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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. NEKEKIM CORPORATION and KENNETH W. CARLTON, Defendants.	Case No. COMPLAINT

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

SUMMARY OF THE ACTION

1. In this case, California-based Nekekim Corp. and its CEO Kenneth Carlton induced hundreds of investors to invest over $16 million in a fruitless gold mining venture. In doing so, Defendants violated the antifraud and registration provisions of the federal securities laws.

2. Nekekim succeeded in attracting investors from across the U.S. and overseas from 2001 through 2011. Carlton led this effort, representing to investors that a special "complex ore" found at Nekekim's mine site in Nevada contained gold deposits worth at least $1.7 billion. As proof of the deposits, Carlton pointed investors to test results produced by two small labs that used unconventional methods to test the purported ore for gold. He did not tell investors that other tests conducted by different firms suggested the Nekekim mine site held little if any gold, or that the small labs' reliability had been called into doubt by geologists and a government study.

3. Carlton told investors that Nekekim had to develop a custom method to be able to extract gold from its ore. He falsely represented to investors that a "physicist"—in reality an individual with no scientific training—had helped develop a confidential gold extraction technique licensed by Nekekim. And as Nekekim failed to produce any mining revenue, Carlton touted a series of other supposedly promising extraction methods in frequent reports to shareholders. Each of these methods failed, and Carlton's reports grossly overstated Nekekim's progress toward profitability while prompting shareholders to invest more money in the company.

4. The sales of Nekekim's securities were not registered with the Commission or covered by an exemption from registration, as the securities laws require.

5. Nekekim and Carlton violated the antifraud and registration provisions of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)(2)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. 240.10b-5(b)].

6. The Commission brings this action to enjoin Nekekim and Carlton from further violations. The Commission also seeks civil money penalties against Carlton and all other appropriate relief against both Carlton and Nekekim.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

8. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22 of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of any facility of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

10. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)]. During the period described in this complaint, Nekekim maintained its principal place of business in this District and Carlton resided within this District. In addition, acts, practices, and courses of business alleged in this complaint occurred within this District.

11. Intradistrict assignment to the Fresno Division is proper pursuant to Local Rule 120(d) because a substantial part of the events or omissions which give rise to these claims occurred in Madera County.

DEFENDANTS

12. **Nekekim Corporation** ("Nekekim" or "the company") is a Nevada corporation formed in 1993, with its principal place of business in Madera, California.

13. **Kenneth W. Carlton** ("Carlton"), age 64, resides in Clovis, California. Carlton has been the CEO and president of Nekekim and one of its directors since its founding. He is a former music teacher and has no mining experience outside of Nekekim.

FACTS

I. Nekekim Operations and Investment Sales

14. During the relevant period, Nekekim controlled mining claims covering a site near Tonopah, Nevada. It paid annual government fees to maintain the claims and purported to be attempting to develop the claims site as a mine. In 2005, Nekekim bought a North Carolina chemical plant, which it staffed with employees and operated as a so-called pilot mining facility through about 2006. Since 2006, Nekekim has operated an Arizona facility equipped with a small lab and processing tanks and staffed with several employees. In operating the North Carolina and Arizona facilities, Nekekim incurred expenses for salaries, equipment, supplies, and rent. At times, Nekekim used paid contractors and professionals to support its operations.

15. Nekekim has never generated mining revenue, and it used money raised from investors to fund its operations. The company raised approximately $14.6 million from about 600 investors in three nominally separate stock offerings begun in approximately October 2001, November 2005, and July 2009, respectively. Additionally, from around April 2005 through October 2010, Nekekim sold approximately $1.8 million in notes to about 50 investors, mostly existing shareholders. The investors who bought the stock and notes resided in multiple U.S. states, including California, Florida, and New Jersey, and in several foreign countries, including Canada, Australia, and Singapore.

16. Carlton took the leading role for Nekekim in the sales of the stock and notes. He approved the three offering memoranda that Nekekim used to offer the stock for sale to persons who later invested. He typically sent the memoranda to prospective investors using his personal email account. Carlton's practice was to conduct personal phone calls or meetings with prospective investors, and he personally closed the initial stock purchase with the vast majority of Nekekim shareholders.

17. Nekekim relied heavily on repeat investments by existing shareholders to sustain and continue its operations. Carlton used frequent newsletters to shareholders that he wrote and signed to solicit and obtain such additional investments. After receiving the newsletters, many

existing Nekekim shareholders invested more money in the company. Over 100 persons invested two or more times.

18. Nekekim also relied on its existing shareholders to refer potential new investors to the company. Carlton encouraged such referrals.

19. In addition to leading investment sales, Carlton's duties for Nekekim included, but were not limited to, overseeing third-party service providers; signing contracts on behalf of the company; budgeting; and paying company bills. In lieu of salary, Carlton took periodic loans from Nekekim that were funded with investor money. During the relevant period, the loans averaged approximately $150,000 annually. Carlton has never repaid any of the approximately $2.2 million he has "borrowed" from Nekekim since its founding in 1993.

II. Nekekim and Carlton's Fraudulent Stock Sales: November 2005 through June 2009

20. During approximately November 2005 through June 2009, Nekekim sold approximately $6.7 million in common stock to investors. An offering memorandum that Carlton distributed to prospective investors to promote the stock claimed that Nekekim controlled gold deposits worth $1.7 billion or more. Investors were not told this claim was based on test results that were produced by two suspect labs and had been cherry-picked from less favorable test results produced by other firms. The memorandum also claimed that Nekekim had licensed technology developed by a purported "physicist" who in fact has no scientific training. Carlton solicited existing shareholders to add to their investments through the offering, claiming repeatedly that Nekekim had nearly perfected a method for recovering the gold from its ore. Yet none of these methods resulted in gold production for the company.

A. The Defendants Touted Cherry-Picked Test Results

21. In the mining industry, the potential of a mine site is often gauged by tests called "assays." In a typical assay, a lab tests a sample of material from a potential site to determine its gold content. The lab then extrapolates the result to calculate the proportion of gold contained in a ton of the sampled material, expressed as "ounces per ton" or "OPT."

22. A sample taken randomly from anyplace in the world may hold a trace amount of gold. But mining is viable only at sites where gold is present in concentrations high enough that it can be profitably extracted from the rock or other surrounding matter that contains it.

23. Since its founding, Nekekim has had samples of material from its claims site assayed and subjected to test-runs of potential gold extraction methods by numerous third-parties. Carlton monitored these procedures and knew that some of them failed to detect or recover OPT of gold sufficient to allow profitable mining.

24. Two small labs reported highly significant OPT in Nekekim samples. Using uncommon and so-called "proprietary" procedures during 1999-2000, these labs purported to measure gold content in samples that were collected from the Nekekim claims site by Nekekim's contract geologist. The two labs' combined results indicated that the samples contained gold, on average, at 3.967 OPT.

25. Successful mining companies routinely work gold deposits under .5 OPT. If accurate, the 3.967 OPT figure would have meant a tremendous and rare gold discovery for Nekekim, as Carlton understood.

26. According to its offering memorandum dated November 5, 2005, Nekekim had "determined that [the] ore body" at its claims site "encompasses at least four square miles." Citing the 3.967 OPT figure produced by the two small labs, the offering memorandum "project[ed]" that Nekekim could "recover approximately $1.7 billion in gross gold value" from just a portion of the claims site. Carlton approved the offering memorandum and personally distributed it to persons who later purchased Nekekim stock.

27. The 3.967 OPT figure was cherry-picked and therefore misleading. As Carlton knew, firms other than the two small labs had provided Nekekim with less positive findings, including several showing no economically significant gold in Nekekim samples. The offering memorandum said nothing about the other findings, which created a significant, undisclosed risk that the 3.967 OPT figure was inaccurate and Nekekim lacked the rich gold deposits it claimed.

28. Carlton also knew of other undisclosed red flags that put the 3.967 OPT figure further in doubt.

29. First, Carlton had learned of a government study in which the two small labs produced inaccurate assay results. The study, completed in 2002 by the federal Bureau of Land Management ("BLM"), was designed to test the accuracy of assay labs, which can be incompetent or fraudulent. The BLM provided the two small labs and approximately 60 other labs with samples to assay. Some of the samples were culled from material in which previous tests by several prominent labs had detected no precious metals. Results reported by the two small labs including detecting gold and silver in such samples. In particular, one of the small labs ("Lab A") reported finding a highly significant quantity of gold in such a sample.

30. In addition, Nekekim's contract geologist mentioned above ("Geologist 1") and a second contract geologist ("Geologist 2") had expressed concerns in 2002 and 2003 about the reliability and accuracy of the results provided by the two small labs.

31. While working with Nekekim, Geologist 2 produced a 1998 report which noted a procedure by Lab A that supposedly yielded over 4 OPT of gold from a sample of material from the Nekekim claims site. But in a 2002 email read by Carlton, Geologist 2 wrote that Lab A "was never reliable in [his] estimation." His email also called it "suspicious" that no other lab had produced similar results as of the time of his work with Nekekim.

32. In working for Nekekim, Geologist 1 wrote a 2000 report that used the 3.967 OPT figure from the two small labs to estimate the amount of gold present at Nekekim's claims site. But later, in January 2003, Geologist 1 wrote a memo to Carlton that called the work of Lab A "suspect." The memo cited another firm's inability to reproduce Lab A's work, and the possibility that the "proprietary" process Lab A used had actually added gold to the Nekekim samples. The memo also questioned a report, issued by the other small lab, which illogically suggested that waste material left after Nekekim testing contained much more gold than the raw material that was tested. Geologist 1 ended the memo with a "strong recommendation" that Nekekim suspend spending money to establish new mining claims.

33. The offering memorandum did not disclose these other red flags to the prospective investors who received it. This omission also made the memorandum misleading because the other red flags created a significant risk that Nekekim lacked the rich gold deposits it claimed.

B. Defendants Misrepresented Nekekim's Outside Support

34. Defendants further misrepresented to investors that Geologist 1, a physicist, and a major industrial firm had validated Nekekim's gold deposits or otherwise supported it.

35. First, the November 2005 offering memorandum claimed that Geologist 1 had "attested to the presence of" gold at 3.96 OPT. This was false and misleading because Geologist 1 in fact had questioned the basis for this figure in his January 2003 memo to Carlton.

36. The offering memorandum also stated that Nekekim had licensed a "proprietary" and confidential gold extraction process developed by a Lab A employee and another individual, whom the memorandum identified as a "physicist." This was false and misleading because the memorandum omitted that the other individual, a purported consultant to Nekekim, has no formal scientific training and is entirely self-taught, which Carlton knew from his many contacts with the individual or recklessly failed to know.

37. The offering memorandum claimed that "a major east-coast refinery" had committed in writing to "accept [Nekekim's] ore for smelting" after confirming its gold content through assays. A representative of the "refinery" once visited Nekekim's North Carolina facility, as Carlton knew. But, as Carlton also knew or recklessly failed to know, the "refinery" never confirmed any gold content or agreed to do any business with Nekekim.

C. Carlton Solicited Increased Investments with False Progress Reports

38. During the relevant period, Defendants often represented to Nekekim investors and prospective investors that the Nekekim claims site held a "complex," "rare," "unique," or otherwise unusual ore. They also regularly represented to investors that to recover the gold from this ore, Nekekim had to develop a custom extraction method instead of using methods already established and widely used in the mining industry.

39. According to Carlton's reports to shareholders, Nekekim developed a series of promising extraction (or "recovery") methods during 2006-2009. These progress reports followed a pattern of introducing a new method, touting the method as promising for several months, then putting it aside in favor of another new and supposedly even better method. The

reports also frequently urged shareholders to support Nekekim financially and increase their investments by purchasing more Nekekim stock.

40. Excerpts from certain progress reports are below:

- **July 2006 shareholder newsletter**:
  - "Major Discovery Significantly Expands Our Development Plan"
    - "We have determined that [a] new [nitric leach recovery] system is totally reliable. . . . This system is capable of producing actual gold . . . for immediate sale without additional processing required. . . . Never before has our future been more certain."
- Citing this same nitric leach process during an **October 2006 shareholder meeting**, Carlton claimed that Nekekim had a good chance of achieving $1.8 billion in annual revenues—with production costs running only 5 percent of this—within 18 months.
- **February 2007 shareholder newsletter**: "It is my pleasure to announce that we have successfully developed our new [nitric] gold leaching process and will begin production in one-ton batches on the 16th of February at our pilot processing facility in [Arizona]. . . . [The] . . . recovery levels [for this process] . . . far exceed anything we had ever hoped for with our previous process in North Carolina."
- **November 2007 shareholder newsletter**:
  - "A NEW GOLD RECOVERY PROCESS IS SUCCESSFUL"
    - "Our dedicated lab researcher . . . [in Arizona] has succeeded in developing a new successful and commercially viable leach. . . . We have chosen to begin production with this new process as soon as possible."
  - "At the same time, we will continue to perfect the previously pursued nitric leach process . . . ."
- **October 2008 shareholder newsletter**:
  - "The Bromine process [that Nekekim purported to abandon years before] is still commercially viable, especially considering today's gold prices . . . ."

- "Please remember the Bromine-based production project is still only a 'back up plan' for us. We still strongly believe our New Arizona Process [discussed in the November 2007 newsletter] will be ready for operation before the bromine process."

- **January 2009 shareholder newsletter**:
  - "The scale up of our bromine leach process, developed by [the above-mentioned Lab A employee] . . . is now nearing completion."
  - "A new leach process has very recently been discovered [in Arizona]. . . . [I]n a short time this new recovery method may be ready for its own scale up . . . ."
- During a **February 2009 shareholder meeting**, Carlton claimed that the above-mentioned Lab A employee had already built three working versions of his bromine system for other customers.
- **June 2009 shareholder newsletter**:
  - "Now that gold is in the $900 per ounce range . . . we have the opportunity to use [Lab A's] *modified mercury amalgam process* to begin production with a processing company in Mexico."
  - "[The bromine leach process] has been put aside, since the Mexican Project has now become our primary direction for commercial operation."

41. These progress reports were false and misleading. Contrary to the content and tone of the reports, Nekekim was never close to commercial viability, as CEO Carlton knew or recklessly failed to know. Carlton fabricated his claim that the Lab A employee had built three working bromine recovery systems. Carlton had no reasonable basis for his claim that Nekekim could achieve $1.8 billion in annual revenue with production costs of only five percent within 18 months. Carlton and Nekekim abandoned the touted "Mexican Project" by approximately December 2009.

42. In the progress reports, Carlton knowingly or recklessly misrepresented Nekekim's progress toward commercial gold production and profitability while soliciting increased

investments from the company's shareholders. At least 40 persons who became shareholders (and newsletter recipients) by 2005 bought more Nekekim stock in later years.

III. Additional Fraudulent Stock Sales: July 2009 through December 2011

43. From approximately July 2009 through December 2011, Defendants sold approximately $5.3 million in Nekekim preferred stock. At the same time, they failed to disclose red flags, misrepresented Nekekim's validation and support, and overstated the company's progress toward finding a viable recovery method.

44. In a new offering memorandum dated July 14, 2009, Nekekim continued to tout the 3.967 OPT figure and falsely and misleadingly claim that Geologist 1 had "attested to" it. The memorandum further stated that "Nekekim's estimated values in just 4 of its 24 square miles of claims provide sufficient reserves to mine for decades." This statement and the reference to the 3.967 OPT figure were misleading because they omitted the red flags set forth above. Carlton approved the memorandum and personally distributed it to persons who later purchased Nekekim stock.

45. The July 2009 memorandum also included a "Key Personnel" section written by Carlton. It claimed that Geologist 1 was then Nekekim's "top-level drilling and exploration consultant," citing his "years of experience and concern for the success of the [Nekekim] project." This claim was misleading because it omitted that Geologist 1 had last worked for Nekekim in approximately 2004, which Carlton knew from his role overseeing Geologist 1.

46. Similarly, the "Key Personnel" section listed a firm part-owned by an individual on "the Nevada State Mining Commission." It said Nekekim used the firm's "very experienced and diverse staff for permit application work and operational planning." This statement was misleading because it omitted that this firm did limited permit work for Nekekim in 2005 and no work thereafter, as Carlton knew from his role overseeing the firm.

47. In his February 2010 shareholder newsletter, Carlton stated that Nekekim's ore was "known" to contain gold at 300 OPT—a staggering figure in the mining industry. The origin of this figure was a supposed laser research project conducted in the late 1990s by the purported consultant identified as a "physicist" (the "Consultant") in the November 2005 offering

memorandum. Carlton did not witness the supposed laser project or see it documented. He thus had no reasonable basis for claiming it was "known" that Nekekim's claims site held such a tremendous amount of gold, making his newsletter misleading.

48. This February 2010 newsletter also stated that Nekekim had been experiencing "very trying financial times" and offered shareholders an opportunity to buy more stock. Within seven weeks, existing shareholders invested approximately $70,000 in additional Nekekim shares.

49. On or about December 17, 2010, Carlton sent a prospective investor a signed personal letter, enclosing the July 2009 offering memorandum together with other documents Carlton signed stating that the Consultant had spent $10 million of his own money on his research. The other documents, authored by Carlton, also stated that the Consultant had a college degree and once worked for a "major investment company." These statements about the Consultant were false and Carlton had no basis for making them.

50. Along with the same letter, Carlton sent an "Executive Summary" he authored. It claimed that Geologist 2, whom it called "a well known and highly respected Geologist," had "personally witnessed and verified" Lab A's assays on Nekekim samples. This claim was false and misleading because Geologist 2 in fact had called Lab A unreliable and its results suspicious in his email approximately eight years before, as Carlton knew. The Executive Summary likewise falsely and misleadingly claimed that Geologist 1 had "verified" Lab A's work supporting the 3.967 OPT figure.

51. After receiving the false and misleading documents from Carlton, the investor invested $130,000 in Nekekim.

52. In his 2010 and 2011 newsletters to shareholders, Carlton encouraged shareholders to increase their investments while suggesting that commercial gold production and payment of shareholder dividends were imminent due to the Consultant's work on developing a recovery method. For example, Carlton's December 2010 newsletter cited the Consultant's work and stated that "[t]he New Year will spawn more activity than ever, as the company begins commercial production for the first time." This newsletter also noted that the stock offering begun in July 2009 remained open, but Nekekim planned "to hold future [stock] sales to a

minimum, since we see foresee the possible start of production within the next several weeks." Shareholders were invited to contact Carlton to "discuss your Nekekim Corporation investment portfolio." In the two months following the newsletter, existing shareholders invested approximately $100,000 in more Nekekim stock. Likewise, an August 2011 newsletter falsely claimed that the Consultant's recovery system had "been determined to be commercially successful." It further stated that Nekekim wished to pay shareholder dividends "as soon as possible" and that unsold shares left in the July 2009 offering would be "sold only to existing shareholders on a first come, first served basis." Immediately after this newsletter was issued, several shareholders emailed Carlton to inquire about buying more shares. Starting on the day of the newsletter and through the following seven weeks, one of the inquiring shareholders and several other shareholders purchased about $77,000 in additional Nekekim stock.

53. Contrary to Carlton's newsletters, the Consultant's work never brought Nekekim close to commercial viability, as CEO Carlton knew or recklessly failed to know.

54. On or about September 24, 2011, Carlton emailed the August 2011 newsletter to a prospective investor along with the July 2009 offering memorandum and the "Executive Summary" described above. After receiving these false and misleading documents from Carlton, the prospect invested $50,000 in Nekekim.

IV. Misleading Claims of Other Precious Metals

55. The July 2009 offering memorandum claimed that in addition to gold, Nekekim's "unique and complex" ore contained "high levels of" of additional precious metals, including silver, platinum, and palladium. Carlton similarly claimed high quantities of these three metals in shareholder newsletters— issued in July 2006, February 2007, August 2007, and December 2011—which also urged shareholders to increase their investments. By 2004, however, Carlton had received test results that showed no economically significant quantities of silver, platinum, or palladium in Nekekim samples. These results were not disclosed in the offering memorandum or newsletters. This omission made the memorandum and newsletters misleading because the negative test results created significant risk that the claimed deposits of the three additional metals did not exist.

V. Defendants Violated Registration Provisions From 2001 through 2011

56. In addition to the roughly $12 million in stock sales from approximately November 2005 through 2011 detailed above, Nekekim sold approximately $2.6 million in common stock to investors during approximately October 2001 through October 2005. Also, as stated above, Nekekim sold approximately $1.8 million in notes to about 50 investors during approximately April 2005 through October 2010.

57. In total, then, Nekekim offered and sold approximately $16.4 million in stock and notes to approximately 600 investors from about October 2001 through 2011. Contrary to the requirements of the securities laws, no registration statement was on file with the Commission or in effect for any of these offers or sales, and no exemption from registration applied to the offers or the sales.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a)(2) of the Securities Act

58. The Commission hereby incorporates paragraphs 1 through 57 by reference.

59. Defendants have, by engaging in the conduct set forth above, directly or indirectly, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or of the mails, obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading.

60. By reason of the foregoing, Defendants have each directly or indirectly violated Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)] and unless enjoined will continue to violate this provision.

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Thereunder

61. The Commission hereby incorporates Paragraphs 1 through 57 by reference.

62. Defendants, by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national

securities exchange, in connection with the purchase or sale of securities, with scienter, made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

63. By reason of the foregoing, Defendants have each directly or indirectly violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5(b)] and unless enjoined will continue to violate these provisions.

THIRD CLAIM FOR RELIEF

Violations of Sections 5(a) and 5(c) of the Securities Act

64. The Commission hereby incorporates Paragraphs 1 through 57 by reference.

65. Defendants have, by engaging in the conduct set forth above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or of the mails, offered to sell or sold securities or carried or caused such securities to be carried through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

66. No registration statement was filed with the Commission or was in effect with respect to the securities offered by Defendants prior to the offer or sale of these securities.

67. By reason of the foregoing, Defendants have directly or indirectly violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], and unless enjoined will continue to violate these provisions.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin Defendants from directly or indirectly violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Order Defendant Carlton to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

III.

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

IV.

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

Dated: January 3, 2013

Respectfully submitted,

/s/ Thomas J. Eme

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SECURITIES AND EXCHANGE COMMISSION