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NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

CRB

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12 SECURITIES AND EXCHANGE COMMISSION, Case No. **C 08 4637**

13 Plaintiff,
14 vs.
15 FRANCIS ELIAS AXIAQ, CIRIACO ISRAEL
16 RIVOR, EMMANUEL MARIO AXIAQ, AND
17 STEVEN CRAIG LUSARDI,
18 Defendants.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF

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

20 **SUMMARY OF THE ACTION**

21 1. The case involves a scheme to buy stock in Restoration Hardware, Inc.
22 ("Restoration Hardware") based on inside information about an upcoming acquisition of the
23 company. After being tipped about the confidential acquisition plans by a highly-placed Restoration
24 Hardware finance employee, the defendants began accumulating the stock, netting nearly a million
25 dollars in illegal profits when the acquisition was announced.

26 2. In mid-2007, Ciriaco Israel Rivor ("Rivor"), Restoration Hardware's Vice
27 President of Treasury, was entrusted with confidential, material nonpublic information about the
28 terms and the timing of the acquisition. Rivor secretly passed this information on to his friends

1 spoke to his father Francis. During the discussion with his father, Emmanuel told Francis that Rivor
2 had said to purchase Restoration Hardware stock because there would be a buyout soon at a premium
3 price, but to purchase fewer than 10,000 shares. Francis knew Rivor as Emmanuel's friend and from
4 several occasions when Francis had performed electrical work for Rivor at his home.

5 22. The next day, October 25, 2007, Francis purchased a combined total of 12,500
6 shares of Restoration Hardware securities in three separate trading accounts. Each individual
7 purchase was less than 10,000 shares.

8 23. Shortly thereafter, Rivor and Emmanuel had an additional conversation about
9 the acquisition, in which Rivor updated Emmanuel about the status of the acquisition.

10 24. After this conversation with Rivor, on October 29, 2007, Emmanuel
11 transferred funds into his trading account to purchase additional Restoration Hardware stock. When
12 the transfer was complete and the funds became available for trading on October 31, 2007,
13 Emmanuel bought an additional 6,800 shares of Restoration Hardware stock.

14 25. At around the same time, Emmanuel spoke with his father Francis and told
15 him what Rivor had shared about the acquisition status.

16 26. On October 29, 2007, Francis purchased exactly 10,000 shares of Restoration
17 Hardware stock. That same day, Francis also initiated the liquidation of mutual funds held in a
18 retirement account in order to purchase more Restoration Hardware stock.

19 27. Over the following days, Francis continued to accumulate Restoration
20 Hardware stock. He purchased 10,000 shares on October 30; 40,000 shares on October 31; 35,000
21 shares on November 1; and 20,000 shares on Friday, November 2.

22 28. On or around November 4, 2007, Francis told Emmanuel that he had
23 purchased more than 10,000 shares of Restoration Hardware stock, and that he had done so in several
24 trading accounts. Emmanuel angrily confronted Francis for violating Rivor's instruction to purchase
25 no more than 10,000 shares and thereby exposing them both to potential detection for their unlawful
26 trading.

27 29. The next Monday, November 5, 2007, using the proceeds from the mutual
28 funds he liquidated, Francis purchased an additional 41,200 shares of Restoration Hardware stock in

1 36. On Monday, November 5, 2007, Lusardi opened a new trading account and
2 purchased 1,200 shares of Restoration Hardware stock. On November 7, 2007, Lusardi purchased an
3 additional 40 shares of Restoration Hardware stock, using up the remaining cash available in his
4 newly-opened account. In total, Lusardi purchased 1,240 shares of Restoration Hardware stock.

5 37. When Rivor disclosed confidential, material nonpublic information about the
6 Restoration Hardware acquisition to Lusardi, he did so in breach of his duty of trust and confidence
7 to his employer Restoration Hardware.

8 38. Lusardi knew or was reckless in not knowing that the information provided to
9 him by Rivor was shared in breach of Rivor's duties to the company.

10 **THE MERGER IS ANNOUNCED AND THE TRADERS PROFIT**

11 39. Before the market opened on November 8, 2007, Restoration Hardware issued
12 a press release announcing the acquisition agreement with Catterton Partners at \$6.70 per share. In
13 response to the acquisition announcement, Restoration Hardware's stock price more than doubled
14 from the previous day's closing price of \$2.68 to close at \$6.44 per share on November 8, 2007. The
15 trading volume on the day of the announcement also increased to 12,294,600 shares from 220,500
16 shares the previous day.

17 40. On November 8, 2007, after the announcement of the merger, Emmanuel sold
18 all of his Restoration Hardware stock for realized profits of \$29,539.

19 41. Lusardi also sold all of his Restoration Hardware shares on November 8, 2007,
20 after the announcement, for realized profits of \$4,398.

21 42. Francis did not sell his shares on November 8, 2007. However, when the price
22 closed that day at \$6.44 per share, the value of his holdings had increased by \$881,102.

23 **CLAIM FOR RELIEF**

24 **Insider Trading: Fraud in Connection with the Purchase Or Sale of Securities**
25 **In Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

26 43. Paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

27 44. Defendants Francis Axiaq, Ciriaco Rivor, Emmanuel Axiaq and Steven
28 Lusardi, with scienter, directly or indirectly:

- 1 a) employed devices, schemes, or artifices to defraud;
- 2 b) made untrue statements of material fact or omitted to state a material
- 3 fact necessary in order to make the statements made, in the light of the circumstances under which
- 4 they were made, not misleading; and
- 5 c) engaged in acts, practices, or courses of business which operated or
- 6 would operate as a fraud or deceit upon other persons in connection with the purchase or sale of
- 7 securities, by the use of means or instrumentalities of interstate commerce, of the mails, or the
- 8 facilities of a national securities exchange.

9 45. By reason of the foregoing, defendants violated, and unless restrained and

10 enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule

11 10b-5 thereunder [17 C.F.R. § 240.10b-5].

12 **PRAYER FOR RELIEF**

13 I.

14 Permanently enjoin defendants Francis Axiaq, Ciriaco Rivor, Emmanuel Axiaq and

15 Steven Lusardi from directly or indirectly violating Section 10(b) of the Exchange Act [15 U.S.C. §

16 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

17 II.

18 Order defendants Francis Axiaq, Emmanuel Axiaq and Steven Lusardi to disgorge ill-

19 gotten gains derived from the unlawful trading alleged herein, plus prejudgment interest;

20 III.

21 Order defendants Francis Axiaq, Ciriaco Rivor, Emmanuel Axiaq and Steven Lusardi

22 to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u l]; and

23 IV.

24 Retain jurisdiction of this action in accordance with the principles of equity and the

25 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and

26 decrees that may be entered, or to entertain any suitable application or motion for additional relief

27 within the jurisdiction of the Court.

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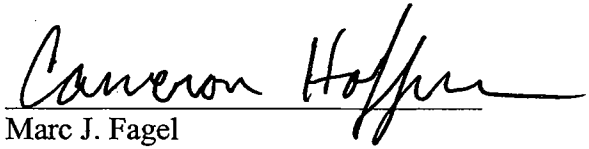
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V.

Grant such other relief as this Court may deem just and necessary.

Respectfully submitted,

Dated: October 7, 2008



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