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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
SECURITIES AND EXCHANGE COMMISSION, :  
:  
Plaintiff, :  
:  
- against - :  
:  
KIMBERLY J. CARRELLA, : **COMPLAINT**  
VINCENT M. CARRELLA, :  
JAMES R. MANCUSO, :  
KEVIN J. BARTON, :  
PHILIP J. HOURICAN, :  
NOEL J. BELMONTE, and :  
JOHN C. KAWAS, JR., :  
Defendants. :  
:  
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The plaintiff Securities and Exchange Commission (“Commission”) alleges the following against defendants Kimberly J. Carrella ("Kimberly Carrella"), Vincent M. Carrella ("Vincent Carrella"), James R. Mancuso ("Mancuso"), Kevin J. Barton ("Barton"), Philip J. Hourican ("Hourican"), Noel J. Belmonte ("Belmonte"), and John C. Kawas, Jr. ("Kawas"):

**SUMMARY**

1. This securities law enforcement action involves Kimberly Securities, Inc.'s scheme to defraud its brokerage customers by repeatedly executing unauthorized, unsuitable

trades in its customers' accounts, and churning those accounts.

2. Specifically, from early 2000 until September 2002, Kimberly Securities' brokers (or registered representatives), misrepresented, and failed to disclose, material information to investors to persuade them to open brokerage accounts at Kimberly Securities, and then invest significant amounts of money. Once these customers invested funds, the brokers disregarded their customers' investment objectives. The brokers repeatedly executed securities transactions that were unauthorized by, and unsuitable for, their customers, and the brokers churned their customers' accounts. The brokers' frequent trading typically depleted the customers' capital investments through trading losses and commission charges. After there were no remaining funds in the customers' accounts, or the customers closed their accounts, the brokers lured new, unsuspecting customers into opening accounts at Kimberly Securities, and the brokers repeated the same conduct. Through this scheme, Kimberly Securities, its principals, and its brokers generated substantial commissions, while the customers lost their entire investment.

3. Kimberly Carrella, the President of Kimberly Securities, orchestrated this scheme, and her husband, Vincent Carrella, assisted her. Kimberly Carrella was the broker for numerous customer accounts. Kimberly Carrella misrepresented, and failed to disclose, material information to customers. Kimberly Carrella also executed numerous unauthorized and unsuitable trades in her customers' accounts, and she churned these accounts. Vincent Carrella also executed unauthorized and unsuitable trades in Kimberly Carrella's customers' accounts. Finally, Kimberly Carrella and Vincent Carrella directed other brokers to execute unauthorized and unsuitable trades in customers' accounts, and churn those accounts.

4. Mancuso, Barton, Hourican, and Belmonte were brokers who participated in the fraudulent scheme. Mancuso, Barton, Hourican, and Belmonte misrepresented, and failed to

disclose, material information to customers to convince them to open accounts and invest significant sums of money. Once customers invested funds, Mancuso, Barton, and Hourican executed unauthorized and unsuitable trades, and churned these accounts. Belmonte generally transferred the customer accounts he opened to Kimberly Carrella, who then executed unauthorized trades in, and churned, the accounts.

5. Kawas, Kimberly Securities' Compliance Officer, assisted the scheme by, among other things, failing to address red flags that brokers were executing unauthorized trades and churning accounts, and by obstructing customers' efforts to stop the improper trading in their accounts.

6. Through this scheme, the defendants enriched themselves at their customers' expense. From January 2000 to September 2002, Kimberly Securities charged customers approximately \$4.5 million in commissions. At the same time, these customers lost in excess of \$4 million through trading losses and commission charges.

#### **VIOLATIONS OF FEDERAL SECURITIES LAWS**

7. Kimberly Carrella, directly or indirectly, singly or in concert, has engaged in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), 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.

8. Vincent Carrella, directly or indirectly, singly or in concert, has engaged in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5. Alternatively, Vincent Carrella has engaged in acts,

practices, or courses of business that have aided and abetted violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

9. Mancuso, directly or indirectly, singly or in concert, has engaged in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

10. Barton, directly or indirectly, singly or in concert, has engaged in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

11. Hourican, directly or indirectly, singly or in concert, has engaged in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

12. Belmonte, directly or indirectly, singly or in concert, has engaged in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5. Alternatively, Belmonte has engaged in acts, practices, or courses of business that have aided and abetted violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

13. Kawas, directly or indirectly, singly or in concert, has engaged in acts, practices, or courses of business that have aided and abetted violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

## **JURISDICTION AND VENUE**

14. The Commission brings this action pursuant to Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and seeks permanent injunctions to restrain and enjoin the defendants from engaging in the transactions, acts, practices, and courses of business alleged herein. The Commission seeks an order requiring the defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon. The Commission also seeks the imposition of civil monetary 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), against each of the defendants. Finally, the Commission seeks all other just and appropriate relief.

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

16. Venue lies in this District pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Certain of the transactions, acts, practices, and courses of business alleged herein occurred within the Eastern District of New York. For instance, Kimberly Securities maintained its principal place of business in Huntington, New York.

17. Defendants, directly or indirectly, have each made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and/or the mails, in connection with the transactions, acts, practices, and courses of business alleged herein.

## DEFENDANTS AND RELEVANT ENTITY

### **Defendants**

18. Kimberly Carrella, age 29, is a resident of Bellport, New York. During the relevant time period, Kimberly Carrella was a registered principal of Kimberly Securities, as well as its President, Secretary, and Treasurer. Kimberly Carrella also worked as a broker at Kimberly Securities.

19. Vincent Carrella, age 38, is a resident of Bellport, New York. Vincent Carrella is Kimberly Carrella's husband. Although Vincent Carrella did not hold a formal position at Kimberly Securities, he was present at Kimberly Securities' offices on a regular basis, and he helped manage the brokerage firm's operations. The National Association of Securities Dealers ("NASD") previously found that Vincent Carrella engaged in fraudulent sales practices while he was associated with a registered broker-dealer. The NASD suspended Vincent Carrella from associating with any NASD member firm, such as Kimberly Securities, during the period from November 20, 2000 to February 19, 2001. The NASD further suspended Vincent Carrella from associating with any NASD member firm in any capacity that would require registration during the period from February 20, 2001 to February 19, 2003. Market Regulation Committee v. Vincent Carrella, Complaint No CMS960174 (NASD Regulation, Decision Mar. 22, 1999); Market Regulation Committee v. Vincent Carrella, SEC NASD Discip. Lexis 10 (Appeal Apr. 14, 2000); Department of Enforcement v. Vincent Carrella, Disciplinary Proceeding No. CMS960174 (NASD Regulation, Order Accepting Offer of Settlement Oct 19, 2000).

20. Mancuso, age 35, is a resident of Patchogue, New York. Mancuso was a broker at Kimberly Securities from January 2000 until August 2002.

21. Barton, age 23, is a resident of East Hampton, New York. Barton worked at Kimberly Securities as a trainee beginning in March 2001. Barton then worked as a broker at Kimberly Securities from May 2001 to August 2002.

22. Hourican, age 37, is a resident of North Babylon, New York. Hourican worked as a broker at Kimberly Securities from November 1999 to July 2000, and from April 2001 to August 2002.

23. Belmonte, age 34, is a resident of Bellport, New York. Belmonte worked as a broker at Kimberly Securities from March 2000 until November 2000, from March 2001 until August 2001, and from February 2002 until August 2002.

24. Kawas, age 63, is a resident of East Northport, New York. Kawas served as the Compliance Officer at Kimberly Securities from July 2001 until March 2002.

#### **Relevant Entity**

25. Kimberly Securities is a defunct broker-dealer formerly located in Huntington, New York. From March 2000 until September 2002, Kimberly Securities employed approximately ten brokers and serviced approximately 600 to 800 retail accounts.

#### **FACTS**

##### **Kimberly Securities' Fraudulent Trading Scheme**

26. According to Kimberly Securities' business model, the firm sought aggressive investors interested in short term trading. In fact, Kimberly Securities' brokers targeted unsophisticated investors, who had little or no investment experience, to open brokerage accounts.

27. Kimberly Carrella, Mancuso, Barton, Hourican, and Belmonte, as well as others, cold-called individuals to solicit them to open brokerage accounts at Kimberly Securities.

28. To convince prospective customers to open brokerage accounts, and invest significant funds in the accounts, Kimberly Carrella, Mancuso, Barton, Hourican, and Belmonte misrepresented, and failed to disclose, material information to investors. For instance, in March 2002, Mancuso contacted a customer, Customer D.B., to open an account at Kimberly Securities and told him that he should invest in the stock of Herley Industries because the stock price would increase \$10 per share in two weeks. Mancuso had no reasonable basis to make this price prediction.

29. After the customers made sizeable investments, Kimberly Carrella, Mancuso, Barton, and Hourican executed unauthorized and unsuitable trades in the customers' accounts.

30. For example, Kimberly Carrella and Mancuso executed trades in options without informing their customers about the option trades, and without obtaining their customers' authorization. Moreover, in certain instances trades in options were unsuitable for the customers because the trades conflicted with the customers' investment objectives, and the customers did not understand option trading or appreciate the risks involved.

31. Kimberly Carrella, Mancuso, Barton, and Hourican executed trades on margin without informing their customers about the margin trades, and without obtaining their customers' authorization. (By "buying on margin," a customer borrows money to purchase additional securities.) In many cases, margin trades were unsuitable for the customer because they conflicted with the customers' investment objectives, and the customers did not understand margin trading or appreciate the risks involved.

32. Executing trades on margin was an important aspect of the fraudulent scheme because trading on margin afforded the brokers more buying power to make more trades in a customer's account and therefore to charge more commissions.

33. Kimberly Carrella, Mancuso, Barton, and Hourican executed short sales in certain customers' accounts. In certain cases, such trades were executed without the customers' authorization, or the trades were unsuitable for the customers because they conflicted with the customers' investment objectives, and customers did not understand short sales or appreciate the risks involved.

34. Kimberly Carrella and Mancuso also engaged in day-trading in certain customer accounts. Kimberly Carrella and Mancuso, however, failed to inform customers that they were day trading in their accounts and they failed to inform the customers about the risks of day trading.

35. Finally, Kimberly Carrella, Mancuso, Barton, and Hourican churned numerous customer accounts.

36. For example, from October 2000 to September 2002, the turnover ratios for forty-one accounts Kimberly Carrella, Mancuso, Barton, and Hourican managed ranged from 22 to 303, and twenty-two of these accounts had turnover ratios of more than 100. (Turnover ratios measure the number of times per year a customer's securities are replaced by new securities. Turnover ratios greater than six generally constitute churning.)

37. The breakeven analysis for these forty-one customer accounts showed that these customers would have had to realize a return on investment between 17% and 570% just to breakeven. (Breakeven analysis determines the rate of return that the account has to earn on an annual basis to cover transaction costs, such as commissions. Trading practices that require an account to appreciate in excess of 20% to breakeven generally constitute churning.)

38. Kimberly Carrella, Mancuso, Barton, and Hourican executed unauthorized and unsuitable trades, and churned customers' accounts until the commission charges, coupled with trading losses, depleted the customers' capital investments.

### **The Defendants' Roles in the Fraudulent Scheme**

#### **Kimberly Carrella Orchestrated the Fraudulent Scheme**

39. Kimberly Carrella directed the fraudulent scheme at Kimberly Securities.

40. As a primary matter, Kimberly Carrella defrauded her own customers.

41. Kimberly Carrella misrepresented, and failed to disclose, material information to her customers. For example, Kimberly Carrella told a customer ("Customer J.J.") who opened an account in September 2001 that the price of Sun Microsystems would increase \$4.00-\$7.00. Kimberly Carrella had no reasonable basis to make this price prediction.

42. Customer J.J. then agreed to invest approximately \$10,000 in Sun Microsystems.

43. In mid-January 2002, Kimberly Carrella told Customer J.J. to invest in Amazon.com because the price of Amazon.com would increase 20% - 30%. Kimberly Carrella had no reasonable basis to make this price prediction.

44. Customer J.J. then agreed to invest approximately \$60,000 in Amazon.com.

45. Kimberly Carrella then repeatedly executed unauthorized and unsuitable trades in Customer J.J.'s account, and she churned this account. For instance, on February 4, 2002, approximately two weeks after Customer J.J. purchased Amazon.com stock, Kimberly Carrella sold this stock and used the sales proceeds to make unauthorized trades in other securities.

46. For example, on February 22, 2002, Kimberly Carrella purchased 100 put options in QLogic Corp. in Customer J.J.'s account without Customers J.J.'s authorization.

47. Kimberly Carrella never explained options or the risks associated with trading in options to Customer J.J., despite her duty to do so.

48. These options transactions were unsuitable for Customer J.J. who did not understand options trading or appreciate the risks involved.

49. Between September 2001 and July 2002, Kimberly Carrella executed so many trades in Customer J.J.'s account that the annualized turnover rate for the account was 67. Customer J.J.'s account would have had to realize a return of 275% just to breakeven.

50. Customer J.J. lost \$56,745, which included \$33,061 in commission charges, as a result of Kimberly Carrella's trading activities.

51. Kimberly Carrella also defrauded another customer, Customer D.N.

52. In November 2001, Customer D.N. instructed Kimberly Carrella to sell all of the stocks in his account. Customer D.N. further instructed Kimberly Carrella to use a portion of the sales proceeds to cover his outstanding margin balance and to use another portion of the proceeds to purchase 2000 shares of General Electric stock. Finally, Customer D.N. instructed Kimberly Carrella to send whatever cash was left back to him.

53. Rather than carrying out Customer D.N.'s instructions, Kimberly Carrella executed numerous unauthorized trades in the customer's account, and churned the account.

54. During an approximately one week period, Kimberly Carrella executed more than forty trades in three securities without obtaining Customer D.N.'s authorization.

55. After Customer D.N. learned about the trades, he repeatedly asked Kimberly Carrella to sell all of his stock holdings and to close his account.

56. Kimberly Carrella churned Customer D.N.'s account. From August 2001 to November 2001, Customer D.N.'s account experienced a turnover rate of 181, and would have had to realize a return of 342% just to breakeven.

57. Customer D.N. lost \$87,980, and was charged \$66,270 in commission charges, as a result of Kimberly Carrella's trading activities.

58. From October 2000 to August 2002, Kimberly Carrella churned at least twenty-seven of her customers' accounts. These accounts had annualized turnover rates ranging from 44 to 242. These customers would have had to realize returns of between 70% and 570% just to breakeven.

59. From January 2000 to September 2002, Kimberly Carrella earned ill-gotten gains through this fraudulent trading scheme. For instance, Kimberly Carrella generated commissions from her own customers' accounts. Kimberly Carrella also generated commissions on accounts she shared with other brokers.

60. Kimberly Carrella also directed other brokers to execute unauthorized and unsuitable trades in their customers' accounts, and to churn these accounts.

#### **Belmonte Participated in the Fraudulent Trading Scheme**

61. Belmonte worked with Kimberly Carrella to defraud certain customers.

62. Belmonte misrepresented, and failed to disclose, material information to prospective customers to convince them to open brokerage accounts at Kimberly Securities.

63. For example, in February 2002, Belmonte told a customer ("Customer J.R.") that Acclaim Entertainment stock would increase in price from \$3.00 to \$5.00 per share. Belmonte had no reasonable basis to make this price prediction.

64. After investors opened accounts at Kimberly Securities, Belmonte transferred the customers' accounts to Kimberly Carrella.

65. Belmonte and Kimberly Carrella then shared the commissions Kimberly Securities charged on trades in the accounts. Specifically, Belmonte had an agreement with Kimberly Carrella through which he received 30% of the commissions Kimberly Carrella generated in the accounts he had opened.

66. Belmonte regularly reviewed Kimberly Carrella's customer book to keep track of trading in the accounts he had opened.

67. Kimberly Carrella also orally updated Belmonte about the trading activity in the customer accounts he had opened.

68. In August 2001, Belmonte left Kimberly Securities and then went to work at another brokerage firm. While at the new firm, Belmonte solicited former customers from Kimberly Securities. For example, Belmonte contacted two customers ("Customer M.H." and "Customer D.L.") and told them they should transfer their accounts to Belmonte's new firm because Kimberly Carrella was churning their accounts so that she could earn enough in commissions to pay for her new beach house. Shortly thereafter, in February 2002, Belmonte returned to Kimberly Securities and once again worked for Kimberly Carrella.

69. Kimberly Carrella churned at least nine of the accounts Belmonte had opened.

70. During the period from April 2000 to September 2002, Belmonte earned ill-gotten gains through this fraudulent trading scheme. For instance, Belmonte shared the commissions for the accounts he opened with Kimberly Carrella.

### **Mancuso Trained RRs, Executed Unauthorized and Unsuitable Trades, and Churned Customer Accounts**

71. Mancuso participated in the scheme in two ways. Mancuso trained brokers at Kimberly Securities. Specifically, Mancuso coached brokers about improper techniques to persuade customers to open accounts at Kimberly Securities, and to then invest significant amounts of money.

72. Mancuso also defrauded a number of his own customers. Mancuso misrepresented, and failed to disclose, material information to his customers. Mancuso then executed unauthorized and unsuitable transactions in his customers' accounts, and churned these accounts.

73. For example, in November 2001, Mancuso took over as the broker for a customer ("Customer S.M.I.") who had invested approximately \$60,000 in an account at Kimberly Securities.

74. During an approximately two week long period in November 2001, Mancuso executed at least sixteen unauthorized trades in Customer S.M.I.'s account.

75. Mancuso executed at least fifteen trades on margin even though Customer S.M.I. had not authorized these margin trades.

76. Mancuso also executed options transactions without Customer S.M.I.'s authorization. For instance, on November 14, 2001, Mancuso purchased 50 put options in Siebel Systems in Customer S.M.I.'s account without S.M.I.'s authorization.

77. Mancuso did not explain options trading, or the risks associated with this type of trading to Customer S.M.I., despite his duty to do so.

78. These options transactions were unsuitable for Customer S.M.I. who did not understand options trading or appreciate the risks involved.

79. Mancuso executed so many trades in Customer S.M.I.'s account that the annualized turnover rate for the account was 38, and the account would have had to realize a return of 33% just to breakeven.

80. Ultimately, Customer S.M.I. lost \$25,432 in the account through trading losses and commission charges.

81. In February 2002, Mancuso convinced an investor to open an account with Kimberly Securities with an initial investment of approximately \$2,800 ("Customer J.A.").

82. Prior to opening an account at Kimberly Securities, Customer J.A. had no prior investment experience.

83. After Customer J.A. opened his account, Mancuso pressured him to invest more money. For instance, Mancuso told Customer J.A. that he could generate trading profits of as much as \$60,000 to \$70,000 in one day if he invested more money. Mancuso had no reasonable basis to make this statement.

84. In March 2002, Customer J.A. agreed to invest \$30,000 based, in part, on Mancuso's promise to return the money the following month to enable Customer J.A. to pay taxes.

85. Approximately two weeks after Customer J.A. invested the \$30,000, Mancuso executed numerous trades in Customer J.A.'s account without his authorization.

86. Mancuso executed so many trades in Customer J.A.'s account that it constituted day trading.

87. Mancuso, however, failed to inform Customer J.A. that he was day trading in his account, and prior to executing these trades, Mancuso failed to inform Customer J.A. of the risks involved in day trading, despite his duty to do so.

88. Such active trading was unsuitable for Customer J.A. because he did not want to engage in high risk trading.

89. Between February and August 2002, Customer J.A.'s account experienced a loss of \$27,985 through trading losses and commission charges.

90. Mancuso churned Customer J.A.'s account. From February to August 2002, the annualized turnover rate in the account was 303. The account would have had to realize a return of 329% just to breakeven.

91. Mancuso churned other customers' accounts as well. For example, five of Mancuso's accounts had annualized turnover rates ranging from 38 to 303. These customers would have had to realize returns of 33% to 570% just to breakeven.

92. During the period from January 2000 to September 2002, Mancuso earned ill-gotten gains through this fraudulent trading scheme. For instance, the accounts Mancuso managed by himself and with other brokers generated significant commissions.

#### **Barton Executed Unauthorized and Unsuitable Trades, and Churned Customer Accounts**

93. Barton participated in the fraudulent trading scheme. Barton misrepresented, and failed to disclose, material information to customers. Barton also executed unauthorized and unsuitable trades in customer accounts, and churned these accounts.

94. For example, one customer ("Customer J.P.") opened an account at Kimberly Securities in July 2001. Prior to opening an account at Kimberly Securities, Customer J.P. had no investment experience.

95. Customer J.P. invested approximately \$109,000.

96. Barton recommended that Customer J.P. invest in the stock of Ciena. Barton represented that Kimberly Securities' analysts had studied Ciena and that the stock price would

increase \$10 to \$15 within two months. Barton's statement was false. Kimberly Securities did not have any research analysts, and Barton had no reasonable basis to make this price prediction. Customer J.P. invested approximately \$45,000 in Ciena stock.

97. Shortly after Customer J.P. invested, Barton executed unauthorized sales of stocks in Customer J.P.'s account.

98. Barton then used the sales proceeds to purchase stock on margin.

99. Barton did not explain margin trading or the risks associated with this type of trading to Customer J.P., despite his duty to do so.

100. These margin transactions were unsuitable for Customer J.P., who did not understand margin trading or appreciate the risks involved.

101. Barton also churned Customer J.P.'s account. From July 2001 to August 2002, the account experienced an annual turnover rate of 59. Customer J.P.'s account would have had to realize an annual return of 226% just to breakeven.

102. Customer J.P. lost over \$81,000 through trading losses and commission charges. For instance, during the period from July 2001 to September 2002, Kimberly Securities charged Customer J.P. \$52,859 in commissions.

103. Another customer ("Customer D.S.") opened an account in November 2001, and from December 2001 to January 2002, Customer D.S. invested approximately \$116,000 in the account.

104. After Customer D.S. opened the account, Barton executed numerous unauthorized trades in his account.

105. Barton also churned Customer D.S.'s account. During the period from December 2001 to August 2002, the account experienced an annualized turnover rate of 66. The account would have had to realize a return of 98% just to breakeven.

106. Customer D.S. lost approximately \$27,875. For instance, Kimberly Securities charged Customer D.S. \$68,456 in commissions.

107. Barton churned at least six of his customers' accounts during the period from June 2001 to September 2002. These six accounts had turnover rates ranging from 22 to 102. These accounts would have had to realize returns of between 17% and 397% just to breakeven.

108. During the period from May 2001 to September 2002, Barton earned ill-gotten gains through this fraudulent trading scheme. The accounts that Barton managed generated significant commissions.

#### **Hourican Executed Unauthorized and Unsuitable Trades, and Churned Customer Accounts**

109. Hourican participated in the fraudulent trading scheme. Hourican misrepresented, and failed to disclose, material information to customers. Hourican also executed unauthorized and unsuitable trades in his customers' accounts, and churned these accounts.

110. For example, one customer ("Customer M.T.") opened an account with Hourican in March 2002.

111. Customer M.T. had no prior investment experience, and wanted to purchase securities and to hold them in the account as long term investments.

112. Hourican pressured customer M.T. to invest additional funds in the account. Hourican told Customer M.T. that he had tripled his brother-in-law's investment and that he would do the same for Customer M.T. Hourican also told Customer M.T. to make an investment

in Imclone Systems because this was the only way for the customer to earn enough money to retire.

113. Customer M.T. then agreed to invest approximately \$70,000 at Kimberly Securities.

114. After Customer M.T. invested these funds, Hourican executed numerous unauthorized trades.

115. In light of Customer M.T.'s investment objectives to buy and hold securities, this type of short-term trading was wholly unsuitable for the customer.

116. Hourican also misrepresented to Customer M.T. that the account was earning profits when, in fact, it was losing money.

117. Hourican churned Customer M.T.'s account. The account experienced an annualized turnover rate of 114. Customer M.T. would have had to realize a return of 153% just to breakeven.

118. Ultimately, Customer M.T. lost \$50,370 in this account through trading losses and commission charges. For example, from April through August 2002, Kimberly Securities charged the customer \$36,514 in commissions.

119. Another customer ("Customer R.R.") opened an account with Hourican in May 2002 and invested approximately \$46,000.

120. Hourican immediately executed unauthorized trades in Customer R.R.'s account, including four unauthorized short sales.

121. Hourican also churned Customer R.R.'s account. From May to August 2002, Customer R.R.'s account experienced an annualized turnover rate of 49. The account would have had to realize a return of 50% just to breakeven.

122. By September 2002, Customer R.R.'s account lost approximately \$9,000 through trading losses and commission charges. For instance, Kimberly Securities charged the customer \$8,507 in commissions.

123. Hourican churned at least five of his customers' accounts. During the period from December 2001 to August 2002, the five accounts had turnover rates ranging from 40 to 114. These accounts would have had to realize returns of between 50% and 230% just to breakeven.

124. During the period from January 2000 to September 2002, Hourican earned ill-gotten gains through this fraudulent trading scheme. The accounts Hourican managed generated significant commissions.

#### **Vincent Carrella Actively Participated in the Fraudulent Trading Scheme**

125. Vincent Carrella participated in the fraudulent trading scheme. From late 1999 to September 2002, Vincent Carrella was actively involved with managing Kimberly Securities' operations.

126. Vincent Carrella trained brokers at Kimberly Securities.

127. Vincent Carrella also pressured brokers at Kimberly Securities to execute numerous transactions, including unauthorized transactions, in their customers' accounts.

128. Vincent Carrella would listen in on Kimberly Carrella's and other brokers' telephone conversations with customers, and Vincent Carrella would tell the brokers what to say to their customers.

129. Vincent Carrella executed trades in the brokers' accounts. For example, Vincent Carrella prepared order tickets for Kimberly Carrella's customers' accounts and gave them to Kimberly Securities' trader to execute, without discussing the trades with the customers.

130. Vincent Carrella would periodically examine a board on the trading floor containing information about each broker -- such as accounts opened, capital raised, and commissions earned -- and he would reprimand any brokers who did not meet his expectations.

131. Vincent Carrella frequently reprimanded and threatened to fire RRs if they did not obey his instructions. For instance, Vincent Carrella once told a broker “if you don’t do \$10,000 in commissions today, you’re fired. You don’t have a job.”

### **Kawas Substantially Assisted the Fraudulent Trading Scheme**

132. As Compliance Officer, Kawas was generally responsible for ensuring that Kimberly Securities operated in compliance with the securities laws. More specifically, Kawas was responsible for reviewing the firm's trading activity to ensure that trades were suitable for customers. Kawas' duties also included investigating and responding appropriately to customer complaints about the conduct of Kimberly Securities brokers.

133. Kawas was aware that the other defendants were engaged in deceptive and fraudulent conduct. Kimberly Securities' trading reports that Kawas received contained information that indicated the brokers were churning customer accounts. In addition, Kawas was notified by others that the level of trading in customer accounts at Kimberly Securities constituted churning. Kawas also received numerous complaints from customers about unauthorized trading in their accounts.

134. Kawas substantially assisted the brokers' deceptive and fraudulent conduct. Kawas failed to investigate, or otherwise respond to, customers' complaints about unauthorized trading in their accounts, and took no action to stop the unauthorized trading and churning in customer accounts. For example, Kawas did not investigate or respond to written customer

complaints from Customer D.N. and Customer S.M.I. alleging unauthorized trades in their accounts.

135. Instead of assisting customers, Kawas obstructed their efforts to stop the improper trading in their accounts. For example, Customer B.B. complained to Kawas about Barton executing unauthorized and unsuitable trades in his account. Kawas did not investigate Customer B.B.'s allegations. Instead, Kawas rejected Customer B.B.'s allegations and challenged Customer B.B. to bring the matter to arbitration.

136. While Kawas was engaged in the conduct described above in paragraphs 132-135, Kimberly Securities paid him compensation, including salary.

### **FIRST CLAIM FOR RELIEF**

#### **Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5**

(Against Kimberly Carrella, Vincent Carrella, Mancuso, Barton, Hourican, and Belmonte)

137. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1-136.

138. Kimberly Carrella, Vincent Carrella, Mancuso, Barton, Hourican, and Belmonte directly and indirectly, singly or in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, in the offer and sale, and in connection with the purchase or sale, of securities, knowingly or recklessly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of, or otherwise, made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

139. As part and in furtherance of the violative conduct, Kimberly Carrella, with Vincent Carrella's assistance, orchestrated the scheme to defraud Kimberly Securities customers. Mancuso, Barton, Hourican, and Belmonte participated in the scheme. For instance, Kimberly Carrella, Mancuso, Barton, Hourican, and Belmonte misrepresented, and failed to disclose, material information to customers to induce them to open brokerage accounts and invest significant sums of money. After customers had made sizeable investments, Kimberly Carrella, Mancuso, Barton, and Hourican executed numerous unauthorized trades, which were often unsuitable for the customer, and churned customer accounts. Vincent Carrella pressured brokers to open accounts, and to then execute unauthorized transactions in the customers' accounts. The customers' investments were depleted through trading losses and commission charges.

140. Kimberly Carrella, Mancuso, Barton, Hourican, and Belmonte misrepresented, and failed to disclose, material information to Kimberly Securities' customers.

141. Kimberly Carrella, Vincent Carrella, Mancuso, Barton, Hourican, and Belmonte each knowingly or recklessly participated in the fraudulent scheme. Kimberly Carrella, Mancuso, Barton, Hourican, and Belmonte also knowingly or recklessly made material misrepresentations and omissions to Kimberly Securities' customers.

142. By reason of the foregoing, Kimberly Carrella, Vincent Carrella, Mancuso, Barton, Hourican, and Belmonte singly or in concert, directly or indirectly, violated and, unless enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

## **SECOND CLAIM FOR RELIEF**

### **Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

(Against Vincent Carrella, Belmonte, and Kawas)

143. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1-142.

144. Kimberly Carrella, Mancuso, Barton, and Hourican, as well as Vincent Carrella, Belmonte, and Kawas, directly or indirectly, singly or in concert, by the use of any means or instrumentality of interstate commerce, or of the mails, in connection with the purchase or sale of any security, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they are made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operated or would have operated as a fraud or deceit upon any person.

145. As part and in furtherance of this fraudulent conduct, Kimberly Carrella, Mancuso, Barton, and Hourican engaged in a scheme to defraud Kimberly Securities' customers. Kimberly Carrella, Mancuso, Barton, and Hourican also made material misrepresentations and omissions to customers during the course of the scheme. As a result, Kimberly Carrella, Mancuso, Barton, and Hourican violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

146. Vincent Carrella, Belmonte, and Kawas knew that Kimberly Carrella, Mancuso, Barton, and/or Hourican were making material misrepresentations and omissions to customers. Vincent Carrella, Belmonte, and Kawas also knew that Kimberly Carrella, Mancuso, Barton,

and/or Hourican made unauthorized and unsuitable transactions in customer accounts, and/or were churning customer accounts.

147. Vincent Carrella, Belmonte, and Kawas substantially assisted the fraudulent activity described above. For example, Vincent Carrella helped direct the fraudulent scheme. Vincent Carrella pressured Kimberly Securities brokers to execute unauthorized and unsuitable transactions in customer accounts. Belmonte misrepresented, and failed to disclose, material information to investors to persuade them to open accounts at Kimberly Securities and invest significant sums. Kawas failed to address red flags that the brokers were executing unauthorized trades in customer accounts and churning these customers' accounts, and he obstructed customers' efforts to stop the improper trading in their accounts.

148. Pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), and by reason of the foregoing, Vincent Carrella, Belmonte, and Kawas, singly or in concert, directly or indirectly, aided and abetted and unless enjoined will again violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests a Final Judgment:

#### **I.**

Permanently enjoining Kimberly Carrella, Mancuso, Barton, and Hourican, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

## **II.**

Permanently enjoining Vincent Carrella and Belmonte, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

## **III.**

Permanently enjoining Vincent Carrella, Belmonte, and Kawas, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating, directly or indirectly, or as an aider or abettor, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

## **IV.**

Ordering Kimberly Carrella, Vincent Carrella, Mancuso, Barton, Hourican, Belmonte, and Kawas to disgorge the ill-gotten gains they received as a result of their violations of the federal securities laws and to pay prejudgment interest thereon.

## **V.**

Ordering Kimberly Carrella, Vincent Carrella, Mancuso, Barton, Hourican, Belmonte, and Kawas to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and/or Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

**VI.**

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, NY  
August 30, 2004

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