE TIPPER TO LEVEL GLOBAL. AND THAT'S, THAT'S THE SECOND CIRCUIT'S RULING. AND, MIND YOU, I ATTACHED THE WHOLE CERT PETITION RELATED TO CONTORINIS TO MY LAST SUMMARY JUDGMENT FILING.

THE COURT: CONTORINIS IS NOT NECESSARILY LOOKING TO FOLLOW A LOT MORE LAWS. I WANT TO GO BACK AND SEE WHAT'S REALLY ON THE RECORD BEFORE WE TELL YOU ANYTHING.

MR. MONNIN: OKAY.

THE COURT: WE WILL MAKE A DECISION. BUT WE ARE NOT GOING TO MAKE IT DUE THE FIRST WEEK HE'S OUT OF TRIAL.

MR. MONNIN: NO. THAT IS FINE.

THE COURT: I JUST WANTED TO NOT HAVE TO FIND A DAY WHERE YOU ALL WERE AVAILABLE AND WE THINK THAT WE COULD PUT ALL THESE PIECES TOGETHER. AND, PRESUMABLY, WE'LL HAVE A TRANSCRIPT. SO THANK YOU VERY MUCH.

IS THERE ANYTHING ELSE WE NEED TO ADDRESS WHILE WE'RE ALL TOGETHER?

MR. HUDDLESTON: NO, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. MONNIN: NO, YOUR HONOR.

THE COURT: I GATHER THIS IS YOUR WIFE WHO'S HERE WITH YOU?

APPRECIATE YOUR BEING HERE. I ALWAYS LIKE TO SEE FAMILY MEMBERS AT ANY TYPE OF PROCEEDING.

YOU CAN HAVE A SEAT.

I DON'T KNOW ENOUGH ABOUT EVERYTHING THAT HAS HAPPENED AT GLOBAL. OBVIOUSLY I HAVE READ THESE DECISIONS AND KEPT UP WITH THIS WITHOUT HAVING WASTING YOUR TIME WITHOUT WATCHING ALL OF THIS. JUST ON A LARGER SCALE. AND I DON'T KNOW, GIVEN EVERYTHING ELSE THAT WAS HAPPENING IN OUR SOCIETY, HOW, WHATEVER HAPPENED HERE FITS INTO THIS PICTURE, WHAT WAS GOING ON WALL STREET, WHAT THE CULTURE, HOW THE CULTURE EVOLVES AND HOW EVERYONE STARTS ADOPTING THE SAME ATTITUDE ABOUT WHAT IS ACCEPTABLE AND NOT.

AND I ASSUME THAT THOSE WHO ARE SITTING IN NEW YORK ON THE BENCH ARE SEEING A LOT MORE OF IT AND HAVE MUCH MORE DEVELOPED OPINIONS THAN I DO. I'VE PERHAPS MORE DEVELOPED OPINIONS ABOUT FRAUDS THAT ARE COMING IN FRONT OF ME EVERY DAY. SO IT'S, YOU KNOW, I'M TRYING TO LOOK -- SOME OF MY QUESTIONS ABOUT GLOBAL WAS JUST TRYING TO UNDERSTAND WHAT THAT WILL LOOK LIKE. TO UNDERSTAND MORE ABOUT THIS DEFENDANT'S CONDUCT AS WELL. BUT IT'S CERTAINLY A SAD DAY WHEN SOMEBODY, THIS DEFENDANT HAS -- MR. MEGALLI, YOU OBVIOUSLY HAD AN ENORMOUS

AMOUNT OF EDUCATION AND SKILLS. AND IT'S A WASTE TO OUR SOCIETY.

SO WHATEVER HAPPENS HEREAFTER AND WHATEVER PENALTY I IMPOSE, I JUST WANT TO SAY -- BECAUSE I MIGHT NOT SEE YOU AGAIN PERSONALLY -- I HOPE THAT YOU'RE ABLE TO CONTINUE THE WORK THAT YOU WERE DOING, HOWEVER DIFFICULT IT WAS, ON THE VOLUNTEER WORK. YOU HAVE A LOT TO CONTRIBUTE, A GREAT DEAL OF EDUCATION. AND IT'S -- LIFE IS STRANGE IN A WAY THAT TERRIBLE MISFORTUNE AND ERRORS OF JUDGMENT CAN END UP BEING USED TO BRING LIGHT AND MEANING TO YOUR LIFE, TOO.

AND MAYBE I'M SPEAKING MORE AS A SENTENCING JUDGE IN THAT REGARD, BUT WHEN I SEE SOMEBODY WITH ALL THE TALENT AND EDUCATION YOU HAVE AND YOUR WIFE STANDING BY YOUR SIDE, YOUR HAVING TWO SMALL CHILDREN, I GUESS I HAVE A DESIRE TO SAY THAT YOU, YOU CAN MAKE A DIFFERENCE. I HOPE YOU WILL MAKE A DIFFERENCE. I HOPE THAT THE HUNDRED HOURS IS NOT JUST 100 HOURS. OR 120 HOURS, BECAUSE TO THE EXTENT YOU RECONSTRUCT YOUR LIFE AND ARE NOT PROFIT-DRIVEN AND BLIND TO THE CONSEQUENCES OF YOUR CONDUCT, THERE'S AN EXTENT TO WHICH YOU ARE GOING TO HELP OTHERS AS WELL.

AND THERE ARE MANY PEOPLE, WHETHER IN NEW ORLEANS OR NEW YORK CITY, WHO NEED THE ASSISTANCE OF SOMEBODY SO TALENTED AS YOU ARE. AND WHATEVER THE DIFFICULTIES YOU'VE HAD IN FINDING WORK WITH A NONPROFIT, I DON'T THINK THAT THAT'S A -- I DON'T THINK THAT'S GOING TO BE IN LOTS OF PLACES. YOU WILL

FIND YOUR NICHE. AND PEOPLE NEED YOU, AND PEOPLE NEED TO -- WHO HAVE REALLY BEEN IN THEIR OWN FORM OF DAMNATION, NEED A HELPING HAND FROM SOMEBODY LIKE YOU. AND THE WAY THAT YOU RESURRECT YOURSELF AND YOUR OWN CHILDREN AND YOUR WIFE IS THAT WAY AS WELL.

SO I WISH YOU THE BEST OF LUCK, AS WELL AS YOUR WIFE IN HER ARCHITECTURAL DEGREE.

AND, COUNSEL, YOU'VE BEEN MOST HELPFUL, BOTH OF YOU, AND I APPRECIATE IT. AND IT'S REALLY A PLEASURE TO HEAR AN ARGUMENT AND A DISPUTE SO WELL PRESENTED. VERY HELPFUL TO THE COURT. THANK YOU.

MR. MONNIN: MAY I MAKE ONE SUGGESTIONS THAT MAY BE HELPFUL? IF THE COURT IS INCLINED -- AND I THINK IT IS IMPORTANT, PERHAPS, TO HAVE SUPPLEMENTAL BRIEFINGS, MAYBE JUST HAVE US FILE AT THE SAME TIME AND JUST DO ONE BRIEF, AND YOU CAN TELL US WHAT YOU'RE INTERESTED IN.

THE COURT: THAT WOULD BE FINE. THAT'S GREAT. AND IF I'M INCLINED TO DO THAT, I'LL PROBABLY JUST TELL YOU, AS I SAID, WHEN THE TIME, FROM ONE WEEK, WHATEVER THE CONCLUSION OF HIS TRIAL IS, I'LL START THINKING ABOUT IT, REASONABLY ABOUT A WEEK AFTERWARDS AFTER HE'S CHECKED ALL HIS E-MAILS AND ALL THE CRAZINESS.

THANK YOU.

MR. HUDDLESTON: THANK YOU, JUDGE.

THE COURTROOM DEPUTY: ALL RISE. COURT'S IN RECESS.

(PROCEEDINGS CONCLUDED AT 5:22 P.M.)

- - -

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

CERTIFICATE OF REPORTER

I DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN DOWN BY ME IN THE CASE AFORESAID.

THIS, THE 30TH DAY OF DECEMBER, 2015.

/S/ ELIZABETH G. COHN

ELIZABETH G. COHN, RMR, CRR
OFFICIAL COURT REPORTER

HARD COPY

Exhibit B

Yale Law School

JONATHAN R. MACEY
Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law

November 2, 2017

The Honorable Carol Fox Foelak
Office of Administrative Law Judges
Mail Stop 2585
100 F St. NE
Washington, DC 20549

RE: Mark Megalli

Dear Judge Foelak:

I understand that the Enforcement Division of the Securities and Exchange Commission is seeking to bar Mark Megalli from working it the securities industry or serving as an officer or director of a public company, either permanently or for a specified period of time.

I write in strong opposition to the imposition of such a bar.

I am a professor at Yale Law School where I teach courses in corporate and securities law. Among the courses I teach is "Ethics in Financial Markets." For the past several years Mark Megalli has been a guest speaker in the class. In the class Mr. Megalli has spoken to the the students about his career and the events leading up to his violation of the securities laws.

The students and I are consistently impressed by how deeply sorry Mr. Megalli is for his past conduct. He is genuinely and deeply committed to proceeding along a future path that is consistent with the law as well as with his deep ethical and moral values. I am absolutely certain that Mr. Megalli is profoundly sorry for what he did and completely sincere in his expressions of deep remorse.

I understand that among the factors that you are likely to consider in deciding whether to bar Mr. Megalli from working in the securities industry are the sincerity of his assurances against future violations, his recognition of the wrongful nature of his conduct and the likelihood that he will commit future violations. In this context, I note that Mr. Megalli has volunteered his time to speak to law students for no reason other than a genuine desire to share his experience in order to make sure that they will not break the law or even approach any legal or ethical boundaries that they may encounter in their careers.

Mr. Megalli has repeatedly expressed his deep remorse and his commitment to avoid any future wrongful conduct in a classroom setting in which he had nothing personally to gain by doing so. I imagine that it is difficult and embarrassing for Mr. Megalli to talk about his experience in front of law students, and his sincerity and commitment to acting in conformity with all applicable laws and norms for the rest of his life.

Thank you very much for your consideration of this letter. Please do not hesitate to contact me if you have any questions or if I can provide you with any additional information about this matter.

Very truly yours,

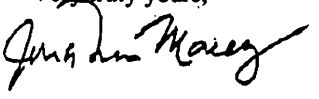

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Exhibit C

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

UNITED STATES OF AMERICA, v. MARK MEGALLI, Defendant.	CRIMINAL ACTION NO. 1:13-CR-442-RWS

DEFENDANT MARK MEGALLI'S SENTENCING MEMORANDUM

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Defendant Mark Megalli, by and through his undersigned counsel, respectfully submits this sentencing memorandum in connection with the Court's advisory guideline range computation and its determination of a substantively reasonable sentence in this case under 18 U.S.C. § 3553(a).

I. INTRODUCTION

Mr. Megalli has entered a negotiated guilty plea to a criminal information charging him with a single count of conspiracy to engage in insider trading in violation of 18 U.S.C. § 371. As with most negotiated pleas that, as here, have culminated in a waiver of indictment, the parties have stipulated to application of the sentencing guidelines, such that there is little, if anything, to litigate with regard to the Court's computation of an advisory guideline range. This is particularly true of the insider trading conspiracy count to which Mr. Megalli has pled, which is governed by USSG § 2B1.4, an offense guideline that, aside from an 8-point base offense level, effectively includes only a single specific offense characteristic – namely, the overall "gain" (which includes both profit and avoided loss) attributable to the subject trading activity, which is not in dispute here.

As a result, Mr. Megalli does not anticipate devoting significant time at sentencing to the Court's advisory guideline range calculation. The parties have agreed for guideline purposes to a gain of between $2.5-$7 million; that no Chapter

3 enhancements for role, abuse of trust, or special skill apply under USSG §§ 3B1.1-3B1.3; and that Mr. Megalli is entitled to a 4-level acceptance of responsibility[1] and downward variance adjustment to account for his waiver of indictment and early plea. This corresponds to a total offense level of 22 and to an advisory custodial guideline range of 41-51 months (OL 22; CHC I), as to which the government has bound itself to a low-end recommendation. (With the exception of the government's 1-level variance recommendation, the foregoing guideline stipulations are also incorporated in the Probation Office's advisory guideline range computation set forth in Mr. Megalli's pre-sentence investigation report ("PSR")).

While computation of an advisory guideline range is effectively academic at this point, as shown below, imposition of a 41-month custodial guideline sentence is, without question, substantively unreasonable in this case. The Court, following *United States v. Booker* and subsequent controlling authority, must give due consideration to the factors set forth in 18 U.S.C. § 3553(a) in affixing a substantively reasonable sentence based on Mr. Megalli's guilty plea to conspiracy

[1] To the extent the government has reserved an objection to Mr. Megalli receiving the full, 3-level reduction for acceptance of responsibility under USSG § 3E1.1, Mr. Megalli has addressed the government's concerns below in Parts II.B and III.B of this memorandum.

to commit securities fraud in violation of 18 U.S.C. § 371, and the host of mitigating considerations discussed herein, (*see* Part III.C, *infra*), that counsel strongly in favor of a significant guideline variance here. To that end, Section 3553(a) mandates imposition of a sentence that is "sufficient, but not greater than necessary" to accomplish the basic goals of sentencing; namely, just punishment (*i.e.*, retribution), deterrence, public protection and rehabilitation. 18 U.S.C. § 3553(a).

As with most white collar offenses, application of the sentencing guidelines in insider trading cases is driven almost entirely by the purported economic value of the defendant's offense conduct; *i.e.*, the "gain" attributable to the subject trading activity. And as with the other Chapter 2B offense guidelines applicable to fraud violations, this excludes consideration of the broader statutory sentencing objectives set out in section 3553(a) – specifically, whether a significant offense level premised on gain actually corresponds to a particular offender's degree of criminal intent, the remuneration he personally realized from the charged offense conduct, or, indeed, is in fact relevant to the traditional sentencing objectives of proportionality, retribution and deterrence.

As shown below, it is a statistical reality that a decided majority of courts that have considered the guidelines' applicability in the insider trading context

have concluded that a guideline sentence often materially overstates the degree of an offender's culpability, thereby necessitating a significant variance. This has repeatedly been the case even for defendants who, in stark contrast to Mr. Megalli, have proceeded to trial when, among other things, the facts under indictment included their corruption of multiple corporate insiders, the payment of kickbacks and other remuneration, a range of issuers, and their personal realization of millions of dollars in illicit trading profits.

In this regard, fully 18 of the 22 total offense levels applicable to Mr. Megalli (associated with the 18-level increase for a trading gain of more than $2,500,000 but less than $7,000,000 under USSG § 2B1.4(b)(1)) has little if any correspondence to his actual culpability. As shown below, Mr. Megalli's *personal* gain attributable to the subject trades was negligible, amounting to a few thousand dollars. This is hardly a surprise, given that Carter's positions never comprised more than one-half of one percent of the $8 billion hedge fund (including leverage) that employed him. In addition, Mr. Megalli's offense conduct involved either conscious avoidance as to the source and legitimacy of certain information imparted by Eric Martin (which Mr. Megalli certainly admits is nonetheless criminally actionable) or, when Martin disclosed more concrete information, such disclosure was often part of a mix of legitimately sourced information collected by

Mr. Megalli on which he also relied in deciding whether to trade Carter's Inc. ("Carter's") securities.

Finally, Mr. Megalli has already been substantially punished. He is not only deeply and irretrievably humiliated by his well-publicized conviction, but he also faces permanent debarment from the securities industry and the assessment of potentially significant disgorgement and a civil penalty in connection with a parallel enforcement proceeding brought by the U.S. Securities and Exchange Commission. (Notably, with regard to the financial component of his criminal liability, Mr. Megalli has already deposited $50,000 in criminal restitution with the clerk for eventual disbursement to Carter's in partial reimbursement of its legal fees associated with the government's and the SEC's investigation of the subject trading activity.) In addition, based on his felony conviction for conspiracy to engage in insider trading, it is virtually assured that Mr. Megalli, who holds an inactive New York law license, will be disbarred.

Accordingly, an extraordinary measure of retribution and deterrence is already in place here, which diminishes the utility of reliance on the advisory guideline range, effectively to the point of irrelevance. Indeed, Mr. Megalli faces the same guideline exposure as a defendant who, unlike Mr. Megalli, actively procured inside information through bribes and/or kickbacks, traded based solely

on this information, and personally realized up to $7 million in illegal trading profits. As such, in deriving a "sufficient, but not greater than necessary" sentence, rote application of the guidelines, most notably the 18-level gain enhancement under USSG § 2B1.4(b)(1), dramatically overstates the degree of criminal culpability associated with Mr. Megalli's conviction. In addition, the mitigating factors the Court must consider under section 3553(a) in imposing a just sentence are not simply controlling in this case, they predominate over any of the aggravating factors referenced in the statute.

It follows that this Court should join the tide of sentencing courts from around the country that have varied substantially downward from the guidelines in insider trading prosecutions of remote tippee traders like Mr. Megalli in affixing a substantively reasonable sentence here.

II. BACKGROUND FACTS

A. Mr. Megalli's Personal History

Mr. Megalli's personal narrative is told by the people who know him best: his wife, parents, brother and numerous friends, many of whom have submitted mitigation letters to the Court attesting to Mark's character. The individual reflected in these letters is a man of keen intelligence, with a strong work ethic and

tremendous devotion to his family and friends, who is in turn loved and supported by a great many people.

Mark Megalli recently turned 42. He was born in New York City, to Maguid and Viviane Megalli, naturalized U.S. citizens who emigrated from Egypt after marrying in 1968 to avoid the severe discrimination visited on Christian families in their native country. Mark's older brother, Michael, was born shortly after his parents arrived in this country. Now retired, Mark's father spent his career as a board-certified urologist and hospital administrator. He served for twelve years in the United States Army Reserve, attaining the rank of Lieutenant Colonel, and was the volunteer police surgeon for the city of Rye, New York. Mark's mother, also retired, was a career-long real estate agent.

The Megallis are a close-knit family, and, as his mother writes, Mark's parents took great pride in their son's achievements:

> I wish I could tell you in this very short letter what a wonderful and honest person my son Mark Megalli is. He has always been our pride and joy. Growing up, he always excelled in whatever he was doing – his studies, his sports, and his hobbies, whether it was varsity crew or playing the piano or guitar. He was always aiming to be the best in his class.
>
> I suspect you will hear from others who are writing letters on his behalf that Mark is kind and compassionate, works hard, and always tries to do his best for his family. All true. Here is what I have noticed as his mother: Mark always assumes the best motives in everyone around him. He is very hesitant to prejudge others. He

> takes things at face value and is not prone to suspicion. I have seen this trait repeatedly in his relationships with us, his brother, his wife, his friends, and his colleagues. I think this may in some way speak to the situation in which he has now found himself.

(V. Megalli Letter).

These sentiments are echoed by Mark's father and older brother, who speak of his early promise and life-long positive character traits:

> Mark was first discovered by his kindergarten teacher, who predicted that Mark is and will continue to be one of a kind. She was right. He was and still is, in a nutshell, smart, hard-working, determined, sensitive, mild-mannered, peaceful, trustworthy, honest, honorable, and extremely fair. His drawbacks are that he is very trusting of others and totally non-confrontational. As for all these characteristics of Mark, I would say that I used to and still get calls from people he has worked for and worked with that express their love and respect for him time and time again.

(Maguid Megalli Letter).

> We grew up in Rye, N.Y., where my parents had bought their first small house based on the excellent reputation of the town's schools. Aware of the sacrifices that had been made on our behalf, we worked hard to live up to the expectations placed on us by our parents and by ourselves.
>
> As early as kindergarten, Mark stood apart. By the first grade, his teacher had me bringing home double copies of my second grade homework so that Mark could do more challenging work. It wasn't long before Mark had established himself as the champion of the school's chess club; he would spend hours playing practice games against himself, with short breaks to master Rubik's cube.

(Michael Megalli Letter).

Following public elementary and middle school in Rye, Mark attended high school at Phillips Academy in Andover, Massachusetts. He attended Yale College, graduating *magna cum laude*, Phi Beta Kappa, and with Distinction in Political Science in 1994. Mark worked for Ralph Nader over the course of two summers in college, co-authoring a book that was published by Mr. Nader in 1991. After several months in Los Angeles, Mark matriculated at the Yale Law School and the Yale School of Management, earning a JD/MBA degree in 1999.

Following graduate school, Mark joined McKinsey & Company, focusing on strategic advice to financial services firms. While there, Mark undertook a pro bono consulting engagement for New York City Police Commissioner Ray Kelly, the purpose of which was to assess the NYPD response to 9/11. He presented the McKinsey study to the NYPD's top management in 2002.

Mark left consulting in 2003 to join the investment firm John Levin & Company (later called BKF Capital). It was there that he initiated his decade-long vocation analyzing the consumer discretionary space. He also passed the three-year Chartered Financial Analyst (CFA) examination toward the end of his time at BKF. Following BKF's dissolution, Mark was employed for two years by Searock Capital, another investment fund. In 2008, Buckingham Research Group, which

specialized in the consumer discretionary sector, recruited Mark to serve as an analyst/junior portfolio manager.

Mark was contacted by Level Global, a Manhattan-based hedge fund, in 2009 to launch a consumer group, hire analysts, and manage capital. Believing this to be an opportunity for advancement, Mark joined Level Global in August 2009. Level Global, however, fairly quickly became embroiled in legal issues in 2010, which caused it to fold, at which time Buckingham asked Mark to return. He began working again at Buckingham in early 2011 and continued to work there until September 2013.

Mark's hard work and character earned the respect of his colleagues, including Buckingham's Chairman, Laurence C. Leeds, Jr.:

> [D]uring the approximately four years that Mark Megalli worked at Buckingham (in two separate tranches), I believe I got to know Mark Megalli quite well. Our offices were in close proximity, and during those years we must have spent well over one thousand hours working together. I always believed him to be a most decent and ethical person, and in a way, I considered him to be my protégé and perhaps future successor. . . .
>
> . . . Despite the fact that he has, as I understand it, pleaded guilty, I must say that this terrible and illegal action on his part seems so totally unlike the Mark I have known and worked with for over six years. It appears to be totally out of character.

> . . . Whatever the facts, to the extent that Mark did something terribly wrong, I believe it to be an aberration that is not indicative of the quality of his character as I knew it to be.

(L. Leeds Letter).

Mark developed a strong professional reputation for thorough preparation and thoughtful analysis, as noted by a former professional associate:

> Mark and I were in frequent dialogue over the years that he was my client. I have now known Mark for almost ten years. As a client, it had often impressed me that Mark had always done a thorough amount of research before any meeting that we had. If we were meeting with a company, his questions were thoughtful, insightful and interesting. Mark is an incredibly intelligent person with an extremely analytical mind. My analysts were always enthusiastic about meeting with Mark because they were likely to work through a different perspective that they hadn't had before then. . . . Mark had always done his homework and it was clear he was a very hard-worker. Mark had clarity and good ideas and could synthesize the information . . . .
>
> * * *
>
> I am aware of the difficulty that Mark is now facing. I was completely stunned when he told me that he was being charged with insider trading. I am still stunned as I have only known him as someone who did thorough research on stocks, worked incredibly hard and had the intellect and intuition to trade stocks profitably. I know Mark as a terrific husband and father, and as a kind, soft-spoken individual. He cares about people and those who know him as a friend know that he will always be their friend.

(C. Wispelwey Letter).

While in graduate school, Mark began dating and fell in love with his wife, Jenifer, a former college classmate from Columbus, Georgia, where her parents,

Nelle and Billy Wells, continue to live in retirement. Married in 2000, Mark and Jenifer have two young daughters, [redacted]. As noted by their many friends who have corresponded with the Court, Mark and Jenifer are exemplary parents to their girls, who clearly love their father. In Jenifer Megalli's own words:

> When I was working in New York and Mark was a summer associate at Debevoise and Plimpton in the summer of 1997, we reconnected. I was turning 25. Mark was sweet, incredibly intelligent, and beautiful. One of our first serious conversations was about how important honesty is in a relationship. I admired how close he was with his brother and his parents. His conservative upbringing and character was very apparent in the way he was – and still is – focused on making them proud.
>
> We are both competitive but Mark is also easygoing and even tempered. In fact, I can count on one hand the number of times I have seen Mark get angry. He has poise, self-control and is very hesitant to judge others. These are all qualities that attracted me to Mark and make him who he is to me: a generous, caring, and faithful partner.
>
> * * *
>
> Now we have been married for almost 14 years and have two young daughters. No one has played a larger role in the decisions and events that have shaped my adult life. I have never known anyone as loyal as Mark. If there is any silver lining to the tragic events affecting our family as a result of the charges against my husband, it is a deeper appreciation of our marriage and how strong our bond is.

(J. Megalli Letter).

As a parent, Mark exhibits the same passion and devotion that he has brought to every aspect of his life:

> When Mark's first child, [redacted], was born, I saw my brother change; his drive took on new purpose in devotion to his family. Before children, Mark had been the dutiful son working hard to realize the dreams of his parents, but as a parent he committed himself to helping his children realize their own dreams.
>
> [redacted] She has much of her father's intensity and brilliance, and they share that unique bond that I know from personal experience exists between fathers and daughters. His younger daughter, [redacted]. She's happy and sociable and loves her role as the baby of the family. She's a funny kid and has the uncanny ability to combine goofball antics with comments so cutting and incisive, they sound like they came from my [redacted] year old.

(Michael Megalli Letter).

Jenifer Megalli's parents, Nelle and Billy Wells, likewise describe their son-in-law as a loving and devoted husband and father:

> Mark and our daughter Jenifer were married at Saint Patrick's Cathedral in New York in August 2000. We knew him through Jenifer for the years they were in college together but really came to know him as their courtship evolved around 1998-2000. Mark called us to ask us if he could propose to Jenifer which we were pleased to say yes to. He is so dignified and always does the proper thing in all situations. We were impressed that some men still go that extra step to ask for their daughter's hand in marriage.
>
> We later got to meet Mark's parents at their engagement party in New York. They were everything we expected them to be. We realized why Mark had turned out to be such a fine young man. We could tell how proud his parents were of him and how they expected only the

> best of him. We could also understand why Mark always conducted himself in a way that would please them.
>
> * * *
>
> Mark is honest and has integrity. He always finds the good in everyone and doesn't judge people or talk about people. We have never heard Mark use profanity in any shape or form. He is a perfect gentleman at all times.
>
> Mark is a thoughtful and caring father to his two daughters, [redacted]. Their family is very close and he plays a major role in all decisions concerning his children. He is involved in parent/teacher conferences and all functions at both of his children's schools.
>
> * * *
>
> We could have searched the world over and never found a man to be our son-in-law with such honesty, faithfulness, sincerity, humility, integrity and generosity as the man in Mark Megalli.

(N. & B. Wells Letter).

Many of Mark and Jenifer's friends have expressed great admiration for the intense bond that unites the Megalli family:

> Having spent a great deal of time with the Megallis both as a couple and as a family, I have seen their shared love of learning, creativity, adventure and care. I know the fascination Mark has for Jen, and she for him. I watched them fall in love, first with each other and then with the girls. And I have seen them grow indelibly closer in recent months, despite (and indeed because of) the stresses they are facing. Their partnership is fiercely dedicated. Their shared concerns for protecting and supporting [redacted] over the oncoming time period are equally strong. From the day I met him, I have always seen Mark as big-hearted. Nowadays that heart belongs fully to his family.

(N. Bly Letter). Another of the Megallis' friends writes:

> I have known Mark Megalli for 24 years. I am fortunate to be able to say that he has been a very close friend of mine over each of those years. When I first met Mark during freshman year of college, he was known as perhaps the nicest and kindest of all students. I considered myself lucky to be his friend. I still do.
>
> * * *
>
> [Mark] has two beautiful daughters and is an adoring and doting father and husband. I have known Mark's wife for 24 years as well. They also met in college. They have accomplished a great many things as a couple – most important of which is the rearing of two thoughtful and energetic daughters.
>
> Mr. Megalli has really only ever wanted what I want – happy, healthy and well educated children and a fulfilling marriage. While these desires are simple to list, they are very difficult to satisfy. Accordingly, he has always been and remains focused on them. He has an uncompromising commitment to his family. In this regard, he is a role model. If I were ever in a situation where my family needed prolonged attention and care, I would consider Mark as the person to provide it. He is a kind and generous person.

(D. Beaton Letter). Indeed, many of Mark's close friends look to him as a model parent:

> In the more than fifteen years during which I have enjoyed a close relationship with Mark, I have relied on him for a range of advice. Even though I have many friends from all periods of my life, it is consistently to Mark that I have turned about the most important matters. As a father of a daughter – my and Mark's most cherished roles – and as an investor – our professions – I have sought Mark's counsel about model behavior.

> Much of how I parent my children is the result of thoughtful consideration Mark and I have shared. Where to draw lines, how to encourage and discourage certain conduct, effective methods of discipline and generally how to mold productive members of our community are all subjects on which I have sought Mark's guidance. Mark is consistent in his moral certitude and remarkably creative about how to transmit it to his children and mine, so I return again and again to him for similar conversations.

(G. Heyman Letter).

As Jenifer Megalli describes, however, Mark's prosecution has already exacted a significant toll on his family, particularly his two young daughters:

> At the start of this crisis and at so many points along the way, I have held onto the belief that the truth would prevail and everything would be okay. While I have never been so naïve to think that life is fair, the extremely punishing outcomes for Mark and for our family seem so severe: Mark's livelihood – a career which he loved and at which he excelled – has been taken away from him forever. . . .
>
> To our daughters the consequences of these upheavals are particularly devastating. We will likely be forced to sell our home as a result of the legal expenses and loss of income we are facing. We will be moving away from the city where they grew up to find a more affordable place in which to rebuild our lives. Our daughters will have to leave the safety of their current schools and friendships behind.
>
> When Mark and I got married, I left my career to take care of our family. Mark has been the sole breadwinner for our family. Now I am making plans to go back to work to support our family financially. The prospect of doing this [as] a single parent is overwhelming and terrifying.
>
> I don't know what the future holds, but I do know that our family will face intense pressures as we embark on a different life after this ordeal

> is over. We will be there to support Mark and we will move forward as a family. If Mark has a second chance to put his intelligence, strong character, and good heart to work, I am certain it will be for the good of his community and to better the world around him.
>
> In defending our family, we have tried to protect our young children from the worst of these horrible outcomes – losing their father in their daily lives. Mark is a sensitive, affectionate, and involved father whose parenting and wisdom are critical to the happiness and success of our daughters. I can't imagine life without Mark as my rock and my partner and I am overwhelmed by the prospect of being a single parent. I ask you to weigh the damaging impact on these precious family relationships against the need for Mark's punishment and humbly ask for leniency.

(J. Megalli Letter). Mark's father and brother echo these concerns:

> When we were back for Christmas in December, my wife and I were affected by the toll Mark's situation has already taken on [redacted]. As recently as this summer she was droll and animated, but the girl we saw this holiday seemed withdrawn and sad. She hasn't yet been told what's up, but you can tell she is braced for a shock that she knows is coming.

(Michael Megalli Letter).

> The luckiest part of his life story was marrying his classmate from Yale, Jenifer Wells, and being blessed by two wonderful daughters, [redacted], who are so close to their father. Sadly, I see the unspoken suffering in [redacted] eyes, and she does not yet know the half of it. I often wonder about the anguish and psychological devastation of the children in these situations without any wrongdoing on their part, or their mother for that matter.

(Maguid Megalli Letter).

B. Mr. Megalli's Trading of Carter's Securities

Although the PSR's recitation of Mr. Megalli's offense conduct (including his factual objections) is quite dense, in reality, of the $3.17 million of guideline gain that has been attributed to him, fully 87 percent is associated solely with Level Global's sale of Carter's shares in October 2009 (amounting to $2,110,460 of avoided loss), and its short sales of Carter's stock in July 2010 (amounting to $647,655 of profit). (PSR ¶ 158). Of the remaining gain, the evidence shows that Level Global's sale of Carter's shares on November 9, 2009 (amounting to $276,000 of avoided loss) was merely a portion of the fund's entire position at that time, Martin's contemporaneous e-mails suggest that he did not tip Megalli, and, as he conceded in one of his government debriefings, Martin himself has no recollection of having done so. As to the last increment of gain, arising from Level Global's February 2010 sale of Carter's stock (amounting to approximately $131,600 of profit), the information shared by Martin in advance of Carter's February 25, 2010 earnings announcement did not precipitate an immediate market impact.

It follows that it is unclear whether Mr. Megalli would have been criminally prosecuted based solely on Level Global's sale of Carter's shares on November 9, 2009 and February 2010, which amounts to just over $400,000 of guideline gain

under USSG § 2B1.4. This is particularly true in that Mr. Megalli realized no appreciable personal gain from these trades, (*see* Part III.C.2, *infra*), as well as given the fact that it remains subject to debate (i) whether Martin's contemporaneous e-mails and investigative debriefings show that he did *not* tip Mr. Megalli on November 9, 2009 with regard to Carter's earnings restatement, (*see id.* Part III.B.3), and (ii) when the materiality of Martin's positive tips of February 2010 should be assessed, (*see id.* Part III.B.2).

Accordingly, it is entirely understandable that a considerable amount of the PSR's recitation of Mr. Megalli's offense conduct is devoted to Level Global's October 2009 sales and its July 2010 short sales of Carter's stock. While the government has taken Mr. Megalli to task for objecting to certain of the PSR's contentions in relation to these sales, Mr. Megalli has not sought to minimize his misconduct in this case, either in his dealings with the government prior to his waiver of indictment and entry of a guilty plea to the government's information or, even more importantly, in his Rule 11 colloquy with the Court.

Indeed – and as addressed more fully below in connection with Mr. Megalli's entitlement to acceptance of responsibility credit, (*see* Part III.B, *infra*) – any fair reading of his PSR objections demonstrates the following: First, that he does *not* deny that he acquired and then sold Carter's shares in February 2010 and

that he sold short positions in Carter's stock in July 2010 based on *actual* knowledge of inside information that had been disclosed by Martin. In this regard, his PSR objections related to these sales merely go to the *degree* of the materiality of Martin's information given (i) that the market was, at least initially, fairly underwhelmed by Carter's February 25 earnings announcement, and (ii) there was a great deal of public information related to Carter's difficulties corroborating Martin's negative disclosures of July 2010. Second, Mr. Megalli's collateral PSR objections, which he is plainly entitled to preserve without jeopardizing his acceptance credit, go largely to demonstrably false or irrelevant facts that are nonetheless highly prejudicial to him. And finally, with respect to Level Global's October 2009 Carter's trade, his PSR objections are fully in accord with his discussions with the government prior to his waiver of indictment – and, moreover, his colloquy with the Court – that he sold $9,000,000 worth of Carter's shares (thereby avoiding approximately $2.1 million of loss), based on conscious avoidance as to the source and legitimacy of Martin's telephonic tip on the morning of October 23.

Indeed, the following, verbatim excerpt from Mr. Megalli's Rule 11 colloquy establishes his consent to the government's contention that he traded in material part based on actual knowledge of inside information from Martin in

February and July 2010, and that with respect to the October 2009 trades he is guilty based on conscious avoidance of such knowledge:

> MR. CHAIKEN: . . . . To give the court an example of information provided to Mr. Megalli, Mr. Posey tipped Mr. Martin and Mr. Martin tipped Mr. Megalli and others in advance of Carter's October 27th, 2009, announcement that it was conducting an internal investigation into accounting irregularities and would be delaying its earnings release for the third quarter of 2009, which was scheduled for October 27, 2009.
>
> After business hours on October 22nd, 2009, Mr. Posey and Mr. Martin had an in-person meeting over drinks in Atlanta during which Mr. Posey disclosed inside information about the investigation and earnings delay to Mr. Martin.
>
> * * *
>
> The next morning at 9:42 a.m. on Friday, October 23rd, 2009, Mr. Martin sold his entire position in Carter's stock, over 35,000 shares valued at approximately $1,000,000. Later that morning at 11:23 a.m. on October 23rd, 2009, Mr. Martin placed a seven-minute call to Mr. Megalli during which Mr. Martin disclosed inside information about the investigation to Mr. Megalli. Less than two minutes into the call, Mr. Megalli sent an instant message to Level Global's head of trading in which Mr. Megalli ordered the liquidation of Level Global's entire position in Carter's stock which at that time was 300,000 shares valued at nearly $9 million.
>
> * * *
>
> BY THE COURT: Mr. Megalli, that's a lot of information, and I'm going to ask you not necessarily to go through everything that's been stated here. As Mr. Chaiken has stated, he doesn't suggest that you had knowledge of everything that's said there. But what I want to focus on was your particular role in this, your relationships with Mr. Martin, your knowledge of what was going on, based on your

background the likelihood that you knew that insider information was being passed to you. As to those matters, the representations that have been made by Mr. Chaiken in terms of his evidence, with what part of that do you disagree, if any?

THE DEFENDANT: *I mostly agree factually with pretty much everything he said.* I'd like to make a couple of distinctions, If I may.

He stated I met Mr. Martin in mid-2009. I was introduced to him towards the end of August right after I started at Level Global, and I retained him in September. The main trade that happened in October which Mr. Chaiken outlined was just a few weeks after I met him.

My understanding is, just to try to provide some context, the cooperator that he mentioned and some of the other tippees had known Eric Martin for many, many years. And I just wanted to draw that distinction that this was someone I had just been introduced to.

[THE COURT]: Right.

[THE DEFENDANT]: Just as a very small factual correction.

The only other real thing I guess –

MR. MONNIN: Judge, just quickly, I think what's going to be very helpful for the record is for Mr. Megalli to really focus in on what his intent and knowledge was in relation to the October 23rd and October 26th trades. As the Court pointed out and as Mr. Chaiken very fairly pointed out, really what we're talking about here is an overall conspiracy. But what's important for the Court to accept Mr. Megalli's guilty plea is I think for Mr. Megalli to just tell the Court in his own words what happened on the 23rd, what happened on the 26th, what he heard from Mr. Martin, why he traded.

And Judge, I think what we're going to get is that Mr. Megalli is going to say, Look, he gave me information which was confirmatory of the decision to trade and to trade a significant

position. It's 300,000 shares valued at $9 million, that's absolutely correct; but the nature of the information was not quite as concrete as what the Government would contend, but I consciously avoided stepping over that threshold and saying to Mr. Martin where did it come from, because he's a securities professional and he's not asking those questions for a reason.

So I'll let him address that.

THE COURT: Okay.

THE DEFENDANT: Right. So I have been advised not to get too much into the factual elements. So I want to be respectful of the Court, and I don't want to minimize my own culpability here and I take full responsibility for everything going on. So we'll put that as a preface.

But just for the record, *it was very important for me that the Government included language on conscious avoidance in the charging instrument. I would not have been here pleading guilty had they not done that because I was not willing to say that Eric Martin had given me a specific tip-off about the fact that there was going to be an accounting fraud or an earnings delay. He never – he did not do that.* I found out about the accounting delay on the morning of October 27th with everyone else in the world, and I've stated as such from day one.

However, when he did call me on October 23rd, I did have 300,000 shares of Carter's. The stocks has recently risen from [$]25 to $29 which had been my price target which I wrote up in September. I had started to liquidate a position that was 350,000, and so I had already started selling the position when he called me. And he specifically said to me, as best I can remember, and these may not be the exact words, but the basic I think what was conveyed on that call was he said to me, Hey, do you still own stock in Carter's? And I said to him, Yes, but I've been selling it. What do you think? Is that a good idea or a bad idea? And he indicated to me that he thought it would be a good idea to sell it.

He did not talk about accounting delay. As Mr. Chaiken pointed out, we were on the phone for less than two minutes before the trade was entered in; and we certainly didn't talk about vendor markdown and accommodations. And later I found out it was Kohl's, and lots of the details that came out later. Specifically, though, the accounting problem we did not discuss on that call.

What I'm pleading guilty here today to is the conscious avoidance. When he said to me, Yes, good idea, sell the stock, that was a change from his prior opinion. And I did – I should have probed and asked more questions about why are you telling me this, what are you basing this on. I did know he had worked at the company before. And that was a mistake and I'm going to be paying for the consequences for that mistake for the rest of my life, and I apologize to the Court for that. But I just wanted to set the record straight.

MR. MONNIN: Tell Judge Story about the significance of Mr. Martin to the decision to trade. Were you talking anyone else about Carter's?

THE DEFENDANT: *The call with Eric Martin I would characterize as a catalyst to continue selling stock. The decision to buy and sell stock in Carter's was based on many other factors which we've gone into great lengths with the Government, and I think they're aware of our position in terms of lots of the buying and selling indicators from other sell-side research. But he was certainly, given, obviously, the timing of the trade, a catalyst for me to continue selling stock.*

THE COURT: *Well, and actually to liquidate completely in one fell swoop is essentially what you did.*

(11/14/13 Guilty Plea Hr'g Tr. at 19-26 (emphasis added)).

Mr. Megalli has not minimized his misconduct because his PSR objections in no way depart from his Rule 11 colloquy with the Court, which the Court credited in adjudicating him criminally liable on the government's insider trading conspiracy charge. In connection with the government's Rule 11 proffer, Mr. Megalli admitted that he traded Carter's shares based on his actual knowledge of material, non-public information imparted by Martin and that, with respect to Level Global's October 2009 sales, he consciously avoided obtaining such knowledge.

III. ARGUMENT

A. Post-*Booker* Sentencing Standard

1. Procedural and Substantive Reasonableness

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court held that a mandatory federal sentencing guidelines regime violated the Sixth Amendment. Pursuant to the *Booker* remedial opinion, the sentencing court is to apply the factors set forth in 18 U.S.C. § 3553(a) to derive a "reasonable" sentence. "Reasonableness" in the context of federal sentencing proceedings involves both procedural and substantive components.

Substantively, "in reviewing the ultimate sentence imposed by the district court for reasonableness, we consider the final sentence, in its entirety, in light of

the § 3553(a) factors, rather than reviewing each individual decision made during the sentencing process." *United States v. Greene,* 279 Fed. Appx. 902, 911 (11th Cir. 2008) (quotations omitted). "[W]e will only reverse a procedurally proper sentence if we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case." *United States v. McBride*, 511 F.3d 1293, 1297-98 (11th Cir. 2007) (internal citation omitted); *see also United States v. Irey*, 612 F.3d 1160, 1184-85 (11th Cir. 2010) (noting that district court application of the section 3553(a) factors is subject to abuse of discretion review on appeal "that accords substantial deference to the district court's sentencing decisions") (quotation and citation omitted).

As a result, this Court is effectively the final arbiter of Mr. Megalli's sentence under what is now well-established, post-*Booker* sentencing authority.

2. Applicable Guideline Variance Authority

Section 3553(a), "as modified by *Booker*, contains an overarching provision instructing district courts to 'impose a sentence sufficient, but not greater than necessary' to accomplish the goals of sentencing." *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (quoting the sentencing goals set forth at 18 U.S.C. §

3553(a)(2)(A)-(D)). In arriving at an appropriate sentence, section 3553(a) provides for consideration of a number of factors. The first factor, reflecting the critical component that the district judge "make an individualized assessment based on the facts presented," is "a broad command to consider 'the nature and circumstances of the offense and the history and characteristics of the defendant.'" *Gall v. United States*, 552 U.S. 38, 50 & n.6 (2007) (quoting 18 U.S.C. § 3553(a)(1)). The second factor requires consideration of the "general purposes of sentencing," that is, imposition of a sentence reflecting the seriousness of the offense, promoting respect for the law, and providing "just punishment," as well as specific and general deterrence. 18 U.S.C. § 3553(a)(2); *Kimbrough*, 552 U.S. at 101.

Although a district judge "should begin all sentencing proceedings by correctly calculating the applicable Guidelines range," *Gall*, 552 U.S. at 49, the advisory guidelines are merely one of multiple factors to be considered in imposing a reasonable sentence. *Id.* at 59. Indeed, the district court may not presume a custodial guidelines range is reasonable, but rather must undertake an individualized evaluation of the facts and circumstances before it, particularly where, as here, a defendant's history and characteristics and corresponding considerations of retribution, deterrence and rehabilitation remove a case from

those within the heartland of a particular guideline computation. *See generally Rita v. United States*, 551 U.S. 338, 351 (2007) (noting that it is merely "probable" that a particular sentence is reasonable when, solely in the "mine run" of cases, it is within the guidelines' application of the section 3553(a) factors); *accord Irey*, 612 F.3d at 1185.

In doing so, the sentencing court must consider the possibility that a custodial sentence derived from the guidelines is not only unnecessary to accomplish the goals set forth in section 3553(a), but that such sentence is "greater than necessary" to accomplish the statute's sentencing objectives. *See Gall*, 552 U.S. at 47 (rejecting any requirement than an outside-the-guidelines sentence be justified by "extraordinary" circumstances and further rejecting any "rigid mathematical formula" that uses the percentage of a departure from the guidelines as the standard for determining the strength of the justification required for a specific sentence). In other words, and as many sentencing courts in the insider trading context have found, a guidelines sentence may actually *thwart* application of section 3553(a)'s command to impose the *minimum* sentence necessary to achieve the goals of sentencing. *Rita*, 551 U.S. at 351.

As a result, the district court is generally "free to make its own reasonable application of the § 3553(a) factors, and to reject (after due consideration) the

advice of the Guidelines." *Kimbrough*, 552 U.S. at 113 (Scalia, J., concurring); *see also Gall*, 552 U.S. at 50 (noting that district judges are generally free to impose sentences outside the recommended guideline range, provided they have considered "the extent of the deviation and [have] ensure[d] that the justification is sufficiently compelling to support the degree of the variance"). Based on its independent evaluation of each section 3553(a) factor, a district court is legally authorized to impose a non-guidelines sentence, including a sentence substantially below the advisory guideline range. *Kimbrough*, 552 U.S. at 101; *see also Irey*, 612 F.3d at 1187 ("the appellate court may not presume that a sentence outside the guidelines is unreasonable and must give 'due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance'") (quoting *Gall*, 552 U.S. at 51).

B. The Court's Advisory Guideline Computation Should Include Full Acceptance of Responsibility Credit

1. Mr. Megalli Has Not Sought to Minimize His Misconduct

The government has questioned Mr. Megalli's entitlement to acceptance credit following submission of his PSR objections. This is perplexing, particularly in that criminal defendants in this and other federal judicial districts routinely persist in factual objections at sentencing without jeopardizing their acceptance credit. Moreover, Mr. Megalli's PSR objections do nothing – other than supplying

relevant context that goes solely to *mitigation*, not lack of acceptance – to dispute his longstanding concession, including as articulated in open court during his Rule 11 colloquy, that he traded in February and July 2010 based on *actual knowledge* of inside information shared by Martin and in October 2009 based on *conscious avoidance* as to the illicit basis for Martin's sale recommendation.

The government's concerns regarding Mr. Megalli's entitlement to acceptance credit thus appear to spring from the misconception that he has somehow denied having traded based on actual knowledge of material, non-public information disclosed by Martin in February and July 2010 and conscious avoidance of such knowledge in October 2009. He has not.

In fact, the introduction to Mr. Megalli's PSR objection letter to the Probation Office states expressly: "Mr. Megalli readily acknowledges that he traded Carter's shares based on illicit advice from Mr. Martin, albeit typically accompanied by other, independently corroborative analysis compiled by Mr. Megalli." (Def.'s PSR Objection Ltr. at 3). Mr. Megalli amplified this admission by pointing to his sole responsibility for trading on insider information in his acceptance of responsibility statement incorporated in the PSR:

> I respectfully submit this letter to the Court *to fully accept responsibility for the actions that culminated in my guilty plea on November 14, 2013*. I have thought a great deal over the past few months about the series of events that led me to this point. My first

> reaction was one of disbelief and, frankly, anger. What I missed initially was that the target of my anger should have been me, not others
>
> *I have come to the realization that there is no one I can possibly blame for this mess other than myself.*
>
> I am extremely disappointed that I did not follow Warren Buffett's advice to investment managers to "play in the middle of the court." *In the case of my relationship with Eric Martin, it is plain that I stepped out of bounds and this was wrong. What I should have said to Mr. Martin at the beginning of our relationship was to not provide me with advice relating to his former employer. That would have been the right thing to do.*

(PSR ¶ 159 (emphasis added)).

Moreover, during his Rule 11 plea colloquy – and with Mr. Megalli's full assent – the government stated as follows with regard to Mr. Megalli's offense conduct:

> Beginning in September 2009 and continuing through July 2010, Mr. Martin provided Mr. Megalli with material nonpublic information regarding Carter's quarterly and annual financial results and other events in advance of the public disclosure of that information. The information related to Carter's earnings per share, also referred to as EPS, forward guidance, and other confidential internal financial performance information. Mr. Megalli, in turn, caused Level Global to buy, sell and short Carter's common stock based, in whole or in part, on this material nonpublic information. Mr. Megalli did so *knowing or consciously avoiding the knowledge* that Mr. Martin was obtaining the information from a Carter's insider in breach of that insider's duties of trust and confidence to Carter's.

(11/14/13 Guilty Plea Tr. at 16-17 (emphasis added)).

Accordingly, far from minimizing his misconduct, Mr. Megalli's PSR objections simply – and permissibly – place his trades in context to show that, while Martin's information was undoubtedly material – indeed, Mr. Megalli termed his October 23, 2009 call with Martin the "catalyst" for liquidating $9,000,000 worth of Carter's stock – he did not rely on Martin in isolation. This in turn goes to mitigation, insofar as a remote tippee trader like Mr. Megalli who nonetheless conducts independent due diligence is plainly less culpable than a trader who personally corrupts an insider and proceeds to trade on nothing else.

2. Mr. Megalli Has Merely Objected To the Relative Significance of Martin's Disclosures in February and July 2010, Not His Actual Knowledge

Reference to Mr. Megalli's PSR objections reveals that he has merely questioned the significance, not the illegality, of the information Martin disclosed prior to Carter's February 25, 2010 earnings release. In doing so, Mr. Megalli's objections merely state that the PSR's reference to a purportedly "precipitous" drop in the Dow Jones Industrial Average (the "Dow"), while Carter's dropped only "slightly" is factually incorrect. (*See* Def.'s Objections to PSR ¶¶ 125-26). The inference being that Martin's information was material to the market given that Carter's shares held steady while the Dow purportedly plummeted. In point of fact, Carter's shares held steady with the rest of the market, which essentially did

not move on February 25, 2010. The Dow closed at 10,374.16 on February 24, 2010 and at 10,321.03 the following day, a decline of only 0.5%, while Carter's stock closed down $0.07 (or .25%). It follows that the materiality of Martin's information was of comparatively questionable significance to the market.[2]

With regard to Level Global's July 2010 short sales, Mr. Megalli's PSR objections also go solely to the significance, as opposed to the actionability, of Martin's disclosures. In particular, Mr. Megalli's PSR objections, *see id.* at 16-17, illustrate the wealth of independent due diligence he conducted to corroborate the advisability of shorting Carter's stock, as evidenced by a July 27, 2010 Morgan Stanley note "that Carter's stock had seen the second largest absolute increase in volume of short sales in the entire consumer sector – up by 34.6%." *Id.* at 16. As such, while Mr. Megalli admits to having shorted Carter's stock in July 2010 based on actual knowledge of inside information imparted by Martin, such information was complemented by Mr. Megalli's independent due diligence.

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[2] While the government has also addressed the applicable October 2009 and February 2010 trading windows in its PSR objections, Mr. Megalli notes that he has questioned the PSR's use of disparate trading windows only to point out that the applicable trading window is an issue, along with many others, he waived by pleading guilty. He certainly understands he remains subject to the 18-level enhancement for illicit gain under USSG § 2B1.4(b)(1).

3. The Evidence Suggests That Mr. Megalli's November 9, 2009 Carter's Trade Was Not Based on Inside Information Disclosed by Martin

Mr. Megalli's lone objection to relevant conduct, which remains entirely consistent with acceptance of responsibility, relates to Level Global's sale of 150,000 Carter's shares on November 9, 2009, purportedly in anticipation of Carter's restatement announcement of later that day. *See id.* at 13-14. In fact, Martin admitted in an e-mail to his clients *following* Carter's restatement announcement, "We are frankly amazed that management would again come out and delay earnings after the beating they took last week from investors and the share price." *Id.* at 13. Approximately 20 minutes later, Martin e-mailed Megalli directly, stating, "I am praying you lowered today, I should have." *Id.* Indeed, Martin apologized to Megalli by e-mail the following day: "Can stop by the office around 3pm if you want to whip me for cri[.]" *Id.* Finally, Martin advised the government during a December 5, 2012 debriefing, *after* he had elected to cooperate, [redacted] *Id.*

In light of this evidence, it is inconceivable that Mr. Megalli's objection to inclusion of the November 9, 2009 sale as relevant conduct – which, because it has no guideline impact, he did not even ask be excluded from the PSR's gain computation, (PSR ¶ 158) – should jeopardize his acceptance credit.

4. Conscious Avoidance is Just as Criminally Actionable as Actual Knowledge

Applicable tipper-tippee insider trading authority has long countenanced criminal liability based either on a tippee's actual knowledge of the tipper's direct or derivative fiduciary breach or deliberate avoidance of learning the truth. *See generally Dirks v. SEC*, 463 U.S. 646, 660 (1983) (tippee has duty to abstain or disclose "only when the insider has breached his fiduciary duty . . . and the tippee knows or should know that there has been a breach"); *United States v. Whitman*, 904 F. Supp. 2d 363, 372 (S.D.N.Y. 2012) ("[W]here appropriate . . . the Government is entitled to a 'willful blindness' or 'conscious avoidance' instruction to the jury on the issue of [tippee scienter]"). Conscious avoidance liability flows from trading activity that is "so overwhelmingly suspicious" that a "failure to question the suspicious circumstances establishes the defendant's purposeful contrivance to avoid guilty knowledge." *United States v. Svoboda*, 347 F.3d 471, 480 (2d Cir. 2003) (quoting *United States v. Lara-Velasquez*, 919 F.2d 946, 952 (5th Cir. 1990)); *see also United States v. Rodriguez*, 983 F.2d 455, 458 (2d Cir.

1993) (noting that it is "essential to the concept of *conscious* avoidance that the defendant must be shown to have *decided* not to learn the key fact, not merely to have failed to learn it") (emphasis in original).

Mr. Megalli has never made a secret of his position that, while Martin tipped him to sell on October 23, 2009, such tip – which was conveyed to Mr. Megalli's trader in two minutes (or less) – did *not* involve disclosure of Carter's impending earnings delay, Kohl's identification as the customer in question, or the prospect of a restatement. This led the parties to negotiate inclusion of a conscious avoidance intent element in the government's information, which, as noted above, the parties also addressed during Mr. Megalli's change of plea hearing. In particular, Mr. Megalli acknowledged that certain of the information imparted by Martin on October 23, 2009 was sufficiently suspicious to render his conscious choice not to divine its source and nature criminally actionable. (*See* 11/14/13 Guilty Plea Hr'g Tr. at 24-25); *see also Svoboda*, 347 F.3d at 480 (deliberate actions to avoid knowledge are sufficient to confer criminal liability). Most importantly, given that conscious avoidance is just as actionable as actual knowledge, the Court correctly accepted Mr. Megalli's allocution testimony in adjudicating him guilty, thereby mooting any objection to Mr. Megalli's receipt of acceptance credit based on

acknowledging his conscious avoidance, as opposed to actual knowledge, in connection with the October 2009 Carter's trades.

5. Mr. Megalli is Entitled to Acceptance of Responsibility Credit as a Matter of Applicable Law and Equity

As noted above, Mr. Megalli's position regarding his knowledge and intent has been consistent throughout these proceedings, including at sentencing. He has not minimized his liability, but rather has merely sought to place it in context to distinguish him from those remote tippee traders who corrupt corporate insiders with kickbacks, trade based solely on this information, and reap millions of dollars of personal profit as a result. Frankly, given that he allocuted at length regarding his conscious avoidance in relation to the October 2009 trades, the time for the government to have objected, if at all, was prior to the Court adjudicating him guilty of the subject insider trading conspiracy (which was followed by national publication of his criminal conviction). Finally, he has further demonstrated acceptance of responsibility within the meaning of USSG § 3E1.1 by depositing $50,000 in early – and complete – restitution with the clerk of court.

Mr. Megalli, a defendant who, alone among his currently convicted co-conspirators, waived indictment and entered a negotiated plea, would be irretrievably prejudiced by the Court's failure to accord him acceptance of

responsibility credit. Based on any fair reading of the foregoing discussion and Mr. Megalli's PSR objections, this clearly should not happen.

C. Entry of a Substantively Reasonable Sentence in This Case Under 18 U.S.C. § 3553(a) Necessitates a Substantial Variance

As discussed above, section 3553(a) expressly provides that, in deriving a substantively reasonable sentence, the Court must consider the nature and circumstances of the offense and the history and characteristics of the defendant, as well as the need for the sentence imposed to: (1) reflect the seriousness of the offense, (2) promote respect for the law, (3) provide just punishment, (4) afford adequate deterrence, and (5) protect the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(1) & (2).

As one sentencing court has aptly noted, evaluation of the foregoing section 3553(a) factors frequently supports a substantial downward variance in fraud cases:

> [S]entencing judges know that a full consideration of "the nature and circumstances of the offense and the history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1), implicates offense and offender characteristics that are too numerous and varied, and occur in too many different combinations to be captured, much less quantified in the Commission's Guidelines Manual. *A consideration of those and other factors set forth in § 3553(a) produces sentences that are moored to fairness, and to the goals of sentencing set forth in § 3553(a)(2), but sometimes not so much to the advisory Guidelines range. Indeed, in some cases, the fair sentence can drift quite far*

> *away from the advisory range, which is, after all, but one of eight factors the sentencing judge must consider.*

United States v. Ovid, No. 09-CR-216 (JG), 2010 WL 3940724, *1 (E.D.N.Y. Oct. 1, 2010) (emphasis added).

This case fits well within the foregoing admonition. First, a substantial downward variance here will further the statutory objectives of ensuring proportionality in relation to the sentencing of similarly-situated remote tippee traders, while increasing the likelihood that Mr. Megalli is appropriately punished in a manner that is not more severe than necessary to promote general and specific deterrence.

Second, rote application of the guidelines in this case results in an offense level that significantly overstates Mr. Megalli's culpability. Specifically, the guideline offense level, which is driven primarily by Level Global's gains and losses avoided, fails to take into account, among other things, (i) the fact that Mr. Megalli did not, at least in the main, personally profit or attempt to personally profit from the offense conduct and (ii) his status as a remote tippee who neither corrupted an insider, breached any fiduciary duty nor divulged confidential information to others.

And third, consideration of Mr. Megalli's personal history, devotion to his friends and family, and the debilitating consequences he has already suffered plainly counsel in favor of leniency here.

1. Mr. Megalli is Entitled to a Substantial Variance Based on Considerations of Proportionality and Deterrence

As codified in 18 U.S.C. § 3553(a)(2), sentencing in federal court serves multiple purposes, including retribution, specific and general deterrence, incapacitation and rehabilitation. Incapacitation and rehabilitation are inapposite to the vast majority of federal fraud prosecutions, given that, as here, the fact of conviction disqualifies the offender from occupying any status that would afford him the opportunity to re-offend. Accordingly, the focus under section 3553(a)(2) in federal fraud prosecutions is on retribution and deterrence, both sentencing objectives that, particularly for first-time offenders like Mr. Megalli, afford substantial downward departure grounds, particularly in light of the kinds of sentences available, including probation/community confinement, coupled with community service and restitution.

a. Sentencing Courts Routinely, and Substantially, Vary Downward in Insider Trading Prosecutions

Courts routinely have downwardly varied from the advisory guideline range in insider trading prosecutions. Indeed, from October 1, 2009 through December

31, 2013, U.S. Sentencing Commission data reflects that courts imposed guideline sentences *in only 16 of 104 insider trading cases*, and none above the guidelines.[3] Although, admittedly, a significant number (40 cases) of the foregoing non-guideline sentences resulted from 5K departures, Sentencing Commission data establishes that a larger number (46 of the remaining 64 cases, or fully 71 percent of the total number of non-5K insider trading sentences entered over the past four years) resulted from variances exclusive of any government-sponsored departure.

Moreover, the actual sentencing reductions accorded in these cases – based on a comparison of the advisory guideline range with the custodial sentence ultimately imposed – have often been quite significant. Indeed, according to a

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[3] *See* U. S. Sentencing Comm'n, Preliminary Quarterly Data Report at tbl. 5 (1st Quarter 2014), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC-2014-Quarter-Report-1st.pdf; U. S. Sentencing Comm'n, 2013 Sourcebook of Federal Sentencing Statistics at tbl. 28 (2013), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table28.pdf; U. S. Sentencing Comm'n, 2012 Sourcebook of Federal Sentencing Statistics at tbl. 28 (2012), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/Table28.pdf; U. S. Sentencing Comm'n, 2011 Sourcebook of Federal Sentencing at tbl 28 (2011), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2011/Table28.pdf; U. S. Sentencing Comm'n, 2010 Sourcebook of Federal Sentencing Statistics at tbl. 28 (2010), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2010/Table28.pdf.

well-regarded compendium of sentencing data, *more than half of the sentences handed down on non-cooperator pleas were below 50% of the minimum guideline range from 2010-13, while fully 63% of the non-cooperator plea sentences handed down in 2012-13 were below the 50% mark. See* Morrison & Foerster LLP, 2013 Insider Trading Annual Review (2013), at 11 (chart) *available at* http://media.mofo.com/files/Uploads/Images/140108-Insider-Trading-Annual-Review.pdf. Accordingly, it is approaching a statistical reality, particularly as the government has continued to prosecute insider trading cases across a range of offense conduct, that the heartland of insider trading sentencing involves upwards of a 50% guideline reduction.

Notably, these variance statistics do not distinguish between schemes that implicate the corruption of insiders, the payment of bribes and other remuneration, and the direct realization of millions of dollars of personal gain, versus Mr. Megalli's offense conduct, which involved none of these aggravating factors.

Further, such variances account for the uniquely debilitating impact of a criminal insider trading conviction on most defendants (regardless of custodial time), which includes, without limitation, considerations of public humiliation and loss of reputation, loss of career and permanent debarment from the securities industry, and loss of income and the ability to support one's family. For example:

- *United States v. Anderson*, 267 Fed. Appx. 847, 849-51 (11th Cir. 2008) (affirming variance from 18-24 month guideline range to 3 years probation and six months home detention based on, among other things, the negative consequences to the defendant, including job loss and diminished future income prospects);
- *United States v. Whitman*, No. 12-cr-125 (S.D.N.Y. Jan. 29, 2013) (variance from 51-63 month guideline range to 24 month sentence for hedge fund founder and portfolio manager who actively participated in two separate criminal conspiracies involving multiple public companies, and who lied on the witness stand at trial);
- *United States v. Brownstein*, No. 11-cr-904 (S.D.N.Y. Jan. 11, 2012) (guilty plea by former hedge fund CEO to insider trading and $2.4 million profit; stipulated guideline range of 37-46 months reduced to custodial sentence of one year and one day);
- *United States v. Longueuil*, No. 11-cr-161 (S.D.N.Y. July 29, 2011) (guilty plea by former portfolio manager to trading on inside information obtained from expert consulting network, resulting in $1.25 million gain; stipulated guideline range of 46-57 months reduced to custodial sentence of 30 months);

- *United States v. Contorinis*, No. 09-cr-1083 (S.D.N.Y. Dec. 17, 2010) (conviction following insider trading trial of former hedge fund manager, on $13.6 million gain; guideline range of 97-121 months reduced to custodial sentence of 72 months);
- *United States v. James Turner II*, No. 2:11-cr-868 (D.N.J. Apr. 16, 2012) (former hedge fund chief investment officer sentenced to one year despite guideline range of 57-71 months (based on gain in excess of $2.5 million) and personal profits of approximately $1.1 million; tippers received probation despite guideline ranges of 46-57 months and 30-37 months, respectively);
- *United States v. Tom*, No. 1:05-cr-10361 (D. Mass. July 23, 2009) (37-46 month guideline range, based on attributable range of approximately $783,000 and USSG § 3C1.1 obstruction enhancement, downwardly varried to one year and one day).

Aside from a defendant's offense conduct, his personal background and family obligations are also routinely cited as a factor that calls for a significant variance. *See, e.g., Gupta*, 904 F. Supp. 2d at 353-55 (advisory guideline range of 78-97 months reduced to custodial sentence of 24 months); *Adelson*, 441 F. Supp.

2d at 515 (urging courts to step outside the guidelines and consider "the human being who will bear the consequences"); *United States v. Milne*, 384 F. Supp. 2d 1309, 1312-13 (E.D. Wis. 2005) (reducing guideline range and imposing split sentence to allow defendant to work and support his family).

Finally, considerations of proportionality – codified as "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[,]" 18 U.S.C. § 3553(a)(6) – dictate that the Court need not be tethered to the guidelines when, as a matter of national statistical fact, district courts from around the country have so routinely varied from advisory guideline ranges derived principally from application of USSG § 2B1.4. In varying from the guidelines, these courts have recognized that application of USSG §2B1.4, with its focus on institutional gain as a proxy for individual moral culpability, not only frequently overstates the seriousness of an offender's misconduct, but also fails to account for the particularly disabling effect of a felony insider trading conviction on individuals (like Mr. Megalli) who have participated in the securities industry throughout their career. Indeed, it is precisely because a felony insider trading conviction is so uniquely debilitating that courts have not appeared troubled by the impact of a substantial downward variance on considerations of general deterrence. They know the devastating personal and

professional effects of a felony insider trading conviction – separate and apart from jail time – accord specific and general deterrence, both simultaneously and in equal measure.

b. Deterrence is Effectively Served by the Fact of Mr. Megalli's Felony Conviction

Given the debilitating personal, financial and professional consequences that Mr. Megalli has suffered and will continue to suffer, the guideline stipulations and significant, multi-level variance advocated herein meet the objectives of 18 U.S.C. § 3553(a)(1) to secure a just punishment that is not more severe than is necessary to promote general and specific deterrence. Mr. Megalli and his wife Jenifer have been married for fourteen years and have two young daughters. Removing Mr. Megalli from his family for an extended period of time is unquestionably devastating, particularly given Mr. Megalli's devotion to his wife and daughters, as has been shared with the Court by his family and many friends. Mr. Megalli has already lost his job as a result of the government's investigation, cutting off his family's only source of income. Moreover, Mr. Megalli will be barred from working in the investment industry – the only industry in which he has worked over the past eleven years – thus effectively eliminating the risk of a repeat offense and significantly limiting his future employment options.

In short, the personal, financial and professional consequences that Mr. Megalli has suffered and will continue to suffer serve as a tremendous source of both individual and general deterrence, justifying the substantial variance advocated herein.

2. The Nature and Circumstances of Mr. Megalli's Offense Conduct Are Fundamentally Mitigating

Just as the Court is to "consider every convicted person as an individual" so too is it required to evaluate "every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Gall*, 552 U.S. at 52 (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)). The PSR's tendency to focus on Mr. Megalli's trading activity and communications with Martin in isolation – without examining clearly applicable mitigating factors such as Mr. Megalli's lack of personal gain, his parallel due diligence in support of his trading decisions, and his status as a remote tippee who never engaged in forward tipping – suggests that Mr. Megalli has been deemed inevitably subject to sentencing within the applicable guideline range. This is not the case.

a. Mr. Megalli's Personal Gain Was Negligible

Using institutional, as opposed to personal, gain for purposes of an offense level computation in insider trading cases has come under increasing attack as

being substantively unreasonable. *See, e.g., United States v. Gupta*, 904 F. Supp. 2d 349, 351 (S.D.N.Y. 2012) ("[T]here is no better illustration of the irrationality of this approach than the instant case: for of the total of 30 Guideline points calculated by the Probation Department and endorsed by the Government as reflecting the proper measure of [defendant's] crime and punishment, no fewer than 20 – or two thirds of the total – are exclusively the product of [co-conspirator's] and his companies' monetary gain, in which [defendant] did not share in any direct sense"); *see also United States v. Contorinis*, 692 F.3d 136, 145-48 (2d Cir. 2012) (vacating criminal forfeiture order imposed on hedge fund portfolio manager convicted of insider trading because the subject proceeds had been acquired by the fund, rather than the defendant, and thus "the district court erred in ordering [the defendant] to forfeit funds that were never possessed or controlled by himself or others acting in concert with him"); *see also United States v. Emmenegger*, 329 F. Supp. 2d 416, 427-28 (S.D.N.Y. 2004) (finding that the amount of victim loss or defendant gain under the guidelines is a "relatively weak indicator of the moral seriousness of the offense").

The fact that Mr. Megalli did not directly profit from the unlawful trades at issue is a highly relevant variance consideration. Each trade was executed through Level Global's accounts for the exclusive benefit of the Level Global fund and its

investors. Any profit or loss avoided from the trades inured in the first instance to the benefit of Level Global and its investors, not Mr. Megalli.

That said, Mr. Megalli does not – and, indeed, cannot – deny that positive trading performance was an important employment consideration at Level Global. As a corollary, however, it bears noting that Mr. Megalli managed a several-hundred million dollar consumer sector portfolio at Level Global, which required him to monitor 300-400 separate issuers. For its part, Carter's securities never comprised more than one-half of one percent of Level Global's total available investment capital.

Moreover, there is no dispute that Mr. Megalli was at all relevant times solely a Level Global employee. He did not own or otherwise hold an equity share in the business and was only entitled to a small percentage of the firm's incentive fees, which were paid pursuant to his employment contract. In particular, Mr. Megalli was eligible to receive 1%-3% of Level Global's incentive fees if his consumer fund returned $50 million or less, and 3%-5% of Level Global's incentive fees if his consumer fund returned $50 million or more.

Ultimately, Mr. Megalli's consumer fund returned approximately $40 million in 2010, and he received 3% of Level Global's overall incentive fees. (His employment contract precluded an incentive bonus award for 2009.) As noted in

the PSR, the subject Carter's trades generated a guideline gain of approximately $3.17 million. (PSR ¶ 158). Level Global was entitled to 10 percent of these profits as an incentive fee (its investors kept the remainder), such that the $3.17 million at issue generated approximately $317,000 in firm gain. As most of this profit occurred in 2009, a year in which Mr. Megalli was contractually ineligible to receive an incentive bonus, he is in fact accountable solely for the illicit gain realized from the 2010 Carter's trades, or $779,266. *Id.* Three percent of $77,926 (the amount of Level Global's incentive fee associated with the 2010 Carter's trades) corresponds to $2,338 realized by Mr. Megalli directly.

Further, attributing Level Global's gain to Mr. Megalli also overstates his culpability given the leverage inherent in institutionalized securities trading, as opposed to personal trading in a retail brokerage account. Here, because he served as a Level Global portfolio manager at the time of the alleged offense conduct, Mr. Megalli's trading involved millions of dollars across hundreds of thousands of shares. Again, however, Mr. Megalli neither directly nor, in the main, personally profited from his offense conduct. As opposed to the highly-publicized prosecution of former hedge fund manager Raj Rajaratnam, who actively procured inside information that inured to his personal benefit as the principal officer of

Galleon Group, Mr. Megalli's benefit, as noted above, was dramatically more diffuse, thereby warranting a multi-level variance.

In this regard, sentencing courts have, post-*Booker*, commonly exercised their variance authority to adjust guideline ranges that have been inflated due principally to the institutionalized or market-related aspects of a fraud scheme, which the courts have recognized does not, standing alone, reflect more aggravated intent or bad faith. *See generally Adelson*, 441 F. Supp. 2d at 509-15 (reasoning that the "multiplier effect" on loss associated with revelations of securities fraud at public companies that have typically issued millions of shares is a clear ground for variance); *Parris*, 573 F. Supp. 2d at 754 (stating that, in the absence of a variance, "we now have an advisory guidelines regime where, as reflected by this case, any officer or director of virtually any public corporation who has committed securities fraud will be confronted with a guidelines calculation either calling for or approaching lifetime imprisonment").

In short, driving up the potential term of incarceration Mr. Megalli faces based on the benefit that Level Global obtained from the trades at issue, virtually none of which inured directly to Mr. Megalli's personal benefit, translates to significant additional punishment and generates an advisory guideline range that is substantively unreasonable.

b. Mr. Megalli Did Not Seek to Augment His Gain Through Parallel Personal Trading or Forward Tipping

It is also an important variance consideration that Mr. Megalli never traded Carter's securities for his own account (*i.e.*, in a personal brokerage or retail account he controlled) throughout his dealings with Martin, a fact the government acknowledged during his change of plea hearing. (11/14/13 Guilty Plea Hr'g Tr. at 21). Nor did Mr. Megalli recommend to David Ganek, Level Global's principal, that Ganek trade Carter's shares in parallel with him, notwithstanding Ganek's access to exponentially greater trading capital and leverage. Simply put, there were clearly more direct – and certainly more remunerative – means for Mr. Megalli to have profited from his misconduct, yet he availed himself of none of them.

c. Mr. Megalli Did Not Corrupt a Corporate Insider or Breach Any Fiduciary Duty

Mr. Megalli did not induce any insider to breach a duty, nor did he have direct contact with any corporate insider who did so. Mr. Megalli was at all times a secondary tippee of Martin, who was himself a tippee of Richard Posey, the lone Carter's insider in the charged conspiracy. Mr. Megalli never met Posey, nor was he even aware of Posey's identity in relation to the trades in issue. (*See* 11/14/13

Guilty Plea Hr'g Tr. at 17 (reflecting the government's acknowledgment that "Mr. Martin did not identify his [Carter's] source by name")). Courts have long recognized that those who breach a fiduciary duty are more culpable than those whose liabilities are derivative of a breach. *See Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 313 (1985) ("[I]n the context of insider trading, we do not believe that a person whose liability is solely derivative can be said to be as culpable as one whose breach of duty gave rise to that liability in the first place"); *see also SEC v. Tome*, 638 F. Supp. 638, 639 n.1 (S.D.N.Y. 1986) ("it is illogical to argue . . . that a tippee's liability can be greater than that of the tipper"), *aff'd*, 833 F.2d 1086 (2d Cir. 1987).

For its part, the government has argued in other insider trading cases that one who induces a fiduciary breach is "simply more culpable" than one who receives and trades on that information, even if the tippee is a securities professional with substantial trading authority. For example, in connection with Danielle Chiesi's sentencing in the Southern District of New York for having facilitated a spoke of Raj Rajaratnam's well-known insider trading scheme, the government wrote as follows with respect to her culpability as compared to that of her boss, Mark Kurland, to whom she had disclosed inside information on which he traded:

> Chiesi is simply more culpable than Kurland, since she was the one on the front lines obtaining inside information and swapping it with others. It was Chiesi, and not Kurland, who had the relationship with Moffat. It was Chiesi, and not Kurland, who induced Moffat to breach his duties to IBM. And it was Chiesi, and not Kurland, who magnified the crime by simultaneously conspiring with Rajaratnam and others, who controlled billions of [sic] more dollars.

Gov't Sentencing Mem. at 12, (Doc. 284), *United States v. Chiesi*, No. 09 CR 1184 (RJH), (S.D.N.Y. June 13, 2011).

Similarly, the SEC has advocated to no less of an authority than the U.S. Supreme Court that the relative culpability of those who directly breach or induce a breach of fiduciary duty is higher than those who indirectly profit from it, noting that tippers are the "*persons most directly culpable in a violation*," because, "[a]bsent the tipper's misconduct, the tippee's trading would not occur." Brief for the U.S. Securities and Exchange Commission as Amicus Curiae Supporting Respondents, *Bateman Eichler, Hill Richards, Inc. v. Berner*, No. 84-679, 1985 WL 669566, at *21 (quoting H.R. Rep. No. 98-355, at 9 (1983)) (emphasis in original). Congress codified the SEC's position in the Insider Trading Sanctions Act of 1984, Pub. L. No. 98-376, 98 Stat. 1264 (1984), which authorized the imposition of civil penalties on non-trading tippers based "on the premise that tippers are the parties most responsible for any fraud on the investing public." *Id.*

Mr. Megalli did nothing to corrupt any Carter's insider. Indeed, the criminal scheme perpetrated in the first instance by Posey and Martin extended to other remote tippee traders, including one who has been immunized and others who may never be charged.[4] Without question, insider trading by a remote tippee is patently criminal, yet others were plainly indispensable to the conspiracy's success in that they personally breached a fiduciary duty to Carter's and disseminated their illegally obtained information well beyond Mr. Megalli.

d. Mr. Megalli's Carter's Trades Were Typically Accompanied by Independent (and Often Personal) Due Diligence

As noted above in connection with his entitlement to acceptance of responsibility credit, (*see* Part III.B, *supra*), and as further delineated in his PSR objections, (*see*, *e.g.*, Def.'s PSR Objection Ltr. at 7 (PSR ¶ 31), 10 (PSR ¶¶ 65-70), 15-16 (PSR ¶¶ 127-42) and 16-17 (PSR ¶¶ 143-57)), Mr. Megalli was a diligent investor who typically availed himself of a wealth of analyst research, as

[4] As an additional indicium of comparative culpability, it is undisputed that Martin lied to the FBI repeatedly over the course of at least two interviews, yet neither his plea agreement nor the transcript of his Rule 11 plea colloquy reflects that he faces any incremental sentencing exposure (*i.e.*, in addition to his insider trading liability) under, for example, 18 U.S.C. § 1001 or USSG § 3C1.1 (obstruction) for having done so. This is true despite the fact that Martin also denied having illegally traded Carter's securities in sworn deposition testimony in the SEC's civil enforcement proceeding, pending before Judge Totenberg, against certain former Carter's officers.

complemented by his own analysis, in making his trading decisions. This is not to say, however, that he failed to rely on Martin's inside information regarding Carter's as a part of the overall mix of information that was material to him in connection with effectuating the charged trades. He did. Indeed, and as noted above, Martin's October 23, 2009 telephonic tip was, by Mr. Megalli's own admission during his plea allocution, the catalyst for him to order the sale of Carter's stock during the same phone conversation.

Rather, the important point here with regard to mitigation is that, as opposed to other remote tippee defendants who rely in isolation on material, non-public information that has been passed to them, Mr. Megalli's reliance on inside information disclosed by Martin was, in the main, corroborated by independent analysis and otherwise innocent due diligence, particularly with respect to Level Global's July 2010 short sales. (*See id.* at 16-17 (PSR ¶¶ 143-57)). While a trader who relies on inside information in combination with other data remains criminally liable for his violation, the corresponding punishment should account for the relative significance of the disclosure in the overall mix of information justifying an illegal trade.

e. Mr. Megalli Waived a Potentially Meritorious Legal Defense Related to Knowledge of Insider Benefit

According to his debriefings, Martin never identified his source at Carter's by name. Further, there is no suggestion that Martin indicated to Mr. Megalli that his source was reaping some benefit from disclosing information to Martin. This has potentially dispositive legal implications. As is currently being litigated in the Second Circuit on the appeal of the criminal insider trading convictions of Todd Newman and Anthony Chiasson (a former Level Global principal), *see United States v. Chiasson and Newman*, No. 13-1917 (CON) (2d Cir. 2013), an essential element of a breach of fiduciary duty giving rise to tippee liability is that the tipper engaged in self-dealing:

> Whether disclosure is a breach of duty therefore depends in large part on the purpose of the disclosure. . . . [T]he test is whether the insider personally will benefit, directly or indirectly, from his disclosure. Absent some personal gain, there has been no breach of duty to stockholders. And absent a breach by the insider, there is no derivative breach [by tippees].

Dirks, 463 U.S. at 662. Tippees do not "assume an insider's duty to the shareholders . . . because they receive inside information[.]" *Id.* at 660; *see also id.* at 659 ("recipients of inside information do not invariably acquire a duty to disclose or abstain"). Rather, tippees assume the insider's fiduciary duty only

when "[inside information] has been made available to them *improperly*," *i.e.*, in exchange for a personal benefit. *Id.* at 660 (emphasis in original).

If an insider is not liable for disclosing inside information unless such disclosure is the product of self-dealing, *see id.* at 654 (noting that sharing of inside information unaccompanied by a personal benefit is not fraudulent and therefore not actionable under Rule 10b-5), it necessarily follows that a tippee must know of the personal benefit to be found criminally liable. *See id.* at 660-62 (holding that a tippee must "know[] . . . that there has been a breach" of fiduciary duty and, because there can be no breach of a fiduciary duty giving rise to tippee liability absent some personal benefit, a tippee can only "know" of a breach if he is also aware of a benefit); *accord Bateman Eichler, Hill Richards, Inc.*, 472 U.S. at 311 n.21 ("A tippee generally has a duty to disclose or to abstain from trading on material nonpublic information only when he knows or should know that his insider source has breached his fiduciary duty to the shareholders by disclosing the information – in other words, where the insider has sought to benefit, directly or indirectly, from his disclosure.") (quotations omitted).

Given Martin's admission that he never identified Posey, either by name or, for that matter, even by position within Carter's, and, further, that he never disclosed any rationale for Posey to have violated his fiduciary duty to Carter's, it

appears unlikely that the government would have been able to establish Mr. Megalli's knowledge of Posey's personal benefit beyond a reasonable doubt had this case gone to trial. *See, e.g., Whitman*, 904 F. Supp. 2d at 371 ("[I]f the only way to know whether the tipper is violating the law is to know whether the tipper is anticipating something in return for the unauthorized disclosure, then the tippee must have knowledge that such self-dealing occurred, for, without such a knowledge requirement, the tippee does not know if there has been an 'improper' disclosure of inside information."); *accord United States v. Rajaratnam*, 802 F. Supp. 2d 491, 498–99 (tippee liability "necessitates tippee knowledge of *each element*, including the personal benefit, of the tipper's breach") (emphasis in original); *Hernandez v. United States*, 450 F. Supp. 2d 1112, 1118 (C.D. Cal. 2006) (tippee only liable "if [he] had knowledge of the insider-tipper's personal gain"). Because Martin was the only conduit between Mr. Megalli and Posey, and Martin has disclaimed having identified Posey even by job category, much less by name, it is difficult to see how a jury could reasonably infer Mr. Megalli's knowledge of Posey's personal benefit from the circumstances of Martin's disclosures.

This is not to say that Mr. Megalli improperly waived an absolute, legal defense to liability. He expressly acknowledges that a trial on the merits

(involving the government's continued refinement of its proof and potentially including Mr. Megalli's testimony in open court) would have been required to perfect a defense based on lack of knowledge of Posey's criminally actionable benefit. That said, the government's ability to prove knowledge of benefit when Martin concedes he never identified Posey either by name or even by job title – and he certainly never identified a reason for his unnamed source to have violated a fiduciary duty to Carter's – is hardly a foregone conclusion, which means it should factor as a mitigating circumstance in the Court's assessment of a reasonable sentence in this case.

3. Mr. Megalli's Personal History and Characteristics, Along With the Debilitating Consequences of His Conviction, Militate Strongly in Favor of a Lenient Sentence

> But surely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very life hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, the history and characteristics of the defendant.

Adelson, 441 F. Supp. 2d at 513-14.

Mr. Megalli is a first-time offender who, as attested by the numerous family members and friends who have submitted letters to the Court on his behalf, has

lived a life of kindness, optimism and compassion. Those who know Mark well know him to be a man of strong character and honesty:

> With respect to Mark, having watched him mature over the years and embark on his career, I have always found him to display the very highest moral character. In the 35 years I have known him, I have never once seen Mark say anything or do anything that would raise the slightest question about his complete integrity. The adjectives that come foremost to mind when I think of Mark are honest, sincere, trustworthy and dependable. Despite his enormous talents and his outstanding academic and professional achievements over the years, Mark has always been humble and reserved. He is also very respectful and considerate of everyone with whom he deals.
>
> His family and friends are very important to Mark. He is a loving husband, a devoted father to his two daughters and a caring and devoted son to both of his parents. He has established lifelong friendships with classmates from grade school, from Phillips Andover Academy and from Yale College and with many others, and the fact that all of his friends are standing by him during his ordeal and professing their total loyalty to him is a testament to the special kind of person that Mark is.
>
> In sum, Mark Megalli is a person of impeccable character.

(R. Friedman Letter). Another friend writes:

> . . . In twenty-four years of knowing Mark, I have observed him to be a devoted friend, father, and son; a modest, perceptive, and deeply kind person. In my opinion, he is a gentleman in every sense of the word.
>
> * * *
>
> From my first impressions of Mark and to this day, he has always been well-mannered – someone who strives for (and achieves) excellence always, but who maintains an unflashy, even self-effacing

> attitude. I cannot remember him ever making a disparaging comment about anyone but himself. (That rare quality, by the way, is something he and his wife Jenifer have in common.) He has a quietness in the way he carries himself, in spite of his formidable talents and intelligence. In the early days, he occupied the quiet center of our group of friends – not at all as a social butterfly, but as someone for whom everyone had the deepest respect and affection. There was a sense that he was actually kinder and more intelligent than all of us, but because of his modesty only his closest friends knew the secret.

(N. Bly Letter).

Mark's friends consistently cite his humility and thoughtfulness as among his strongest characteristics:

> Mark is a loyal friend and a devoted husband and father with kindness, generosity and sincerity as hallmarks of his persona. Mark is one of the most intelligent and perceptive people that I have ever had the pleasure of knowing, but these gifts are manifested through a humble and empathetic demeanor, making Mark's brand of intellectual inquiry accessible and contagious to the people around him. Mark's self-deprecating humor and self-effacing manner evidence his quiet confidence and gentle nature.
>
> Mark is an intellectual who is driven by challenges. Never afraid of hard work, Mark is a terrific role model not only to his children, but also to his peers. He has always been a long-term thinker, and I have long admired his stoic dedication to his education and career. I have never known Mark to take the easy path in any endeavor, and, despite the circumstances surrounding the writing of this letter, I have only ever known Mark to be honest, forthright, and law abiding. He has always held himself and those around him to the highest moral and ethical standards. Moreover, I consider Mark's trustworthiness and sense of fairness to be unimpeachable.

> Mark together with his wife are a very civic-minded couple who have supported a myriad of causes with their time, money, and spirit. Always eager to lend a helping hand, Mark has always been someone that others turn to for advice and support. He is, in the end, the rare sort of individual that this world needs more of. I look forward to seeing how Mark continues to positively impact the people and institutions around him as he embarks on the next chapter in his life.

(P. Potter Letter). Mark has also been a source of inspiration and support to those around him:

> I do not have strong enough words to describe the value my friendship with Mark has played in my life. [redacted]

[redacted]

From a young age, Mark displayed tremendous generosity and a dedication to charitable service to others:

> Our high school had the motto "non sibi", which means "not for self". Mark embodied this characteristic. In high school he worked at a camp for children with cerebral palsy for two summers. Most high school students I knew were still searching for their own identity and had neither the maturity nor the compassion to help others who were less fortunate, especially those who behaved differently. Mark continued this commitment to others in college, where he volunteered

> as a literacy tutor for adults pursuing their GED, and he is most recently helping abused women through a non-profit in New York.

(E. Older Letter). Indeed, Mark and Jenifer Megalli have made charity and volunteer work an important part of their marriage:

> For most of our marriage (the past nine years) I have been a volunteer for Sanctuary for Families, a non-profit that serves the victims of domestic violence and human trafficking. At every step along the way as my involvement with Sanctuary has intensified, Mark has been a staunch supporter of the work we do. When I was asked to join the board a few years ago, he strongly encouraged me to accept. Every time we have discussed a need that Sanctuary has: new cribs for the shelter, Mother's Day packages, adopting families for the holidays, chairing the annual benefit, Mark has always responded with an enthusiastic yes. His financial support of Sanctuary has made it possible for us to help thousands of victims every year. He also volunteers his own time tutoring at-risk young people in our shelter system. Mark never asks for anything for himself and he is always ready to say yes when asked to help others.

(J. Megalli Letter). Mark and Jenifer's generosity and charitable service has been remarkable to others:

> . . . Mark has demonstrated exceptional generosity in my experience. As befitting his devotion to family, he and his wife have been regularly generous to the Sanctuary for Families, an organization which works to prevent and address domestic abuse and related issues – enough so that Jenifer was asked to join their Board of Directors. In addition, the Megallis have also been unerringly supportive of The Center for Discovery, which serves children and adults with autism and other disabilities and medical frailties. Because I serve on its board, and more importantly because my brother lives there, this organization is very close to my heart. By far more than any of my other friends, the Megallis have been liberally generous and ever-present at the unending fundraisers to which I have invited them. For

> me, this fact alone speaks to the real goodness and loyalty that I have seen in Mark since the beginning.

(N. Bly Letter).

Mark's friends and family have struggled to reconcile the serious mistakes for which he now faces sentencing with what has otherwise been a lifetime of hard work and integrity:

> . . . [Mark] has led both a privileged and exemplary life to this point, one that is wholly inconsistent with the actions to which I understand he has pled guilty. I therefore cannot reconcile what I know to be true about his character and sense of propriety, which were unsurprising given his upbringing, with this matter. His entire life to this point has been marked by rewards fairly earned through hard work and dedication, and he distinguished himself in ways that would make any parents proud, especially ones, like his, that immigrated to this country.
>
> Indeed, the situation Mark now faces is so inconsistent with his values and personal history that I can assure you that he has already paid a terrible price. He has been disgraced personally and professionally. If Mark were a different kind of person, one who had a history of seeking to inappropriately exploit his opportunities rather than earn, by dedication and hard work, the good name he has enjoyed to date, I would consider this a sad, predictable outcome. As it is, I am confident that he is horrified by this devastating set back, and I hope he is able to draw on a lifetime of success and achievement in getting his life back on track.

(A. Jain Letter). Another of Mark's friends, a practicing attorney, writes:

> . . . [I]t was with great surprise and disappointment that I learned from Mark of his current legal troubles. I have always known Mark to be exceptionally responsible so it should come as no surprise that my initial reaction upon hearing of the situation was that the nature of the

> offense is wholly inconsistent with Mark's character and an exceptionally uncharacteristic aberration. Mark explained the charges and described to me what happened at length. I have never heard Mark so utterly despondent. From our discussion and based on our long-standing friendship, I know these charges are a source of genuinely intense remorse and significant embarrassment for him, and he deeply regrets the impact the situation has had on all of those affected by it. At the same time, I know Mark is ready to take responsibility for this situation and I am confident that Mark will not again allow himself to be in a similar predicament.

(T. Seeley Letter). Yet another long-time friend has commented similarly:

> I have been, and will continue to be, proud to call Mark my friend because in all of these years I have never seen him involved in any sort of misconduct or unethical behavior. Through many contexts and stages of life, he has always distinguished himself by his honesty and through the trust he inspires in those around him. As we have grown, I have watched him become a conscientious husband to Jenifer and doting father to [redacted] in addition to the friend he has been to so many people he has met over the years.
>
> . . . I was saddened and truly shocked when Mark admitted guilt in the matters now before you. These are serious matters and he now owes a debt to society. Yet I am convinced that Mark's misconduct was a grave but anomalous error in judgment rather than an indication of his character or normal patterns of behavior. He will be able to repay his debt most effectively by returning quickly to a normal life – a life where [he] can deploy his prodigious intellectual talents in the service of those around him.

(S. Schiesel Letter). Another writes:

> . . . I have known and observed Mark since he was a boy. I have followed with pride his academic successes at Yale and further as a Yale JD-MBA graduate. He is a hard working, highly intelligent scholar, a responsible citizen, a wonderful husband, a nourishing

> parent, an ideal son, a hard working employee and a highly ethical and outstanding citizen.
>
> I was shocked to learn of the charges against Mark, as he has always been an upright, law-abiding person. As President of an investment advisory firm, I know ours is a precarious profession. The incident with which he is charged, is very unlike Mark's character as I have known it for years. But, mistakes happen and no one is perfect. Whether from a lapse of judgment, a misguided action or a misplaced trust, the incident obviously was a "Mistake". A "one-off" mistake in an otherwise unblemished career and life. Mark has already paid dearly for his mistake. He has been deprived from a career he passionately pursued, has suffered severe emotional and physical stresses, has seen his personal life unravel, his family life come under tremendous pressure and has been engulfed with tremendous shame and humiliation.

(H. Bibi Letter).

Mark's great sense of shame and remorse for his actions has been palpable to those around him:

> Mark has already been significantly punished. He feels extreme shame and embarrassment. He can never return to the life he built for himself. All the studying in school that led to his career, and all the hard work he put into that career are now all gone. Thankfully he put the most value in his life on his family. His love for Jen and his two children are paramount and will get him through this, but there is no doubt he has been punished by this whole ordeal.

(A. Kayne Letter). Likewise, Ralph Nader, a long-time friend of Mr. Megalli's and his parents, writes:

> This is only the second time I have written a letter asking a judge to be lenient in sentencing a defendant. I do so because I have known Mark Megalli (and his family) since Mark was four years old, have

> observed his remarkable record as a student, the great respect with which his teachers, classmates and colleagues have regarded him, and the strong, enduring family bonds that have supported him throughout his life.
>
> * * *
>
> Mark's remorse is real and deep. His immediate and parental family knows he is sorry for his misdeeds. His career in the securities industry is gone. He knows the high hurdles, both formal and informal, that his punishment and rehabilitation will require him to surmount.
>
> He reprimands himself and strives to come out a much better and socially productive human being with steady support by family and friends for the contributions he can and will make to society. He makes no excuses for himself.

(R. Nader Letter).

It is abundantly clear, however, that Mark is admired and loved by a great many people who will continue to support him as he rebuilds his life. As Mark's brother Michael writes:

> One blessing of this entire experience has been watching the great outpouring of support that Mark has received from his friends. People love my brother. They know him as I know him: an engaged listener, a devoted friend, and a great raconteur who always has a captivating, hilarious story to tell. They also know him to be brilliant, even-keeled, wise and honorable.
>
> * * *
>
> . . . Mark is guilty of an error of judgment, based in misplaced trust. It's a mistake he will regret for the rest of his life. It's a mistake that

> has already cost him the career he loved, his ability to provide for his family, his reputation, and many months of sleep.
>
> I have to admit I have high hopes for Mark's next chapter. The process of remaking his life will take years, but I know he'll meet the challenge with the intelligence, determination, courage and integrity he has always embodied.

(Michael Megalli Letter).

Mr. Megalli has suffered personal humiliation, economic devastation, professional dislocation and permanent incapacitation as a result of his misconduct. The life he has worked for over the past 42 years is irrevocably altered, regardless of whether he is incarcerated. Justice, fairness and proportionality each dictate that the Court take this into account in ruling that the fact of his felony conviction, with its array of highly punitive consequences beyond custodial exposure, is effectively punishment enough.

IV. CONCLUSION

A substantively reasonable sentence here involves a substantial guideline variance, coupled with no fine. Considerations of proportionality, the facts and circumstances of Mr. Megalli's offense conduct (specifically including his negligible personal gain), and the terrible collateral consequences he has either already or is about to suffer, readily establish this to be an insider trading prosecution replete with mitigation.

Dated: June 26, 2014

Respectfully submitted,

By:/s/ Paul N. Monnin_____
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LOCAL RULE 7.1D CERTIFICATE

The undersigned hereby certifies that the foregoing has been formatted in Times New Roman font, 14-point type, which complies with the font size and point requirements of Local Rule 5.1B.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record. A non-redacted copy of this document has also been electronically served on counsel for the government.

Dated: June 26, 2014 By: /s/ Paul N. Monnin
Paul N. Monnin

HARD COPY

Exhibit D

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

UNITED STATES OF AMERICA, Plaintiff,	)	
-vs-	)	Criminal Information No. 1:13-CR-442-RWS
MARK MEGALLI, Defendant.	)	

Transcript of the Sentencing Proceedings
Before the Honorable Richard W. Story,
United States District Court Judge
July 8, 2014
Atlanta, Georgia

APPEARANCES OF COUNSEL:

On behalf of the Government: David M. Chaiken, Stephen H. McClain, Assistant United States Attorneys

On behalf of the Defendant: Paul Monnin, Esq.

Reported stenographically by:
Amanda Lohnaas, RMR, CRR
Official Court Reporter
United States District Court
Atlanta, Georgia
(404) 215-1546

(Tuesday, July 8, 2014, 2:35 p.m.)

THE COURTROOM DEPUTY: Court calls the case of United States versus Mark Megalli, Criminal Number 1:13-CR-442.

THE COURT: All right, we are here for purposes of sentencing and the Court has received the presentence report, as well as submissions from the parties.

Based upon the presentence report, to which there are no objections, the probation officer found that the defendant was at a total offense level of 23 with a criminal history category of I, which places him at a 46- to 57-month custody guideline range. The government has requested a one-level downward variance, which the Court will approve, which would place the defendant at a 22 offense level with a criminal history category of I and a 41- to 51-month custody guideline range after that variance.

I suppose we should first address, though we've been around this several times, the restitution issue. The Court would be inclined to order the defendant to be responsible for restitution to Carter's in the amount of $50,000.

If anyone wishes to be heard on that further I will give you the opportunity now but otherwise that would be a part of the sentence. Anything from the government?

MR. CHAIKEN: Nothing for the government, Your Honor, thank you.

THE COURT: Anything from the defense?

MR. MONNIN: Judge, the only thing I would say is he's actually already deposited the $50,000. It's on deposit with the treasury of the court and we would suggest that's an additional mitigating factor that we have here.

THE COURT: Very well. All right, then let's address the 3553 factors.

MR. CHAIKEN: Thank you, Your Honor.

Your Honor spoke earlier about the difficulty in sentencing Mr. Posey because of the Court's view that, you know, he's one of us.

Well, this sentencing and this defendant is, I think of all the three, is the most heartbreaking. Mr. Megalli truly is or could be one of us.

He went to the same law school that a prosecutor in our office went to, was a classmate of his. He went to college with people that -- lawyers that we know. He has young children. He worked at the same law firm as a summer associate that several prosecutors in our office worked at. It is heartbreaking and tragic, I think.

At the same time, of these three defendants it's clear that Mr. Megalli is the smartest guy in the room. Of the three of them he's the one with the most experience in this industry, the most sophisticated, the most intelligent, the one who knew better to a far greater extent than the other two.

It's also his trading, liquidating an approximately

$9 million position on the eve of Carter's earnings release, I don't know how FINRA collects its information but I suspect that this is one of the major reasons this entire investigation ever started.

There's, you know, and there's counterbalancing factors, including the fact that Mr. Megalli, like Mr. Posey, agreed to waive formal indictment and come in and come clean and plead guilty to a criminal information. He even agreed to pay his restitution amount even before it was ordered by the Court. That's tremendous demonstration of acceptance of responsibility and attempting to make amends for his misconduct.

The major distinguishing -- there's two major distinguishing -- well, before I get to those, I did want to point out that to the extent that the Court believes this factor is relevant, as it mentioned with the sentencing of Mr. Posey, I don't believe that there has been any resolution of the SEC -- parallel SEC enforcement action yet as to Mr. Megalli. I'm not suggesting that he won't be able to amicably resolve that but, nevertheless, it's still pending.

There are two major distinguishing factors that I think the Court should consider as to Mr. Megalli.

The first and probably the most important is that he did not cooperate. The other defendants provided substantial assistance to the government and I think that was part of the

Court's calculus in varying downward to such a great degree. Mr. Megalli did not do that.

On the other side is the fact that I think Mr. Megalli rightly points out that he did not profit personally in a direct and tangible way from the misconduct. Mr. Posey traded in company stock during blackout periods for years. Maybe it's only thirty, forty, $50,000, but that's a lot of money to people. It's also a lot of money considering the salary that Posey made and the fact that it's not a very diversified investment strategy.

Mr. Martin, of course, traded repeatedly for years on inside information, including while he was at the company, and he made hundreds of thousands of dollars doing that.

Mr. Megalli did not benefit in that kind of a way. He benefited through increased status. He wanted to be a top performer at his firm; he was a new employee at the firm. And I'm sure he regrets every second that he ever dealt with Eric Martin because it's certainly not worth it.

That being said, as we pointed out in our papers, there's a problem with excusing tippers whose tips result in outsize profits, or traders at firms whose insider trading results in outsize profits to the firm but do not belong to them. And the Court needs to consider what, if any, deterrent value there is to not sort of excusing or immunizing those sorts of traders or tippers against the consequences of what

they've done.

We are somewhat hamstrung. We're obviously very cognizant of what the Court has done so far today, but, nevertheless, we are authorized only to recommend a sentence at the low end of the guidelines, which I believe is 41 months in this case, and we believe that is a reasonable sentence. If the Court is inclined to go lower than that we think 24 months would be an absolute basement for that in light of the fact that -- given all of the facts and circumstances of the offense. Thank you, Your Honor.

THE COURT: Thank you.

MR. MONNIN: Thank you, Judge. I do have some witnesses. I just wanted to address one point briefly that Mr. Chaiken had raised and I want to thank him for his professionalism, thank him for his statements and sentiments to the Court.

This has been an involved process. The Court, I know, has taken a look at our submissions. I know they're lengthy. I know that they're involved and I know the Court has read and wrestled with all of them.

The one point that I want to make before I start bringing witnesses up here is that the SEC settlement is absolutely coming, Judge. In fact, I spoke with Mr. Huddleston, who is still here in the courtroom, and said in light of my client's sentencing memorandum, which as succinctly

as possible says he did it, I mean in relation to the October 2009 trades, you were here for purposes of that Rule 11 colloquy, and my client said, yeah, absolutely, I traded and I'm a securities professional and I knew that the information that I was getting, that there were issues with it and I probably should have stepped across that threshold and pursued things further at that point, I'm just too intelligent of a person, you know, there's a lot of money that was at stake, not to have done that.

Conscious avoidance, Judge, is equally as culpable as actual knowledge but I'm here to tell you that we also have actual knowledge in this case. I do not dispute -- and I've had many conversations with the government about this -- that if exhibits appeared on the screen that are consistent with what we see in the PSR in terms of after-hours instant messaging, electronic mail, that on its face bespeaks inside information and the passage of inside information, there really isn't a defense to that. There's mitigation with it, which is what I've tried to explain to the Court in terms of our PSR objections, but there's not a liability defense to it.

And the point that I'm trying to make there is that because there's no liability defense to it and because we're on record in a plea hearing, because we're on record in a sentencing memorandum, my client is out of this industry, Judge, you know that.

We're going to work through a settlement with the SEC that is going to involve permanent debarment from the industry. This is an industry that my client has worked in for, effectively, his adult life, Judge.

And the other component of this, and again I know that I'm going to be calling witnesses up here and then I'll briefly cap things off because I know that the Court has made some decisions already today about things, the other part of this is that disgorgement with the SEC is absolutely a huge liability factor for my client and, Judge, that's as recently as 2014.

The state of the law prior to the Second Circuit returning a decision called *SEC v. Contorinis* was that where you have an individual trader who uses institutional trading accounts to trade there is an argument there that disgorgement goes only so far as the individual trader's personal gain. And you've seen what our position is with respect to personal gain. His variable compensation was based on a percentage of Level Global's incentive fees, and I've laid that out for the court.

Literally on the day that we were presenting that type of argument to Mr. Huddleston and Graham Loomis at the SEC, the Second Circuit came back with *SEC v. Contorinis* and said an individual trader can be liable in disgorgement for institutional gain.

And, Judge, the important consideration there, and

why I'm going to be asking for leniency as a result of that, is that we fully intend to litigate that issue, I don't want the Court not to understand that, and that issue is going to be in front of Judge Totenberg. But the Second Circuit opinion establishes that it could be likely that Mr. Megalli is facing economic liability in disgorgement of $3.17 million. And the way that the SEC is able to collect on disgorgement is through contempt. It's an equitable remedy. So what we're facing is that the burden is entirely on us to basically disprove disgorgement liability and then we're facing a contempt remedy when we're dealing with that.

So I think as you're factoring in to your decision process where Mr. Megalli should end up, that should be a significant component of this. Jail is not the be-all, end-all of deterrence here. And as I mentioned, I'll sum that up in a moment but I just wanted to let the Court know that we are going to be settling with the SEC, we will be litigating disgorgement. I suspect that that is going to be happening fairly quickly here.

With that, I just would like to recognize, I believe that most, other than the Carter's personnel and a few folks from, I believe, your staff, Judge, and the U.S. Attorney's Office, everyone else here on Mr. Megalli's side of the courtroom are friends and family of Mr. Megalli's and they actually flew down here. The vast majority of them came down

from New York of their own volition and on their own dime to support Mr. Megalli through this process and they've been very supportive of him throughout.

He's a remarkable person and he has generated an exceptional amount of love and affection from people who are incredibly supportive of him and who will continue to support him after this process is done.

So with that said, I would like to call his mom, Mrs. Viviane Megalli.

MR. CHAIKEN: Your Honor, may I make one point --

THE COURT: Yes.

MR. CHAIKEN: -- before we start with the witnesses?

We had discussed with respect to Mr. Martin and Mr. Posey the "why" factor. They draw comfortable salaries, they have loving, supportive families and children and parents, and I think that same consideration would apply with Mr. Megalli with one caveat.

Mr. Megalli did not cooperate in this case. But I suspect that if he ever did he would tell us -- and this is based on what I've seen, what has been publicly reported -- I suspect that he would tell us that there is tremendous pressure to succeed in the business in which he was involved and to get any edge that you can and in fact that some believe it is your duty to your clients to do the best you can for them. And so that may be one piece that sort of mitigates his culpability as

compared to Mr. Megalli -- I'm sorry, Mr. Martin and Mr. Posey.

THE COURT: Thank you.

Yes, ma'am, come on up, ma'am. If you will just state your name and then you may make your statement.

VIVIANE MEGALLI: I'm Viviane Megalli.

Your Honor, I stand in front of you as a mother that is hurting, helpless, and begging for your mercy.

Mark is a great person. He is actually an amazing person who would never hurt anyone. He always made us very proud. He worked very hard through his whole life, as a faithful husband and as a wonderful, wonderful father. He's always tried to help others and he's a perfect combination of brilliance, kindness, and generosity. I apologize for my --

THE COURT: It's okay.

VIVIANE MEGALLI: He took a misstep which he paid dearly for, losing everything he loves, absolutely loves.

Both my husband and I always lived by the rule of honesty and integrity. The kids were very young, we always make sure to tell them honesty, integrity, and kindness is the most important thing in a person's character and I know they live by that truth.

We were living the American dream. We immigrated to this country in 1968. We all worked very hard. My husband was a lieutenant colonel in the U.S. Army. We had wonderful children and wonderful grandchildren. I have four

grandchildren, two from each of my sons.

Last year has been a disaster for all of us. It started with Mark losing his job, being humiliated in a way that is really almost inhumane.

He had his passport confiscated. My mother at age 97 [redacted] and she lives in Egypt and it's so hard that Mark can't even go and say good-bye. We're all going next week. She is in [redacted].

And I know God is not going to let me down. I pray every day for strength to be able to cope with this very hard period in our lives. I love my husband, I love my sons, and I adore my grandchildren. Please don't impose a sentence on these poor innocent girls. May God guide you to do the right thing and we would like to be able to turn the page and end this nightmare. Thank you for hearing me out and I'm sorry for my emotion.

THE COURT: It's quite all right. Thank you.

MR. MONNIN: Judge, next is Dr. Mike Megalli, who is Mark's father.

DR. MEGALLI: Your Honor, after hearing you speak in the last two cases I was sitting through, I don't think that anything I'm going to say -- you said it better than I can say it about the children and grandchildren. Only thing I want to tell you, that we came here 46 years ago and it's been a wonderful experience. It was absolutely the American dream in

every which way.

We were blessed with two great boys and we had basically -- it's very simple, not just education, moral education and civic service. It was always those three things. You have to, you know, not just to be educated, but honesty, integrity and kindness. And I used to tell them you do to people what you like them to do to you, period, since they were five years old and that was basically what we told them all the time. So this was the model that we went with all our lives.

As for civic service, I don't want to keep listing the things, you have letters from everywhere where Mark has done, you know, all kind of things in his life. And his brother is no less than him, he was the head of the committee service in Andover and got an award from Brown University for community service. We've been always -- and was, humbly, I was also volunteer for the police department in Rye, New York for years.

As for the life got shattered and not any different than the other two people, it's a horrendous thing to happen to anybody. And I mean after I practice for 14 years I took an M.B.A. and went into healthcare management and ironically my job was mostly have to do with quality assurance and corporate compliance.

So for 25 years I worked with the Catholic Health System and its affiliated hospitals in New York. I didn't care

about making a lot of money in practice because I wanted to have my time with my family. We have no -- I have no brothers or sisters, nor my wife. So our boys were our family; there was nobody else.

And I only just, you know, keep repeating. Mark happened to be, and you can tell from all the letters you got and from all these wonderful people that flew all the way from New York and different places to support him, he is the most kind, the most honest, the most peaceful, nonconfrontation, which I think personally might even be a negative to be nonconfrontational and not to fight but that's different story.

Jenifer, his lovely wife who was his classmate at Yale, now had to take the children and Mark and moved to New Orleans. She might probably speak to that herself. But the ten-year-old and four-year-old, I can't imagine them not having their father around because it is just a close-knit family, like I'm sure almost everybody.

I just hope that you find that with a smart guy like this community service probably help society a lot more than incarceration, but that's up to you, Your Honor, and I leave it in your hand. Thank you.

THE COURT: Thank you.

MR. MONNIN: Judge, this is Michael Megalli, Mark's brother.

MICHAEL MEGALLI: Hello.

THE COURT: Good afternoon.

MICHAEL MEGALLI: Good afternoon. Thank you for the opportunity to speak to Your Honor.

Mark is my younger brother and my best friend. I know him better than I know anyone in the world. It's almost impossible to believe that I'm here today on his behalf just knowing what I know about him and the code with which he's conducted himself throughout his entire life.

You know, while we're here in this court today for Mark to be judged, no one is a tougher judge on Mark than he is on himself. I've never known anyone to hold themselves -- to push themselves harder or to hold themselves to a higher standard. But I've also learned some things about Mark watching him as he's grappled with the situation that is so difficult, I can only imagine.

And, you know, one of the things I think is just the bravery with which he's handled himself and I think he's had the courage to own up to the situation the way that I personally found inspirational.

Another is the incredible lack of self-pity or guile. I mean, this has never been about Mark or feeling sorry for himself or, you know, blaming others. He's taken full responsibility for it and I think his only consideration throughout the entire process has been the continuity of raising his children.

The other thing that I think for all of us has been such a blessing has been the outpouring of support. Mark is the kind of person who -- there are dozens of people from every chapter of his life who have come out and supported him and supported our family and I think without them this would have been that much harder, but it also would have been, you know, we might have been able to tell ourselves that it was just our own bias as a family that, you know, hold him up as such an extraordinary person.

That's basically all I have to say. Thank you for the opportunity to speak.

THE COURT: Thank you.

MR. MONNIN: Your Honor, next is Nell Wells, who is Mark's mother-in-law.

MS. WELLS: Good afternoon.

THE COURT: Good afternoon.

MS. WELLS: I'm Nell Wells. I live in Columbus, Georgia, and Mark is my son-in-law.

We've known Mark for at least 15 years and we are so proud of him. We think as much of him as we do our own children. And we just pray to the Lord that there will be a way for Mark to get out of this to get on with his life and we just know that there's a reason for this and we just pray for justice. Thank you so much.

THE COURT: Thank you.

MR. MONNIN: Your Honor, last is Jenifer Megalli, who is Mark's wife.

JENIFER MEGALLI: Your Honor, first I just wanted to say quickly thank you so much to my family and all of our friends for being here with Mark today and supporting us and to my cousins who are keeping the girls.

I've known Mark for almost 24 years and we've been married for 14 years. As a husband and a father and a best friend he is gentle, truthful, supportive, dedicated and very loyal and I love him so much. We are faced with this crisis which in many ways has put the very fabric of our family in jeopardy.

But most of all I am proud of the way Mark has handled it. He's been so brave and so strong for us, for me, and setting such a good example by being honest about the mistakes he has made and sincere about the remorse he feels.

The consequences of his mistakes for our lives have been very real for the last two years going through this and will continue to be. The practical implications, as you know, mean that Mark can't work in his chosen field.

Meanwhile I have been a stay-at-home mom for a while now and I -- Mark has been taking care of our girls full-time recently so that I can go back to school to complete my master's degree so that I can go back to work and support us financially going forward. Pursuing this is a big change for

us and requires a tremendous amount of hours per week, like 75 or 80 hours a week, and there's no way I could do it without him. He's been so supportive. Taking him away from me and from us during this time would be extremely punishing for me and for our daughters.

Finally, I just want you to consider Mark's character and the many ways that he can continue to do good in the world. I can't imagine that we will ever really move on from this experience but please consider Mark's talents and intelligence and kindness and give him the chance to remain with us and prove himself.

My children and I and our whole family can bear witness to his admission of guilt and his acceptance of the consequences, his respect for the law, which is very strong, his remorse at his wrongdoing, and most of all his determination to make better choices in the future. Thank you.

THE COURT: Thank you.

MR. MONNIN: Thank you, Your Honor. That concludes the witnesses that I have and let me just be very brief.

I know the Court said in the prior hearing that you reset the order of the hearings today to correspond to your perception of relative culpability and obviously I agree with you, Judge.

THE DEFENDANT: I would like to make a statement.

THE COURT: He definitely will let you.

MR. MONNIN: And that's what I was just going to say, that's kind of my client's nature, Judge.

I met Mark in August of last year and his wife Jenifer when I went up to New York and they were considering having me represent them, or Mark was considering having me represent him in relation to this case. And other than the Rule 11 colloquy, most of our communications have been by phone; he's been living up in New York.

But I can tell you from those interactions that I really haven't met a more serious-minded, intelligent person as it comes to what he has done, how he is punishing himself, how he knows that he has taken a terrific life of achievement, of merit, and in certain respects really damaged that. And he understands that and I know that that has weighed on him heavily.

And it's also been a pleasure to be able to meet Mark's family members and extended family and friends through this process and to read their letters on my client's behalf.

The Court well knows that, I've been at this courthouse for quite a period of time, and it's easy to look at mitigation letters and kind of just glaze over them and perhaps not take them as seriously as maybe they should, or is it more just kind of Monday morning quarterbacking, so to speak, in terms of rationalizing conduct.

I think what the Court is able to appreciate from

this and what I want to convey to the Court and recommend to the Court is that there are two aspects of sentencing. One aspect of it is looking backward to decide what type of punishment should be imposed, both specifically related to the offender that's before the Court, as well as generally, and I know you're struggling with that.

I had a conversation with Mr. Chaiken last night where I said that I know that what Judge Story is going to be struggling with in sentencing is how do you generally deter the next Mark Megalli when you're talking about someone who controls millions, billions of dollars of capital who works at a hedge fund. And Mr. Chaiken is exactly right, these hedge funds operate on very, very quick trading, profitability and analysis and there's absolute pressures there. And I submit to the Court that what the facts show here is that you've got an analytical person who stepped over the line in terms of accepting as data points illegal material, nonpublic information. And he knows that and he's here to accept responsibility for that. And, frankly, he's here to be punished for that.

But I think another part of sentencing, and I don't presume to, you know, speak for what's in your mind, Judge, but I think another part of sentencing is looking forward. And you said in the prior two sentencings here: "I don't have any doubt with respect to Mr. Martin and Mr. Posey that you won't

re-offend." Obviously, there's incapacitation that my client has where he clearly cannot re-offend. And I would add that includes disbarment as well. He's a lawyer, Judge, and he's going to be disbarred.

So what I would like to convey to the Court is that I think there is justice that should be tempered with some thoughtfulness as to the future life of Mr. Megalli. And I know how seriously you take this and I know that you've looked at all of these materials. And I respectfully submit that Mr. Megalli, through his family members, his close-knit family network, his obligations to his children and his unquestioned intelligence, his unquestioned compassion, his unquestioned positive personality, is going to turn the corner on this.

And I would just -- I believe that certainly Mr. Megalli in terms of culpability and an appropriate punishment is within the other two offenders that you have sentenced and I am confident that the Court is thinking the same way on that. And I would just ask you to please consider returning Mr. Megalli to his family and to his obligations to allow him to get to the next stage of his life and I think he's going to make you proud if you allow him to do that.

THE DEFENDANT: Thank you very much, Your Honor.

First of all, I just want to say thank you to all the people who have traveled here today. If there's been a silver lining in this ordeal, it's been the tremendous and unwavering

support of friends and family, which I certainly do not feel worthy of today but I'd wanted to acknowledge them.

My whole life I've always tried to do the right thing, and obviously with respect to the events here I got it completely and utterly wrong and I'm not going to make excuses today. Obviously the advice that he was providing to his clients and me was over the line, I knew it was wrong and I should not have traded on it, and obviously I wish I had stopped myself from doing that early on in this process and I didn't.

We're paying a tremendous price for that bad decision or series of bad decisions: financially, emotionally, psychologically. I know I'm not a victim but it feels like we're paying a tremendous amount for my mistakes and I want to apologize to my family in particular for putting them into this position.

I also just want to make clear I do fully accept responsibility for my actions. I will honor and respect whatever decision you make here today, of course, and, you know, I just am ready to accept the consequences of my behavior.

They say it's not our mistakes that define us but how we learn from those mistakes and grow. And that's, you know, that's really what matters and that's the lesson -- sorry -- that's the lesson that I tell my daughters and that's the

guiding principle for me for the rest of my life, how do you grow from this, how do you learn from this.

I can assure you I'll never be in a position like this again. I'm eager to get back to being that person that people graciously wrote about in their letters who lives a life with honor and dignity and has something to contribute.

And finally, it's probably obvious to you, I'm extremely, extremely close to my family and I'm terrified for the well-being of my daughters, for my wife. She's an amazing person. She's doing everything she can to try to keep us going. She hasn't complained a single time since the beginning of this, you know, process, really, and she's just a woman of incredible strength and I'm terrified for her, for my kids, and I just ask you to consider them when you make your decision. Thank you.

THE COURT: Thank you.

(Pause in the proceedings.)

THE COURT: You mentioned the silver lining, if there is one, and I would have to say that I agree with you. And this might sound odd on a day like today but you are a fortunate man because to have people who would travel the distance these folks have to be here to stand by you today makes you a very lucky person, but it also speaks to your character as well. And so you are certainly fortunate in that regard.

You have been the beneficiary of a wonderful life and it's always difficult when parents are here for an occasion like this. I know your parents have been with you on many other momentous days that were of the other kind in your life, with the record that you have built in terms of accomplishments. And I know, I think both your parents in their letters offered could they just please take your place, which speaks to their love and devotion to you, obviously. And parents have a way of at times like this, I think sometimes they start questioning themselves, you know, maybe if we had done this this wouldn't have happened.

But it's clear, and it comes from you as well as from all of them that know you and your family, that your parents are remarkable people. They reflect a richness in this nation brought by people who come from other lands and bring their dreams and desires and fulfill them in this country and become truly remarkable citizens who contribute in significant ways the way that they have to the society and it speaks for you and for them and it's good for all of us.

All of that ties into the character of you as a person. It's one of the factors I'm supposed to consider in this process, is the character of the person. Certainly the letters that have been written on your behalf, I've done a lot of reading in preparation for this sentencing, not just of the 70-page brief your lawyer submitted and the letters along with

it, but also of other cases of this type.

And I've mentioned the *Gupta* case a couple of times but the judge in that case mentioned the number of letters that were sent in on behalf of the defendant in that case and that some might suggest that because of his position and power and et cetera perhaps that's why these folks would write these kinds of letters. But it was clear when one looked deeper into the letters that they were a true reflection of the person and that this was truly a remarkable person. And I find that to be the case with you. You've had letters written by a number of folks and looking behind just the words, it's clear that you have had a remarkable life and have made a number of substantial contributions and, as you mentioned, I expect that you will make many more in the future.

So your character bespeaks itself. You are not judged by just your mistakes; you're judged by your accomplishments as well.

I won't belabor the seriousness of the offense. Just so there's something in the record for this case, I will say the Court views this as a very serious crime. It is not a victimless crime. Society as a whole, in fact, is a victim when these type crimes occur because of the impact that it does have on the confidence of people in our economic system. So there is a seriousness to this offense.

There is a need to deter others. Mr. Monnin

mentioned he doesn't think you need any further deterrence. Again, I agree, as with the other gentlemen, well, one thing you won't be able to work in this field, but I'm speaking deterrence broader than that. You've not been a person committing crimes all your life to this point and I don't expect you to commit another one from this point forward. So it's not about deterring you. It comes down more in the area of deterrence as what do we do so that others don't allow themselves to find themselves in the position where you are. Certainly the need for avoiding disparity.

There's no need for additional training for you, you obviously have wonderful credentials.

And to provide restitution, I've already indicated I will adopt the agreement of the parties to require $50,000 of restitution, which you are also to be commended for having already paid that into the registry of the court.

The question arises as to what does it take to deter others and I've struggled with it throughout this. You've heard me talk about it with the other defendants. You're in a little different position than they are. They were the insiders. And I've been given so much information from these lawyers about other sentences and I've looked at that because I look for anything to hang my hat on for why I do whatever I do.

But I'll be honest with you, one of the things that troubled me was I noticed in many instances tippees, like

yourself, are actually punished more severely than tippers and I found that counterintuitive for myself. I find the tipper more culpable because you have betrayed the confidence of your employer and the person who's entrusted you with information for your own benefit and given that out to others who have used it for their benefit, as opposed to a person who simply receives that information, not that either is good, but to me, in terms of culpability, the person who is disclosing confidential information of his employer is more culpable than the one who receives it. Again, not excusing either but my view of deterrence is it's a little different for the both of those just because I think the culpability is different.

Nonetheless, there's a huge incentive for folks in the place where you were to hedge the line. I mean to -- there's so much pressure, obviously, to succeed and to act quickly and on limited amount of information and so there needs to be a disincentive to engage in the conduct. And as I've said, the question for me is what is that line, where does one draw it.

Let me hasten to say, as I have said to the others who were here today, that the collateral damage of sentencing is the worst part of it, the effect that it has, as you have already mentioned on your wife and your girls, that is the worst part of this.

And I want to thank you for not bringing your

daughters today. Some people do that to make it even worse for me than it has to be. I think it's horribly unfair to a child to use them in that way and I thank you, and I meant to thank Mr. Posey earlier for not having done that. I think it shows character again and a certain amount of class that it's not about you; it's about them and that's why you don't bring them. I think your younger daughter [redacted]?

THE DEFENDANT: [redacted] and the other one [redacted].

THE COURT: The [redacted], there's no way to explain this and I know that. You've mentioned there are life lessons that can be taught from this and I appreciate that you will do that but I also recognize that for a [redacted] it's all pretty incomprehensible and that bothers me a whole lot and I hate that from her perspective.

There's no way to make this easy. There's no way for me to reduce the impact of this in the way that I did for Mr. Posey. I mean, it is what it is and it's just a matter that you've got to work through but I am going to impose a custodial sentence in the case. I'm going to impose a sentence of 12 months and one day. Your lawyer will explain to you why there's one day, it's actually to your benefit.

I will allow you to voluntarily surrender to serve the sentence. And I don't know if you can still do it, but if you can get a ticket for the flight to see your grandmother I'll let you have your passport back to make the trip to see

your grandmother.

I will request that you be allowed to serve the sentence in New York or as close -- is that where --

MR. MONNIN: Judge, he is living with his wife and daughters in New Orleans.

THE COURT: I'm sorry, I didn't realize you had moved.

MR. MONNIN: He has. I believe Pensacola is the closest camp.

THE DEFENDANT: If I may, we relocated to New Orleans where my wife is doing a master's in architecture. You know, we researched this a little bit. Her family is from Columbus, Georgia. Pensacola is almost directly between Columbus and New Orleans. For us it would be terrific to have that.

THE COURT: I will recommend that.

MR. MONNIN: Thank you.

THE COURT: And you will be placed on supervised release for a term of three years. You'll have to pay a $100 special assessment.

In light of the restitution and the other matters that I fully expect you are going to have to do with the SEC I will not impose a fine or cost of incarceration.

You will be required to pay $50,000 to Carter's and it's my understanding that is in the registry of the court and the Court will issue an order to release that to Carter's.

Since that's in the registry I'm not going to make the provisions about monthly payments and so forth, it's there.

You will, as I said, be under standard conditions of supervised release, which include periodic testing, not illegally possessing drugs.

I'm going to require 100 hours of community service and that's because I've read so much about the things that you could do to help other folks that I want to tap into that. I'd rather you do that than pay a fine to the government. I'd like for you -- I think you're a creative enough person that you can come up with some ways that will repay society far more than a check would and I think you can help people in ways that I can't think of that you would be able to and so I hope and I would encourage probation to be open-minded about ways that that could be accomplished that serves the public good.

And you have to submit to the collection of the DNA sample, you can't possess a weapon, and you have to submit to searches and confiscation of contraband.

Under the terms of the plea agreement that you entered into with the government you would not have a right to appeal your conviction or sentence. If you believe there are rights that are reserved that appeal would have to be filed within 14 days or you've waived it. Mr. Monnin, I'll ask you to protect his rights in that regard.

I've been sitting on this all day and I'm going to

read it to you because it just struck me late last night sitting in my den at home when I was reading these things and reading cases, and I've referred several times to Judge Rakoff's decision in this *Gupta* case. And he made a comment there, he made a lot of comments there that made a lot of sense to me as I was struggling with this decision, and I will add he gave a 24-month sentence in that case.

But he was talking about the 3553 factors and he says: "Perhaps the most difficult one of those, but the most important one, is the concept of just punishment. While all other factors under Section 3553 partake to a lesser or greater degree of policy considerations, just punishment taps a deeper vein. Human beings, as social animals, are programmed to respect moral values. That is why people without shame or guilt are considered psychopaths and also why violations of the moral order raise such deep passions in the human breast. As people have come to understand that insider trading is not only a sophisticated form of cheating but also a fundamental breach of trust and confidence, they have increasingly internalized their revulsion for its commission."

And that I think says pretty well what my thoughts are on this. But he goes on to say, and this reflects my feelings as well, that "no defendant should be made a martyr to public passion."

And that is not what this is. In my view this is a

crime like fraud or other crimes for which there needs to be an appropriate punishment but not more than is necessary.

I know particularly your family and friends and perhaps you feel that this could have been accomplished with a lot less than 12 months and a day, and I appreciate those feelings, and were I sitting out there and you were my brother or son I would feel exactly the same way, I know that. But I hope in quiet reflection somewhere down the road they will look back and realize that under the guidelines that are supposed to direct our thinking on these matters it's supposed to be 41 months and that what I have tried to temper that with is all of these things we've just talked about and I have tried to get to a just punishment.

At the end of the day I have to go home and lie down on my bed and be able to go to sleep. And the only way I can do that is if I think I've done justice. There's not a paper grading to let me know, it's just got to be taking all the things we've talked about into consideration.

Mr. Megalli, I've tried to do justice for you and I do believe that you will be able to take this and turn it into something good. I think you've got a tremendous future ahead of you and that you will put this behind you and I suspect that you will be a model, in some ways that you wouldn't have wanted to be, but in ways that will change other people's lives and hopefully will avoid the heartache and hurt for a lot of people

that might have gone down this same road.

I wish you nothing but the absolute best for you and your family and some day when it's the right time to do it -- don't do it now because this wouldn't be the right time -- tell your daughters that I'm terribly sorry this had to happen.

Objections from the government?

MR. CHAIKEN: Yes. The government objects to preserve the record on the basis of substantive and procedural unreasonableness. Thank you, Your Honor.

THE COURT: From the defense?

MR. MONNIN: No objections.

THE COURT: Good luck to you, sir.

(Proceedings concluded at 3:30 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT:

NORTHERN DISTRICT OF GEORGIA:

I hereby certify that the foregoing pages, 1 through 33, are a true and correct copy of the proceedings in the case aforesaid.

This the 21st day of July, 2014.

/s/ Amanda Lohnaas

Amanda Lohnaas, CCR-B-580, RMR, CRR
Official Court Reporter
United States District Court