1 MARC J. FAGEL (CA BAR NO. 154425) (fagelm@sec.gov) JOHN S. YUN (CA BAR NO. 112260) (yuni@sec.gov) 2 MICHAEL S. DICKE (CA BAR NO. 158187) (dickem@sec.gov) CAMERON P. HOFFMAN (CA BAR NO. 229316) (hoffmanc@sec.gov) 3 Attorneys for Plaintiff 4 SECURITIES AND EXCHANGE COMMISSION 44 Montgomery Street, Suite 2600 5 San Francisco, California 94104 Telephone: (415) 705-2500 6 7 UNITED STATES DISTRICT COURT 8 NORTHERN DISTRICT OF CALIFORNIA 9 SAN FRANCISCO DIVISION 10 11 4637 SECURITIES AND EXCHANGE COMMISSION 12 13 Plaintiff, COMPLAINT FOR PERMANENT 14 VS. INJUNCTION AND OTHER RELIEF FRANCIS ELIAS AXIAQ, CIRIACO ISRAEL RIVOR, EMMANUEL MARIO AXIAO, AND 16 STEVEN CRAIG LUSARDI, 17 Defendants. 18 19 Plaintiff Securities and Exchange Commission (the "Commission") alleges: 20 SUMMARY OF THE ACTION 1. 21 The case involves a scheme to buy stock in Restoration Hardware. Inc. ("Restoration Hardware") based on inside information about an upcoming acquisition of the 22 company. After being tipped about the confidential acquisition plans by a highly-placed Restoration 23 Hardware finance employee, the defendants began accumulating the stock, netting nearly a million 24 dollars in illegal profits when the acquisition was announced. 25 2. In mid-2007, Ciriaco Israel Rivor ("Rivor"), Restoration Hardware's Vice 26 27 President of Treasury, was entrusted with confidential, material nonpublic information about the terms and the timing of the acquisition. Rivor secretly passed this information on to his friends 28

1	Emmanuel Mario Axiaq ("Emmanuel") and Steven Craig Lusardi ("Lusardi") so that they could
2	profit by purchasing Restoration Hardware stock before news of the acquisition was made public.
3	Rivor also instructed Emmanuel to pass the information to his father, Francis Elias Axiaq ("Francis")
4	whom Rivor knew, so that Francis could also purchase stock. Francis, Emmanuel and Lusardi were
5	each aware that Rivor obtained the information from his employer. Moreover, each was specifically
6	instructed to evade detection by limiting their purchases to 10,000 shares.

- 3. Francis, Emmanuel and Lusardi all used the information from Rivor to buy Restoration Hardware stock. While Emmanuel and Lusardi both abided by Rivor's instruction to buy no more than 10,000 shares, Francis did not, accumulating nearly 250,000 shares of Restoration Hardware stock in the two weeks leading up to the public announcement of the acquisition.
- 4. When the acquisition was publicly announced on November 8, 2007, the company's stock price closed at \$6.44 per share, jumping 140% from the previous close of \$2.68. On that single day, Francis profited by nearly \$900,000. Emmanuel and Lusardi also immediately profited, selling all of their shares on the day of the announcement for realized profits of \$29,539 and \$4,398, respectively.
- 5. As a senior finance employee, Rivor owed a fiduciary duty of trust and confidence to Restoration Hardware, and violated this duty by passing confidential nonpublic acquisition information to Francis, Emmanuel and Lusardi. Emmanuel, Francis and Lusardi all profitably traded upon the information, knowing that it was provided in breach of Rivor's duties to the company. Accordingly, defendants Francis, Rivor, Emmanuel and Lusardi all violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder. The Commission seeks a court order enjoining defendants from future violations of the federal securities laws; requiring them to disgorge their ill-gotten gains plus prejudgment interest; and imposing civil money penalties.

AUTHORITY TO BRING THIS ACTION

6. The Commission brings this action pursuant to Section 21(d), 21(e), and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1(c)].

1	7. Defendants directly engaged in transactions, acts, practices and course of			
. 2	business that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule			
3	10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.			
4	8. Defendants will, unless enjoined, continue to engage in the acts, practices and			
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7	JURISDICTION AND VENUE			
8	9. This Court has jurisdiction over this action pursuant to Section 21(e), 21A and			
9	27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1 and 78aa].			
10	10. Defendants, directly or indirectly, made use of the means or instrumentalities			
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13	11. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15]			
14	U.S.C. § 78aa]. Defendants all reside and transact business in the Northern District of California.			
15	12. Assignment to the San Francisco Division is appropriate pursuant to Civil			
Local Rule 3-2(c) and (d) because a substantial part of the events or omissions that give				
17	claim occurred in San Mateo County and/or Marin County.			
18	DEFENDANTS			
19	13. Ciriaco Israel Rivor, age 49, resides in Millbrae, California. At all relevant			
20	times, Rivor was a senior employee in the finance department of Restoration Hardware. He was			
21	promoted to Vice President of Treasury in October 2007. Rivor was previously employed at Good			
22	Guys, Inc. from 2001 to September 2004, last serving as Director of Financial Planning.			
23	14. Emmanuel Mario Axiaq, age 38, resides in San Carlos, California. He was			
24	previously employed with Rivor at Good Guys, Inc., from approximately 1996 to 2005, last serving			
25	as Senior Data Warehouse Manager.			
26	15. Francis Elias Axiaq, age 63, resides in Millbrae, California. Francis is			
27	Emmanuel Axiaq's father.			
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16. Steven Craig Lusardi, age 49, resides in San Jose, California. He is currently employed as the Director of Finance at a private company. Lusardi was previously employed with Rivor at Good Guys, Inc., from 1990 to 2005, last serving as Director of Store Operations. In sworn testimony during the Commission's investigation, Lusardi declined to answer questions based on the protections afforded to him by the Self-Incrimination Clause of the Fifth Amendment.

RESTORATION HARDWARE

17. Restoration Hardware, a speciality retailer of home furnishings, was a Delaware corporation headquartered in Corte Madera, California. During the relevant time period, Restoration Hardware was a public company, and its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was publicly quoted on the NASDAQ Global Market. In June 2008, the acquisition of Restoration Hardware by private equity firm Catterton Partners was completed, and Restoration Hardware's stock ceased to be quoted on the NASDAQ Global Market.

THE AXIAQS' INSIDER TRADING

- 18. In August 2007, Rivor began working on due diligence for a potential acquisition of Restoration Hardware. In connection with his work on the due diligence, Rivor signed an acknowledgment prohibiting him from disclosing the material nonpublic information he possessed about the planned acquisition.
- 19. In October 2007, the acquisition negotiations neared completion and Rivor learned that the acquisition would be announced publicly in the near future at a per share price of \$6.50, which was a significant premium on the company's then-current trading price of around \$2.90.
- 20. On October 24, 2007, Rivor told his friend Emmanuel to buy Restoration Hardware stock because a buyout at a premium price of \$6.50 per share would happen soon. In addition, Rivor told Emmanuel to also tell his father Francis Axiaq to buy Restoration Hardware stock. Rivor cautioned Emmanuel to buy no more than 10,000 shares in order to limit the chance of detection and to tell his father to similarly limit his purchases.
- 21. That same day, after the conversation with Rivor, Emmanuel purchased 170 shares of Restoration Hardware in an online trading account. Also on October 24, 2007, Emmanuel

1	spoke to his father Francis. During the discussion with his father, Emmanuel told Francis that Rivor		
2	had said to purchase Restoration Hardware stock because there would be a buyout soon at a premiur		
3	price, but to purchase fewer than 10,000 shares. Francis knew Rivor as Emmanuel's friend and from		
4	several occasions when Francis had performed electrical work for Rivor at his home.		
5	22. The next day, October 25, 2007, Francis purchased a combined total of 12,500		
6	shares of Restoration Hardware securities in three separate trading accounts. Each individual		
7	purchase was less than 10,000 shares.		
8	23. Shortly thereafter, Rivor and Emmanuel had an additional conversation about		
9	the acquisition, in which Rivor updated Emmanuel about the status of the acquisition.		
10	24. After this conversation with Rivor, on October 29, 2007, Emmanuel		
11	transferred funds into his trading account to purchase additional Restoration Hardware stock. When		
12	the transfer was complete and the funds became available for trading on October 31, 2007,		
13	Emmanuel bought an additional 6,800 shares of Restoration Hardware stock.		
14	25. At around the same time, Emmanuel spoke with his father Francis and told		
15	him what Rivor had shared about the acquisition status.		
16	26. On October 29, 2007, Francis purchased exactly 10,000 shares of Restoration		
17	Hardware stock. That same day, Francis also initiated the liquidation of mutual funds held in a		
18	retirement account in order to purchase more Restoration Hardware stock.		
19	27. Over the following days, Francis continued to accumulate Restoration		
20	Hardware stock. He purchased 10,000 shares on October 30; 40,000 shares on October 31; 35,000		
21	shares on November 1; and 20,000 shares on Friday, November 2.		
22	28. On or around November 4, 2007, Francis told Emmanuel that he had		
23	purchased more than 10,000 shares of Restoration Hardware stock, and that he had done so in several		
24	trading accounts. Emmanuel angrily confronted Francis for violating Rivor's instruction to purchase		
25	no more than 10,000 shares and thereby exposing them both to potential detection for their unlawful		
26	trading.		
27	29. The next Monday, November 5, 2007, using the proceeds from the mutual		
28	funds he liquidated, Francis purchased an additional 41,200 shares of Restoration Hardware stock in		

a single account. The following day, November 6, he purchased 57,022 more shares of Restoration Hardware stock, selling other stocks held in the account to fund a portion of the purchases.

- 30. On November 7, 2007, Rivor again shared information about the acquisition with Emmanuel. During the conversation, Rivor told Emmanuel that the acquisition would be announced the following day. After the conversation with Rivor, Emmanuel purchased an additional 1,500 shares of Restoration Hardware stock in his online trading account. That same day, Francis Axiaq purchased an additional 22,927 Restoration Hardware shares.
- 31. In total, from October 24 to November 7, 2007, Emmanuel Axiaq purchased 8,470 shares of Restoration Hardware stock. During that same period, Francis Axiaq purchased a total of 248,649 shares of Restoration Hardware stock in three separate trading accounts.
- 32. When Rivor disclosed confidential, material nonpublic information about the Restoration Hardware acquisition to Emmanuel, and directed Emmanuel to further share the information with Francis, he did so in breach of his duty of trust and confidence to his employer Restoration Hardware.
- 33. Defendants Emmanuel and Francis Axiaq each knew or were reckless in not knowing that the information provided to Emmanuel by Rivor was shared in breach of Rivor's duties to the company. When Emmanuel conveyed the information from Rivor to his father Francis, Emmanuel knew or was reckless in not knowing that the information provided to him by Rivor was shared in breach of Rivor's duties to the company.

LUSARDI'S INSIDER TRADING

- 34. On Saturday, October 27, 2007, Rivor told his friend and co-worker Lusardi that he was working on an upcoming acquisition at Restoration Hardware. Rivor told Lusardi that the acquisition would happen at a premium price, that it would be announced publicly soon, and that he should purchase a small amount of Restoration Hardware stock.
- 35. On November 3, 2007, Rivor and Lusardi again discussed the Restoration Hardware acquisition. During that conversation, Rivor asked Lusardi if he had purchased Restoration Hardware stock. Lusardi responded that he had not because he was unable to access his brokerage account. Rivor told Lusardi he still had time to buy the stock before the acquisition was announced.

1	a) employed devices, schemes, or artifices to defraud;		
2	b) made untrue statements of material fact or omitted to state a material		
3	fact necessary in order to make the statements made, in the light of the circumstances under which		
4	they were made, not misleading; and		
5	c) engaged in acts, practices, or courses of business which operated or		
6	would operate as a fraud or deceit upon other persons in connection with the purchase or sale of		
7	securities, by the use of means or instrumentalities of interstate commerce, of the mails, or the		
8	facilities of a national securities exchange.		
9	45. By reason of the foregoing, defendants violated, and unless restrained and		
10	enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule		
11	10b-5 thereunder [17 C.F.R. § 240.10b-5].		
12	PRAYER FOR RELIEF		
13	· I.		
14	Permanently enjoin defendants Francis Axiaq, Ciriaco Rivor, Emmanuel Axiaq and		
15	Steven Lusardi from directly or indirectly violating Section 10(b) of the Exchange Act [15 U.S.C. §		
16	78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;		
17	II.		
18	Order defendants Francis Axiaq, Emmanuel Axiaq and Steven Lusardi to disgorge ill		
19	gotten gains derived from the unlawful trading alleged herein, plus prejudgment interest;		
20	III.		
21	Order defendants Francis Axiaq, Ciriaco Rivor, Emmanuel Axiaq and Steven Lusard		
22	to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u l]; and		
23	IV.		
24	Retain jurisdiction of this action in accordance with the principles of equity and the		
25	Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and		
26	decrees that may be entered, or to entertain any suitable application or motion for additional relief		
27	within the jurisdiction of the Court.		
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1	V.		
2	2 Grant such other relief as this Cour	Grant such other relief as this Court may deem just and necessary.	
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4	4 Resp	pectfully submitted,	
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7	John	c J. Fagel	
8		nael S. Dicke eron P. Hoffman	
9	9 Atto	rneys for Plaintiff URITIES AND EXCHANGE COMMISSION	
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