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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**Civil Action No.**
v.	**1:10-CV-4118**
JOSEPH M. ELLES,	
Defendant.	

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This matter involves financial fraud perpetrated by Defendant Joseph M. Elles ("Elles") while serving as Executive Vice President of Sales at Carter's, Inc. ("Carter's"), an Atlanta-based clothing marketer.

2. From at least 2004 through March 2009, Elles fraudulently manipulated the amount of discounts Carter's granted Kohl's Corporation ("Kohl's"), its largest

wholesale customer, in order to induce Kohl's to purchase greater quantities of Carter's products.

3. These discounts—typically known in the clothing industry as "accommodations"—were intended to help Kohl's defray costs related to inventory clearance and sales promotions, and to allow Kohl's to achieve a desired profit margin on its sales of goods purchased from Carter's.

4. Elles—unbeknownst to Carter's accounting personnel—granted Kohl's quarterly accommodations in excess of the amount he was budgeted to give, in exchange for Kohl's purchasing increased amounts of Carter's goods. To conceal these additional accommodations from Carter's accounting personnel, Elles obtained from Kohl's an agreement to defer taking those accommodations, *i.e.*, deducting them from invoice payments, until later quarters.

5. To further conceal his actions, Elles directed his assistant to create false accommodation tracking sheets for Carter's accounting department that misrepresented the timing of when the accommodations were granted.

6. Elles signed quarterly and annual internal memos to Carter's Chief Financial Officer ("CFO") falsely underreporting the magnitude of outstanding

accommodations granted to Kohl's. Elles engaged in these actions even though, at least as early as 2003, he had been clearly instructed that deferring accommodations in this manner was improper, caused misstatements in Carter's financial reports, and was "illegal."

7. Accounting rules required the accommodations to be recorded as an expense of the period in which the related sale was recognized. By arranging for Kohl's to delay taking those accommodations and providing false information to Carter's accounting personnel, Elles misrepresented to Carter's accounting personnel that the accommodations were an expense of the later period in which the accommodation was deducted by Kohl's from payments to Carter's, rather than an expense of the period when the sale was actually recognized by Carter's.

8. Thus, during Elles' scheme, Carter's accommodation expense in certain quarters was understated and its income for the corresponding quarter was overstated.

9. During the course of his misconduct, between May 2005 and March 2009, Elles exercised options and sold 200,814 shares of Carter's stock, for a profit before tax of approximately $4,739,862.

VIOLATIONS

10. Elles has engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77 q(a)] and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5 and 13b2-1 thereunder [17 C.F.R. §§ 240.10b-5 and 240.13b2-1].

11. Additionally, Elles has engaged, and unless restrained and enjoined by the Court, will continue to engage in acts and practices that aid and abet violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1, 240.13a-11, and 240.13a-13].

JURISDICTION AND VENUE

12. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Elles from engaging in the transactions, acts, practices, and courses of business alleged in this complaint,

and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

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

14. Elles, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

15. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia. In addition, Carter's is based in the Northern District of Georgia.

16. Elles, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

THE DEFENDANT

17. Joseph M. Elles, 55 and a resident of Las Vegas, Nevada, was hired by Carter's in 1996 as Vice President of Regional Accounts and, thereafter, promoted in 1997 to Executive Vice President of Sales—a position he held until his termination from Carter's in March 2009. As Executive Vice President of Sales, Elles supervised all of the individual Vice Presidents who managed Carter's retail and mass channel customer accounts, and reported directly to Carter's President. Elles was terminated from the Company as of March 2009.

RELATED ENTITIES

18. Carter's, Inc. (NYSE: CRI) is an Atlanta-based public issuer and the self-proclaimed "largest branded marketer in the U.S. of apparel exclusively for babies and young children." The Company sells clothing under the *Carter's* and *Osh Kosh* brand names, as well as private label apparel, through its own stores and other retailers. In fiscal 2009, the Company generated net income of $116 million on sales of $1.59 billion. Since October 2003, Carter's common stock has been registered with the Commission under Section 12(b) of the Exchange Act and listed on the NYSE.

19. <u>Kohl's Corporation</u> (NYSE: KSS) is a public issuer and retailer based in Wisconsin. Kohl's operates over a thousand department stores in 49 states. At the time of Elles' misconduct, Kohl's was Carter's largest wholesale customer in terms of volume of purchases.

THE FRAUDULENT SCHEME

A. Background

20. As a standard business practice, Carter's gave certain customers discounts off invoices to help those customers defray costs related to inventory clearance and sales promotions and to allow customers to achieve a desired profit margin on their subsequent resales of Carter's products.

21. The granting of such accommodations was a common arrangement in the clothing industry, and worked as follows. Once an accommodation was agreed upon—typically at or near the end of a period—the customer then deducted the accommodation amount from its subsequent payments to Carter's.

22. From an accounting standpoint, an accommodation essentially functions as an expense that reduces the revenue otherwise realized by Carter's from the sale to which the accommodation relates.

23. From at least 2004 until March 2009, Elles negotiated Kohl's purchases from Carter's and the corresponding amount of quarterly accommodations that Carter's would give to Kohl's. Elles was the only Carter's employee involved in the negotiations.

24. Elles made sure that all communications with Kohl's ran directly through him or his assistant and were made solely at his instruction and with his approval.

25. Elles made it clear to his assistant that information about the Kohl's account was not to be shared with other Carter's employees without his approval.

B. Carter's Accounting for Accommodations

26. Under the matching principle of accounting, an expense should be recognized when incurred and in the same period as the revenue associated with that expense is recognized.

27. Unlike sales, which can typically be verified by purchase orders and shipping confirmations, accommodations Carter's afforded its customers were oftentimes negotiated amounts that were not finalized until just before or even after the last day of a fiscal period. This timing is a result of the fact that the

appropriate amount of accommodations frequently could not be known until the customer sold Carter's products to the end consumer.

28. At Carter's, the total accommodations to be given to Kohl's for any given period was never finalized until after the last day of each of Carter's fiscal periods, but before Carter's closed its accounting books for that period.

29. Carter's accounting department monitored and booked accommodations primarily by using information and documents obtained from Carter's sales department.

30. Specifically, when an accommodation was negotiated and granted to Kohl's, Elles' assistant filled out an Internal Authorization Form (or "IAF") which set forth the details of each accommodation, including the customer, the amount, the date the form was processed, and the apparel category, budget year and selling season to which it related.

31. This form was then forwarded to Carter's Manager of Strategic Planning ("Manager"), who was responsible for managing the company-wide budget for accommodations and tracking any changes therein. After being prepared by his

assistant, Elles signed each IAF for Kohl's and arranged for it to be sent to Carter's accounting department.

32. When a customer actually took an accommodation by deducting it from payment to Carter's, Carter's accounting personnel would check to see if they had a matching IAF on file. If so, they then cleared the residual charge from the customer's account receivable.

33. If there were no matching IAFs on file, accounting personnel would contact the Manager or Elles' assistant to ask whether the accommodation was authorized and, if so, the accounting department would request the corresponding IAF. Whenever these individuals received such an inquiry, they would go directly to Elles and relay Elles' response back to accounting.

C. <u>Elles' Hidden Accommodations</u>

34. Unbeknownst to Carter's accounting personnel and senior management, since at least 2004 through his departure from Carter's in March 2009, Elles had been secretly granting excess accommodations to Kohl's and affirmatively concealing those excess accommodations from Carter's accounting personnel.

35. Elles extended accommodations to Kohl's above and beyond what he was budgeted to give, and arranged for Kohl's to delay taking those accommodations for a sufficient amount of time such that each accommodation could be mischaracterized to Carter's accounting department as an expense of the later period in which it was taken, rather than an expense of the earlier period in which the sale was made.

36. Over the course of the fraud, the accommodations to Kohl's that Elles secretly deferred to subsequent years grew as follows:

Carter's <u>fiscal year</u>	**Approximate Amount of Kohl's accommodations secretly deferred from <u>prior year into this year</u>**
2004	$3,073,000
2005	$3,784,000
2006	$4,404,000
2007	$12,968,000
2008	$18,927,000
2009	$18,400,000

37. Whenever Elles and Kohl's negotiated an accommodation, they also agreed on how long Kohl's would wait to take the accommodation. The length of the deferral was then documented in an email confirming the accommodations to be taken and the period's sales to which the accommodations actually related.

D. Falsified IAFs

38. Elles hid his scheme by generating, on a delayed basis, falsified IAFs. These falsified IAFs led Carter's accounting department to improperly recognize each accommodation in a later period.

39. For each deferred accommodation, Elles typically told his assistant to wait to generate the corresponding IAF until about a week before Kohl's was scheduled to take the accommodation in the later quarter.

40. Elles further told his assistant to complete the IAF by falsely filling in the line items denoted, "BUDGET YEAR" and "SEASON/YEAR," with the dates, respectively, that corresponded to the agreed upon deferral date, rather than the date of the sales to which the accommodation related. These two fields in the IAF were used by the accounting department to match the accommodation to the appropriate period's sales.

41. By completing the IAFs using false dates, *i.e.*, dates consistent with the agreed upon deferral date rather than the period of the sales to which each accommodation actually related, Elles tricked Carter's accounting department into recognizing each accommodation in a later period. In effect, this allowed Elles to

"borrow" accommodations budgeted for future periods and grant them to Kohl's in earlier periods.

E. **Elles Lies to Carter's Personnel**

42. In addition to falsifying IAFs, Elles told outright lies to Carter's senior officers and accounting personnel when questioned about certain discounts.

43. In late March 2007, near the end of the first quarter of Carter's fiscal year, Kohl's deducted $5.75 million against a payment to Carter's. Elles knew that this deduction represented an accommodation that was entirely related to goods shipped and sold in fiscal 2006, but that Kohl's had agreed to defer taking this accommodation until fiscal 2007.

44. Nevertheless, when questioned about this deduction, Elles told the Manager that the $5.75 million accommodation had been deducted in error and that "Kohl's [was] going to repay [the amount]."

45. The next day, Elles changed his story. Specifically, he told the Manager that the amounts had not been taken in error, and instead Kohl's had merely included incorrect date information with the payment.

46. Elles then had his contact at Kohl's send Elles an email reiterating that explanation, which Elles then forwarded to the Manager knowing that he would in turn provide the email to Carter's accounting department.

47. Elles took two additional steps to further bolster his falsehood. First, he directed his assistant to create fraudulent IAFs to confirm the explanation he had given. Specifically, he had his assistant create and give to accounting a series of falsified IAFs that set forth accommodation amounts totaling $5,750,000.

48. Second, Elles repeatedly represented in contemporaneous meetings with senior Carter's personnel that he had authorized Kohl's taking of the $5.75 million accommodation because Kohl's had "asked [him] for a favor" and that Kohl's had wanted to take the accommodation amount early in 2007 for its own reasons.

49. On each of these occasions, Elles falsely told his colleagues that he and Kohl's had agreed in advance on an annual sales plan for Kohl's and the level of accommodations that Carter's would grant in support of those sales, and Kohl's simply wanted to take the deductions earlier in the year.

50. Moreover, when specifically asked by Carter's senior management whether any portion of the $5.75 million spike in accommodations related to fiscal 2006, Elles said "no."

51. As a result of the concerns generated by Kohl's $5.75 million accommodation deduction in March 2007 and Elles' explanation for why it was taken, Carter's required that Elles obtain from Kohl's a representation letter confirming the agreement that Elles claimed existed between Carter's and Kohl's on the total amount of accommodations Carter's would allow Kohl's to deduct for the entire year.

52. The representation letters were written by accounting personnel using—unbeknownst to them—false information provided by Elles. In April 2007 and again in July 2008, Elles obtained Kohl's signature on such representation letters. Both letters documented the aforementioned false explanation by Elles including the agreements Elles falsely claimed existed between Carter's and Kohl's about the accommodations, and concealed the fact that Elles had granted excess accommodations to Kohl's, which Kohl's had agreed to defer taking.

53. From April 2007 through January 2008, Elles also provided his own false representation letters to Carter's accounting personnel. These letters also falsely described the amount and timing of accommodations due Kohl's and concealed from Carter's the excess accommodations Elles had granted.

F. <u>Impact of the Fraud</u>

54. On October 27, 2009, following discovery of Elles' scheme, Carter's announced that it was delaying the issuance of its third quarter financial results in order to complete a review of its accounting for margin support provided to its wholesale customers. On the same day, the Company's stock price dropped 23.8% to a closing price of $21.66 from the previous day's closing price of $28.44.

55. Shortly thereafter, on November 10, 2009, Carter's announced in a Form 8-K that management's review had "identified issues with respect to the timing of recognizing such margin support payments and the associated historical accounting treatment as a result of margin support commitments that were not disclosed to the Company's finance group."

56. Carter's also announced that its Audit Committee, with the assistance of outside counsel, had begun a review of margin support payments more broadly

and an investigation into undisclosed margin support commitments and related matters.

57. In the same Form 8-K, the Company also announced that as a result of the review, its previously issued financial statements for the fiscal years 2004 through 2008 included in the Company's Forms 10-K, and for the fiscal quarters from September 29, 2007 through July 4, 2009 included in the Company's Forms 10-Q, should no longer be relied upon and would be restated. On November 10, 2009, the Company's stock price dropped 9.1% to a closing price of $21.86 from the previous day's closing price of $24.04.

58. Following an investigation by counsel for Carter's Audit Committee, Carter's filed amended forms 10-K and 10-Q on January 15, 2010, restating its previously issued financial statements for the fiscal years ended January 3, 2009, December 29, 2007, December 30, 2006, December 31, 2005 and January 1, 2005, and quarterly reports for the periods ending July 4, 2009, April 4, 2009, and September 27, 2008. On the same day, the Company's stock price dropped 2.9% to a closing price of $26.06 from the previous day's closing price of $26.85.

59. Between the first quarter of Carter's fiscal year 2006 and the third quarter of Carter's fiscal year 2008, Elles' misconduct caused the Company to overstate the quarterly net income, as reported in Carter's forms 10-Q, from between 5% to as much as 19.1%.

G. <u>Elles' Stock Sales</u>

60. While in possession of, and based upon, material non-public information that Carter's reported earnings were overstated as a result of his scheme, Elles realized sizeable gains from sales of Carter's stock. Specifically, between May 2005 and March 2009, Elles realized a profit before tax of approximately $4,739,862 from the exercises of options granted to him by Carter's and sales of the resulting shares.

61. Also, between February 2007 and February 2009, Elles realized a profit before tax of approximately $116,260 from the release of 6,000 shares of previously awarded restricted stock.

62. Each of the aforementioned stock sales occurred prior to any of Carter's disclosures related to the fraud. The Company's stock price fell after each

disclosure, ranging from a decline of 23.8% after one disclosure to a decline of 2.9% after a subsequent disclosure.

ELLES' SCIENTER

63. Elles understood the impact of his actions on Carter's financial reporting.

64. For instance, in a March 13, 2003 memo from Carter's President to Elles, Elles received a clear instruction that accommodations could not be deferred to later fiscal years. The memo stated that charging accommodations for one year in the following year could not be done because "[i]t is illegal."

65. Later, in a string of emails sent on February 14, 2007, Carter's CFO made clear to Elles the importance of matching accommodations to the sales to which they related. Specifically, the CFO wrote "[j]ust so you understand the importance of [a sub-certification Elles was being asked to sign], I cannot clear the 2006 results tomorrow with the audit committee if you are unable to represent we've provided an appropriate charge to earnings for accommodations," adding that "[i]f you're striking new deals for 2007 sales, we'll provide for those commitments in 2007."

66. The CFO further wrote: "[a]nything related to 2006, must be reflected in our 2006 results." Later, in the same string of emails, the CFO reiterated the import of the representation he was asking Elles to make as part of the sub-certification process when he stated to Elles that "[y]ou're representing that we've appropriately provided for the amount [for accommodations] that relates to 2006 sales."

COUNT I—FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

67. Paragraphs 1 through 66 are hereby re-alleged and are incorporated herein by reference.

68. From at least 2004 through March 2009, Elles, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

69. Elles knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

70. While engaging in the course of conduct described above, Elles acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

71. By reason of the foregoing, Elles, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II—FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

72. Paragraphs 1 through 66 are hereby realleged and are incorporated herein by reference.

73. From at least 2004 through March 2009, Elles, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

74. By reason of the foregoing, Elles, directly and indirectly, has violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III—FRAUD

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]

75. Paragraphs 1 through 66 are hereby re-alleged and are incorporated herein by reference.

76. From at least 2004 through March 2009, Elles, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and 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; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

77. Elles knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Elles acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

78. By reason of the foregoing, Elles, directly and indirectly, has violated and, unless enjoined, will continue to violate 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].

COUNT IV-FRAUD

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1]

79. Paragraphs 1 through 66 are hereby re-alleged and are incorporated herein by reference.

80. From at least 2004 through March 2009, Elles knowingly circumvented Carter's system of internal controls, knowingly falsified the books, records and/or accounts of Carter's, and knowingly caused to be falsified Carter's books, records and/or accounts.

81. In engaging in such conduct, Elles acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

82. By reason of the foregoing, Elles, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

COUNT V-AIDING AND ABETTING REPORTING PROVISIONS

Aiding and Abetting Carter's Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13]

83. Paragraphs 1 through 66 are hereby realleged and are incorporated herein by reference.

84. From at least 2004 through March 2009, Elles aided and abetted Carter's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1, 240.13a-11, and 240.13a-13].

85. The underlying violations occurred when Carter's filed periodic reports that contained financial statements that were not prepared in conformity with GAAP and contained material misstatements.

86. Through the conduct described above, Elles aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

COUNT VI-AIDING AND ABETTING BOOKS AND RECORDS PROVISIONS

Aiding and Abetting Carter's Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]

87. Paragraphs 1 through 66 are hereby realleged and are incorporated herein by reference.

88. From at least 2004 through March 2009, Elles aided and abetted Carter's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which occurred when Carter's, as an issuer of securities, failed to make and keep accounting books, records and accounts which accurately and fairly reflected its transactions and the dispositions of its assets.

89. Through the conduct described above, Elles aided and abetted and, unless restrained and enjoined, will continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Elles committed the violations alleged herein.

II.

A permanent injunction enjoining Elles, his agents, servants, employees, and attorneys from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77 q(a)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5 and 13b2-1 thereunder [17 C.F.R. §§ 240.10b-5 and 240.13b2-1], and enjoining Elles, his agents, servants, employees, and attorneys, pursuant to Section 20(e) of the Exchange Act, from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1, 240.13a-11, and 240.13a-13].

III.

An order requiring the disgorgement by Elles of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order 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)] imposing civil penalties against Elles.

V.

An order pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act barring Elles from acting as an officer or director of any issuer whose securities are registered with the Commission pursuant to Section 12 of the Exchange Act or which is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: December 20, 2010

Respectfully submitted,

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