

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GILBERT FIORENTINO,

Defendant.

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COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

INTRODUCTION

1. This case concerns fraud and other misconduct by Gilbert Fiorentino, a former director of Systemax Inc. (“Systemax” or the “Company”) and the former chief executive of its Technology Products Group.

2. Systemax is a Fortune 1000 company that sells personal computers and other consumer electronics through its websites, retail stores, and direct mail catalogs. In its 2010 annual report (Form 10-K), Systemax reported sales revenue of approximately \$3.6 billion for fiscal year 2010. The Technology Products Group generated more than 90% of Systemax’s 2010 revenue through retail operations marketed under several brand names, including Tiger Direct, CompUSA, and Circuit City.

3. Over the five year period spanning from 2006 through 2010, Fiorentino received more than \$400,000 from one or more entities that conducted business with Systemax, which he failed to disclose to Systemax and its auditors. Fiorentino also misappropriated merchandise from

Systemax, estimated to be worth at least several hundred thousands of dollars, which he also failed to disclose to Systemax and its auditors. As a result of Fiorentino's actions, Systemax materially understated his compensation and failed to disclose his personal financial interest in certain related party transactions in its proxy statements, which were incorporated by reference in Systemax's Forms 10-K. Fiorentino reviewed and signed each Systemax Form 10-K from fiscal year 2006 through 2010, knowing the Forms 10-K failed to make the required disclosures.

4. Through his conduct, Fiorentino violated Sections 10(b), 13(b)(5), and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 10b-5, 13b2-1, 13b2-2, 14a-3, and 14a-9. In addition, Fiorentino aided and abetted Systemax's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-1.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa. Fiorentino has, directly or indirectly, made use of the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged herein.

6. Venue is proper in this Court because Fiorentino resides in Miami and the acts, practices, transactions, and courses of business alleged herein occurred within the Southern District of Florida.

THE DEFENDANT

7. Fiorentino, age 51, is a resident of Miami, Florida. He served as the chief executive of Systemax's Technology Products Group, based in Miami, Florida. He also served as a director of Systemax from 2004 until his resignation on May 6, 2011.

FACTS

Fiorentino Received Additional Compensation and Other Personal Benefits

8. As the chief executive of Systemax's Technology Products Group, Fiorentino dealt directly with external service providers, manufacturer representatives and other entities that conducted business with Systemax. Many of these external service providers, manufacturer representatives and other entities participated in one or more transactions with Systemax that exceeded \$120,000 annually.

9. From 2006 through 2010, Fiorentino received more than \$400,000 in undisclosed compensation from one or more external service providers, manufacturer representatives and other entities that conducted business with Systemax. For example, Fiorentino shared one representative's monthly commissions generated from sales to Systemax's subsidiary, Tiger Direct. This payment stream ended after the representative agreed to renovate the executive kitchen in the Tiger Direct office headquarters, which cost him more than \$30,000.

10. Fiorentino also demanded and received from \$5,000 to \$10,000 monthly from an entity that supplied materials to Systemax's subsidiaries for use in retail and mail order operations. He received these payments from at least January 2006 through at least December 2010.

11. Additionally, as a result of his executive position at Systemax, Fiorentino had access to Company merchandise used to market Systemax products in mail order catalogs and online. Between 2006 and 2010, Fiorentino routinely misappropriated this merchandise, estimated to be worth at least several hundred thousands of dollars, and failed to disclose it to Systemax and its auditors.

12. As a result of Fiorentino's receipt of undisclosed compensation from individuals and entities that conducted business with Systemax, and his misappropriation of corporate merchandise, Systemax materially understated Fiorentino's executive compensation.

Fiorentino Failed to Disclose the Compensation and Personal Benefits to Systemax and its Auditors

13. As part of its compliance with Section 404 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7262, Systemax required certain management personnel, including Fiorentino, to sign annual conflict of interest questionnaires, certifications of compliance with the Company's corporate ethics policy, and representations about transactions out of the course of ordinary business. Fiorentino signed each of these documents for the fiscal years 2007 through 2010.

14. In completing the conflict of interest questionnaires, Fiorentino falsely represented he did not "[r]eceive or make any arrangements for the receipt of any compensation or other personal financial benefit from a current or potential supplier, competitor or customer of the Company."

15. By signing the certifications of compliance with the Company's corporate ethics policy, he falsely represented he had not used "[c]ompany property, information, or [his] position for personal gain..." and had "compl[ie]d with internal controls and procedures of the Company that are intended to allow for better management and protection of the Company's assets."

16. Additionally, Fiorentino routinely signed management representation letters to the Company's independent auditors from at least June 2006 until at least May 13, 2010 that stated: "We have no knowledge of any fraud or suspected fraud involving management or other employees who have a significant role in the Company's internal control over financial reporting...."

17. On March 17, 2011, Fiorentino signed a management representation letter to the Company's independent auditors that contained the language quoted above, but added "...except for

certain matters which are the subject of whistleblower allegations concerning individuals at our Miami Florida [sic] operations which are the subject of an independent Audit Committee investigation.” This additional disclosure related directly to Fiorentino’s conduct over the previous several years, which he had failed to disclose to the Company and its auditors for more than five years.

18. Furthermore, all of the management representation letters Fiorentino signed, like the Company’s internal conflict of interest questionnaires, contained a statement that no officer of the Company had a business interest in conflict with the Company and that such an interest would be contrary to Company policy.

Fiorentino Knowingly Misrepresented His Compensation and Omitted Disclosure of the Compensation Arrangements in Proxy Statements and Forms 10-K

19. Because Fiorentino was one of Systemax’s highest compensated executives, the securities laws required Systemax to disclose all compensation he received each fiscal year. Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than \$10,000, must be disclosed pursuant to Item 402(c) of Regulation S-K, 17 C.F.R. § 229.402(c)(2)(ix).

20. In addition, Item 404(a) of Regulation S-K, 17 C.F.R. § 229.404(a), requires a description of any transaction or series of similar transactions exceeding \$120,000 (adjusted upward from \$60,000 as of December 15, 2006) in which the issuer is a party and in which any director, executive officer, or any member of their immediate families has a direct or indirect material interest. The Company’s Form 10-K and proxy statement must provide this disclosure.

21. Fiorentino received personal benefits and compensation in excess of \$10,000 from entities that engaged in transactions with Systemax that exceeded \$120,000 each year from 2006

through 2010. However, he did not disclose this additional compensation or his interest in those transactions to Systemax or its independent auditors.

22. As a result, Systemax did not disclose this information in its proxy statements or Forms 10-K for the years 2006 through 2010.

23. Fiorentino, as a director of Systemax, reviewed and signed the Company's Form 10-K for each of the fiscal years 2006 through 2010 even though he knew the incorporated proxy statements materially understated his compensation and failed to disclose his financial interest in certain related party transactions.

The Audit Committee Investigation Led to Fiorentino's Resignation

24. In January 2011, Systemax received an internal whistleblower complaint about Fiorentino's actions at the Miami, Florida office. The Company's Audit Committee launched an internal investigation.

25. The Company disclosed the internal investigation in its Form 10-K, filed with the Commission on March 17, 2011. Specifically, the Company stated: "our Audit Committee, with the assistance of independent counsel, is conducting an independent investigation into certain anonymous whistleblower allegations concerning our Miami, Florida operations. While the investigation is not yet complete, it does not appear that there is any material impact on our reported consolidated financial statements."

26. Upon completion of the internal investigation, Systemax announced via a press release and Form 8-K, filed with the Commission on April 17, 2011, that it had placed Fiorentino on administrative leave and notified him of its intent to terminate him. The press release also stated that Fiorentino's actions "did not have a material impact on Systemax's previously reported financial results and were limited to the Company's Miami operations."

27. Soon thereafter, Fiorentino agreed to resign from all of his positions with the Company, surrender stock and stock options that the Company has valued at as much as \$9.1 million, and repay his 2010 annual bonus of \$480,000.

CLAIMS FOR RELIEF

COUNT I

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

28. The Commission repeats and realleges paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Fiorentino, directly or indirectly, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails in connection with the purchase or sale of securities, as described in this Complaint, knowingly, willfully or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading

30. By reason of the foregoing, Fiorentino directly or indirectly violated and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

COUNT II

**Violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1
(Record-Keeping and Internal Control Violations)**

31. The Commission repeats and realleges paragraphs 1 through 27 of this Complaint as if fully set forth herein.

32. Fiorentino knowingly falsified Systemax's books and records required to be kept under Section 13 of the Exchange Act and knowingly circumvented Systemax's system of internal accounting controls.

33. By reason of the foregoing, Fiorentino violated, and unless enjoined, is reasonably likely to continue to violate, Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

COUNT III

Violations of Rule 13b2-2 of the Exchange Act (Lying to Auditors)

34. The Commission repeats and realleges paragraphs 1 through 27 of this Complaint as if fully set forth herein.

35. Fiorentino violated Rule 13b2-2 of the Exchange Act by, directly or indirectly:

- a) Making or causing to be made a materially false or misleading statement to an accountant in connection with; or
- b) Omitting to state, or causing another person to omit to state, any material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with:
 - 1) Any audit, review or examination of the financial statements of an issuer; or
 - 2) The preparation or filing of any document or report required to be filed with the Commission.

36. By reason of the foregoing, Fiorentino violated, and unless enjoined, is reasonably likely to continue to violate Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

COUNT IV

**Violations of Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9
(Proxy Violations)**

37. The Commission repeats and realleges paragraphs 1 through 27 of this Complaint as if fully set forth herein.

38. Section 14(a) of the Exchange Act requires registrants that solicit any proxy or consent or authorization in connection with any security registered pursuant to Section 12 of the Exchange Act (other than an exempted security), to comply with such rules as the Commission may promulgate. Rule 14a-3 provides that no solicitation of a proxy may occur unless each person solicited is concurrently furnished or has previously been furnished with a proxy statement containing the information specified in Schedule 14A. Rule 14a-9 prohibits, among other things, the use of proxy statements which omit to state any material fact necessary in order to make the statements therein not false or misleading.

39. Systemax's proxy statements for the years 2006 to 2010 materially understated Fiorentino's compensation and omitted disclosure of the related party transactions described in this Complaint. Fiorentino reviewed the proxy statements and knew them to be false and misleading, yet allowed the statements to be filed.

40. By reason of the foregoing, Fiorentino violated, and unless enjoined, is reasonably likely to continue to violate Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and Rules 14a-3 and 14a-9, 17 C.F.R. §§ 240.14a-3, 240.14a-9.

COUNT V

**Aiding and Abetting Systemax's Violations of Section 13(a)
of the Exchange Act and Rules 12b-20 and 13a-1
(Reporting Violations)**

41. The Commission repeats and realleges paragraphs 1 through 27 of this Complaint as if fully set forth herein.

42. Section 13(a) of the Exchange Act requires every issuer of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission, in accordance with such rules and regulation as the Commission has prescribed, information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with annual reports as the Commission has prescribed. Exchange Act Rule 13a-1 requires such issuers to file annual reports on Form 10-K and Exchange Act Rule 12b-20 requires that, in addition to including the information expressly required in the annual report, issuers add such further material information necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

43. Based on the conduct alleged herein, Systemax violated Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20 and 13a-1 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, by failing to accurately disclose Fiorentino's additional compensation and business arrangements as required under Items 402(c) and 404(a) of Regulation S-K, 17 C.F.R. §§ 229.402(c)(2)(ix), 229.404(a).

44. Fiorentino, in the manner described above, knowingly provided substantial assistance to Systemax in its failure to comply disclosure with Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

45. By reason of the foregoing, Fiorentino aided and abetted Systemax's violations of, and unless enjoined, is reasonably likely to continue to aid and abet further violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

COUNT VI

Aiding and Abetting Systemax's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act (Books and Records and Internal Control Violations)

46. The Commission repeats and realleges paragraphs 1 through 27 of this Complaint as if fully set forth herein.

47. Based on the conduct alleged herein, Systemax violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), by keeping books and records with fraudulent entries and/or omissions related to officer compensation and related party transactions. Systemax violated Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B), by maintaining a system of internal controls that permitted Fiorentino to obtain a significant amount of unreported compensation and to conceal his related party transactions.

48. Fiorentino, as described in this Complaint, knowingly provided substantial assistance to Systemax in connection with its failure to make and keep books and records, and accounts, which, in reasonable detail, accurately and fairly reflected Systemax's transactions.

49. Fiorentino, as described in this Complaint, knowingly provided substantial assistance to Systemax in connection with its failure to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

50. By reason of the foregoing, Fiorentino aided and abetted Systemax's violations of, and unless enjoined, is reasonably likely to continue to aid and abet further violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court:

I.

Declaratory Relief

Declare, determine and find that Defendant Fiorentino committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunction

Issue a permanent injunction, enjoining Defendant Fiorentino from violating, directly or indirectly, Sections 10(b), 13(b)(5), and 14(a) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, 14a-3, and 14a-9 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

III.

Civil Penalty

Issue an Order directing Defendant Fiorentino to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act, 15.U.S.C. § 78u(d)(3).

IV.

Officer and Director Bar

Issue an Order barring Defendant Fiorentino from serving as an officer or director of any public company pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2).

V.

Further Relief

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

VI.

Retention of Jurisdiction

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

September 17, 2012

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