UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	Case No. 10-cv-01614
	Hon. Robert M. Dow, Jr.
MORANDO BERRETTINI and RALPH J. PIRTLE,	JURY DEMAND
Defendants.	

FIRST AMENDED COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the "Commission"), files this Amended Complaint and hereby alleges:

Introduction

1. This is an insider trading case. Defendants Morando Berrettini ("Berrettini") and Ralph Pirtle ("Pirtle") engaged in deceptive practices in connection with the purchase and sale of securities, that is, insider trading, on three separate occasions between December 2005 and June 2006. Pirtle misappropriated inside information from his employer, Royal Philips, N.V. ("Philips"), and provided it to Berrettini with the intent to enable Berrettini to trade on the information.

2. Defendant Pirtle obtained the information in connection with his job duties at Philips. He was a member of the due diligence team for three separate transactions in the planning or due diligence stage, in which Philips was acquiring or considering acquiring a publicly traded company. The companies were Lifeline Systems, Inc.

("Lifeline"), Invacare, Inc. ("Invacare"), and Intermagnetics Corporation ("Intermagnetics"). Philips acquired Lifeline and Intermagnetics.

3. On each occasion, Pirtle misappropriated Philips' inside information in violation of his obligations to Philips and "tipped" Berrettini with the intent to benefit him, as part of a *quid pro quo* relationship between the two. Berrettini, a real estate broker, consultant, and preferred vendor for Philips, used this information, and also misappropriated it in his own right because of his own relationship of trust and confidence with Philips, to trade in the shares of the three potential or actual acquisition targets. Berrettini traded in three separate brokerage accounts, with actual profits of $240,621.

4. Pirtle's tips and Berrettini's trading on inside information violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5).

5. The Commission seeks permanent injunctions against Defendants Pirtle and Berrettini to restrain and enjoin them from committing any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5). The Commission also seeks an order requiring Defendants Pirtle and Berrettini to pay disgorgement, plus prejudgment interest. The Commission further seeks an order imposing civil penalties on Defendants Pirtle and Berrettini pursuant to Sections 21(d) and 21A of the Exchange Act (15 U.S.C. §§ 78u(d) and 78u-1).

Jurisdiction and Venue

6. This Court has jurisdiction pursuant to Sections 21 and 27 of the Exchange Act (15 U.S.C. §§ 78u and 78aa).

7. Venue is proper in the Northern District of Illinois pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa). In furtherance of their illegal actions, Defendants Berrettini and Pirtle, directly and indirectly, have made use of the means and instruments of interstate commerce and the mails in connection with the acts, practices, and courses of business alleged herein, within the jurisdiction of this Court and elsewhere.

Plaintiff

8. Plaintiff, the **Commission**, is an agency of the Federal Government empowered by Congress to enforce the federal securities laws. It has the authority to make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate the provisions of the Exchange Act. Section 21(a) of the Exchange Act (15 U.S.C. § 78u(a)).

9. The Commission is authorized to bring actions in the United States District Courts when it appears that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of the Exchange Act or the rules thereunder. Section 21(d)(1) of the Exchange Act (15 U.S.C. § 78u(d)(1)).

10. In bringing such actions, the Commission may seek injunctive relief, disgorgement, monetary penalties, and other equitable relief from the Court. Sections 21(d)(1) and (3) and 21A(a)(2) of the Exchange Act (15 U.S.C. §§ 78u(d)(1) and (3) and 78u-1(a)(2)).

Defendants

11. Defendant **Ralph Pirtle** is a 50 year-old resident of the State of South Carolina. He received his bachelor's degree in Business Administration from Southern Methodist University in Dallas, Texas, in 1982. His area of emphasis was finance. He

received a Masters of Business Administration from the Kellogg School of Management at Northwestern University in 1988. His area of emphasis was real estate.

12. Pirtle has been employed in the real estate business for the majority of his career. He is currently employed by the Bank of America, N.A.

13. From in or about 2001 until May 2006, Pirtle was employed as Director of Real Estate for Philips Electronics of North America, Inc. ("Philips North America"), a wholly-owned subsidiary of Philips through which Philips transacted business in North America. During that time, Pirtle worked out of New York, New York, and was a resident of the State of New Jersey.

14. At all times relevant to the allegations in the Complaint, Pirtle held a position of trust and confidence with Philips.

15. On a regular and ongoing basis, Philips entrusted Pirtle with confidential, sensitive, and proprietary business information.

16. Philips entrusted Pirtle with, among other things, using that information to further the best interests of Philips in managing its North American real estate holdings.

17. As head of its Real Estate Department, Pirtle learned on a regular basis of highly sensitive business information regarding Philips. In that capacity, Pirtle's responsibilities included serving on the due diligence team for Philips' North American acquisitions.

18. Philips apprised Pirtle of his duties and responsibilities with respect to maintaining the confidentiality of information he received as an insider of Philips, and Philips apprised Pirtle of the wrongful nature of misusing or inappropriately disclosing confidential company information. Philips did so, among other things, through specific

warnings about the use of inside information in connection with its acquisitions and through general training directed at protecting its trade secrets and confidential business plans.

19. Philips had a history and pattern and practice of sharing confidential information with Pirtle.

20. Pirtle knew or reasonably should have known, through his employment history and pattern and practice of dealings at Philips, when confidential information should be maintained in confidence.

21. Defendant **Morando Berrettini** is a 66-year old resident of Lake Forest, Illinois. He received a Bachelor of Science degree in Chemical Engineering from the Illinois Institute of Technology. He received his Juris Doctor from Depaul University Law School while working as a chemical engineer. Berrettini subsequently received a Masters of Patent Law from the John Marshall School of Law.

22. Berrettini has an active real estate license in the state of Illinois. He received his real estate license in or about 1970. He does not hold a real estate license in any state other than Illinois. He has worked in the real estate industry, in various capacities, since approximately 1975. His work has included mortgage brokeraging, real estate development, and real estate consulting and brokerage. He has been principally involved in the real estate brokerage business since approximately the middle of the 1990s.

23. At all times relevant to the complaint, Berrettini conducted his real estate and consulting business through Berco Realty, Inc. ("Berco"), in Park Ridge, Illinois. Berco is a corporation that Berrettini wholly owns.

24. From 2001, at approximately the time Pirtle joined Philips, through the summer of 2006, Berrettini, through Berco, served as a real estate broker and consultant to Philips or its wholly-owned subsidiary, Philips North America.

25. At all times relevant to the allegations in the Complaint, Berrettini held a position of trust and confidence with Philips.

26. Philips entrusted, on a regular and ongoing basis, Berrettini with confidential, sensitive, and proprietary business information. Philips entrusted Berrettini with, among other things, using that information to further the best interests of Philips in acting as its broker or consultant in dealing with its North American real estate holdings and extended to Berrettini the status of a "preferred real estate vendor." Berrettini received a substantial amount of real estate brokerage business and real estate consulting business from Philips.

27. Philips had a history, pattern and practice of sharing confidential information with Berrettini. As a licensed real estate broker and consultant to Philips, Berrettini also had obligations to act in Philips' best interests first and to maintain confidential information in a confidential manner.

28. Berrettini knew or reasonably should have known, through, among other things, his history, pattern and practice of dealings at Philips, that he could not use confidential information for his own benefit.

Related Parties and Entities

29. **Royal Philips, N.V.** is a publicly-traded company, based in Amsterdam, The Netherlands. Philips is a Dutch conglomerate with world-wide operations. Shares of

American Depository Receipts in the company are listed on the New York Stock Exchange.

30. Prior to its acquisition by Philips, **Lifeline Systems, Inc.** was a publicly-traded registrant headquartered in Framingham, Massachusetts. Lifeline's shares were listed on the NASDAQ stock exchange. Lifeline was in the business of providing home health care services to seniors.

31. **Invacare, Inc**. is a publicly-traded company with headquarters outside Cleveland, Ohio. Invacare's shares are listed on the New York Stock Exchange. Invacare's principal business is the manufacture of wheelchairs and other mobility aids.

32. Prior to its acquisition by Philips, **Intermagnetics Corporation** was a publicly-traded company with headquarters outside Albany, New York. Its shares were listed on the NASDAQ stock exchange. Intermagnetics' principal business was the manufacture of magnetic imaging resonance equipment. Intermagnetics was also a major supplier of Philips prior to its acquisition.

33. **Mesirow Financial, Inc.** ("Mesirow") is a financial firm based in Chicago, Illinois. It provides, among other things, brokerage services and financial advisory services to its clients. Berrettini maintained brokerage accounts at Mesirow in his own name and in the name of partnerships in which he was a partner during the period in which he engaged in the insider trading alleged herein. All of Berrettini's insider stock trading occurred through accounts at Mesirow.

34. **Ezio Berrettini** is the 33-year-old son of Morando Berrettini and was, at all times relevant to the complaint, an employee of Berco.

Background

Berrettini's and Pirtle's Relationship

35. Pirtle and Berrettini have known each other since the early 1990s when they worked together on a real estate project. In approximately 1996, Pirtle began working for Apria Healthcare, Inc. ("Apria"), as head of their real estate operations. From approximately that time forward, Pirtle used Berrettini, or Berco, to assist him with real estate transactions.

36. When Pirtle left Apria for Philips in 2001, Pirtle continued to use Berrettini and Berco. Philips, through Pirtle, offered Berco the opportunity to become a "preferred vendor" for its real estate operations.

37. Pirtle and Berrettini had a close working relationship. Among other things, they communicated frequently by telephone and by email. On some days, they spoke or emailed one another several times during the day.

38. Pirtle and Berrettini had significant financial side-dealings from at least 2003 through 2007, unbeknownst to Philips, as alleged herein. Had those financial side-dealings been known to, or disclosed to Philips, Pirtle would have been subject to termination by Philips. Those financial side-dealings were inconsistent with the duties and obligations each Defendant had to Philips and, in some instances, including the insider trading alleged herein, amounted to forms of self-dealing.

The Alleged "Loans"

39. Between August 2003 and January 2007, Berrettini made a series of payments to third parties on Pirtle's behalf in the form of cashier's checks. These

payments were made on 17 separate occasions in amounts ranging from $1,266 to as much as $36,500. The total amount of these payments exceeded $226,000.

40. Pirtle used the money to pay for, among other things, cars, trips to Las Vegas, and gambling.

41. Berrettini has produced signed promissory notes that purported to document that these payments were arms-length loans.

42. Berrettini testified that he would have simply viewed it "as a cost of doing business" if Pirtle did not repay the loans because of the business Pirtle had directed his way over the years.

43. Pirtle's readily available cash and cash equivalent assets far exceeded the amount he claimed to have needed or wanted to borrow at any of the times when Berrettini paid money on Pirtle's behalf.

44. Given his readily available cash and cash equivalent assets, Pirtle had no credible reason for borrowing from Berrettini at any time that Berrettini purported to loan him money.

45. In fact, these payments were not loans, but were payments Berrettini made to Pirtle in return for the business opportunities Pirtle directed to Berco and for the inside information Pirtle gave Berrettini that Philips had targeted Lifeline, Invacare, and Intermagnetics for acquisition.

The Preferred Vendor Agreements

46. During Pirtle's employment with Philips, Philips managed its real estate affairs with two employees—Pirtle and his assistant—and a select group of outside preferred vendors. Philips required the preferred vendors to execute a preferred vendor

agreement, in large part, to ensure that its vendors, including Berrettini, would share part of their commissions with Philips depending upon the size of the transactions. It was Pirtle's job to ensure that Berrettini complied with the terms of the agreement.

47. Berrettini testified that he signed a preferred vendor agreement with a two-year term on or about July 12, 2001. Pirtle, thereafter, directed his assistant to prepare and send to Berrettini three additional agreements at regular intervals. Pirtle signed each of the agreements, and referred to Berrettini as a preferred vendor, but Berrettini did not sign any of the subsequent three agreements.

48. Berrettini did not pay Philips its full share of the commissions anticipated under the agreements. Pirtle knowingly allowed Berrettini to profit more from his Philips work than he would have under the terms of the preferred vendor agreements. Both Pirtle and Berrettini were aware of the terms of the preferred vendor agreements and that Berrettini was expected to sign and abide by the agreements.

Unauthorized Side Real Estate Dealings

49. In or before 2004, Philips decided to attempt to sell or develop a property in Knoxville, Tennessee that had previously served as space for part of its business operations (the "Knoxville Property"). Unbeknownst to Philips, including its employees at Philips North America, Pirtle shortly thereafter entered into an agreement with Berco, purportedly on behalf of Philips, to develop the property jointly.

50. At the time Pirtle purported to enter into this agreement on behalf of Philips, Pirtle knew or should have known that he was not authorized to bind Philips. He was not an officer of Philips, or Philips North America, and the agreement required the signature of a company officer.

51. Philips later attempted to negotiate its way out of the agreement. Berrettini claimed that Pirtle had bound the company; Philips claimed that the joint venture agreement was not binding. The dispute continued up to and through the time that Pirtle left Philips in May 2006 to work for Panasonic North America.

52. In December 2006, Philips and Berrettini entered into a settlement agreement in principle to resolve the dispute. In January 2007, Philips and Berrettini signed the settlement. Per the settlement agreement, Philips paid Berrettini $500,000.

53. Within thirty days of the January 2007 settlement, Berrettini purchased Pirtle a luxury automobile for approximately $36,500 and paid $15,000 so that Pirtle could take a gambling trip to Las Vegas over Super Bowl weekend in 2007.

54. In or before 2004, Philips made the decision to dispose of three plants in Juarez, Mexico ("Juarez Plants #1, #4, and #9"). With the assistance of Berrettini, Philips retained Recon Real Estate Consultants, Inc. ("Recon"), a real estate brokerage firm in El Paso, Texas headed by Mark Blaugrund ("Blaugrund"), to serve as its real estate broker. Blaugrund served as Philips' real estate broker for Juarez Plant #9.

55. Shortly after Philips retained Recon, Lear Corporation leased Juarez Plant #9, making the property more marketable for sale.

56. Unbeknownst to the management of Philips, except for Pirtle, Berrettini and Blaugrund formed an Illinois limited liability partnership, Amerimex LLP ("Amerimex"), to purchase the Juarez Plant #9 from Philips and flip it to another buyer. Blaugrund marketed the property for resale to third parties on behalf of Amerimex.

57. Despite Berrettini's real estate relationship with Philips and his knowledge that Philips intended him to be bound by the preferred vendor agreements, Berrettini did

not disclose his dual principal-agent relationship to Philips in writing, as he was obligated to do. Berrettini only orally disclosed his dual relationship to Pirtle.

58. Blaugrund did not disclose his dual principal-broker arrangement to Philips in writing. Berrettini, though knowing of the conflict, did not disclose Recon's conflict either, as he and Blaugrund were required to do.

59. The transaction for Juarez Plant #9 closed in early February 2005, in an approximately $7 million sale by Philips to Amerimex. On the same day, Amerimex resold Juarez Plant #9 to CP Monterrey S. de R.I. de C.V., a third party located by Blaugrund, for $9 million. Blaugrund received a commission on the sale as Philips' selling broker. Blaugrund paid a portion of his commission on the transaction to Berrettini.

60. According to Blaugrund, he and Berrettini ultimately split approximately $1.3 million on the resale – far in excess of the commission they could have earned had they acted solely as Philips' agents for the transaction.

61. Pirtle presented the transaction to Philips' Board of Management with no disclosure of the dual relationship of the brokers handling the sale.

62. Pirtle sent an invoice to Recon for the real estate services it performed in connection with the transaction, purportedly as part of the claw back provisions of the real estate agreement under which Recon agreed to serve as Philips' broker for the sale of Juarez Plant #9.

63. Neither Berrettini nor Blaugrund made anything other than a nominal outlay of capital in connection with their substantial profits.

64. Between December 3, 2004 and April 25, 2005, Berrettini paid for goods or services for Pirtle with cashier's checks totaling $80,250.

The Insider Trading

65. Between December 2005 and April 2006, Pirtle tipped Berrettini about Philips' plans to acquire or consider the possibility of acquiring Lifeline, Invacare, and Intermagnetics. On each occasion, Berrettini traded on the confidential information. Berrettini's actual profits from the Lifeline and Intermagnetics trades were $240,621.

Philips' Acquisition Process

66. Philips' corporate mergers and acquisitions department is based at its main corporate headquarters in Amsterdam.

67. Between 2001, when Pirtle joined Philips, and 2005, Philips did not engage in acquisition activity.

68. In 2005, Philips began pursuing acquisitions again. The first acquisition it made of a public company was of Lifeline, in early 2006.

69. During 2005 and 2006, Philips had a multi-step process for considering and acquiring a company. Senior employees in a business segment identified a company of potential interest. Members of the corporate mergers and acquisitions department and the senior employees then did additional work together to investigate the desirability of the acquisition. At this stage, a very small group of employees knew about Philips' interest in the target company, typically numbering no more than five to seven people, all in the business segment or in corporate mergers and acquisitions department.

70. If the acquisition continued to appear promising, a proposal was made to the CFO and CEO of Philips to approve a "project intake form," or "PIF." If the CFO and CEO signed the PIF – a formal document at Philips – employees were authorized to take the next steps, including negotiating a non-binding offer with the target company.

71. The team leader could, in his/her discretion, distribute the PIF to those individuals who would head the due diligence teams; but to ensure confidentiality, due diligence did not begin until after the non-binding offer was approved by the Boards of both companies. Anyone senior enough to be a team leader – including Pirtle – would clearly have understood Philips' acquisition-related confidentiality procedures.

72. If Philips employees successfully negotiated a non-binding offer, it would be submitted to Philips' Board of Management in The Netherlands for approval. Once both Philips' Board and the Board for the acquisition target approved an offer, Philips began due diligence on the target.

73. At the beginning of the due diligence process, personnel on the due diligence team received information describing the acquisition target and their due diligence assignments, clearly reminding them of the importance of maintaining the secrecy and of their legal obligations not to engage in insider trading, and assigning code names to the project and acquisition target to enable team members to discuss it in places where conversations might be overheard by members of the public. Due diligence team members were required to "keep all information relating to [their] efforts, and any derivative of it, strictly confidential, except for disclosure to other members [of the due diligence team] on a 'need to know' basis."

74. Pirtle, as Director of Real Estate for North America, was a member of the due diligence teams that were assembled for North American acquisitions from the time Philips again began making acquisitions in 2005 until his departure from Philips in May 2006.

75. Without prior authorization, members of the due diligence team could not disclose Philips' interest in a target either to other Philips employees or to third parties.

Berrettini's Trading in Lifeline Shares

76. In October 2005, Philips had identified Lifeline as a potential target and a PIF was signed. The team leader for Lifeline distributed the PIF a few days later to potential due diligence team leaders, including Pirtle. In late November 2005, Philips made a non-binding offer to acquire Lifeline. Both Boards approved the offer.

77. On December 2, 2005, the first email was sent from Amsterdam to individuals in the United States informing them that Philips had decided to acquire Lifeline and that the transaction would now enter a due diligence phase. Recipients of this email were authorized to inform other members of the due diligence team, but not other Philips employees, of the impending acquisition.

78. On December 3, 2005, Berrettini purchased a $15,000 cashier's check with funds drawn on the Berco account at Lake Forest Bank & Trust. The cashier's check was made payable to Monte Carlo Resort & Casino in Las Vegas. Pirtle was listed as the remitter. Pirtle used the money for gambling and other entertainment.

79. On December 7, 2005, Pirtle received an email regarding the due diligence project for Lifeline. The first item in the attached power point presentation contained detailed warnings about insider trading and project confidentiality.

80. On or after December 2, 2005, Pirtle tipped Berrettini that Philips was going to acquire Lifeline.

81. Beginning December 15, 2005 and continuing through January 18, 2006, Berrettini purchased 17,500 shares of Lifeline at prices ranging from $36.77 to $39.58 per

share through three separate brokerage accounts at Mesirow. One account was in his own name; the second account was in the name of Berco Jaxon Investments, a partnership he had with another investor; and the third account was in the name of Northchase I Venture LLC, a partnership he created for the purpose of trading Lifeline shares. In total, Berrettini purchased approximately $665,000 of Lifeline stock.

82. Pirtle and Berrettini asserted that they discussed aspects of the proposed acquisition, so that Berrettini could assist Pirtle with due diligence work. They also discussed Lifeline prior to Berrettini's purchases of Lifeline stock.

83. Berrettini's Lifeline purchases in his personal account were the first stock purchases he had made since January 1, 2005.

84. Philips announced the acquisition of Lifeline on January 19, 2006. The day of the announcement, the price of Lifeline's stock closed at $46.94—a one-day increase of 19% from the previous day's close of $39.49.

85. On January 20, 2006 and January 23, 2006, Berrettini sold his Lifeline shares in all three accounts. The total actual profit from the sales was approximately $156,000.

86. Pirtle breached his duty of trust and confidence to Philips by disclosing material, nonpublic information about Lifeline to Berrettini. Berrettini traded on the information and misappropriated it in his own right due to his own relationship of trust and confidence with Philips.

Berrettini's Trading in Invacare Shares

87. In December 2005, members of Philips' corporate mergers and acquisitions department began considering the acquisition of other companies that might complement

the anticipated Lifeline acquisition. Invacare was identified as a company of possible interest. On January 16, 2006, a PIF was signed by Philips' CFO and CEO.

88. On January 19, 2006, the team leader for the Invacare project circulated the PIF to those, including Pirtle, who would be team leaders on any due diligence effort.

89. On or after January 19, and no later than February 1, 2006, Pirtle tipped Berrettini about Philips' interest in Invacare.

90. On February 1, 2006, Berrettini purchased 2,000 shares of Invacare common stock in his own account at $34.69 per share.

91. That same day, Berrettini purchased a cashier's check for $15,000 payable to the Monte Carlo Casino in Las Vegas that listed Pirtle as the remitter.

92. Pirtle and Berrettini asserted that they discussed aspects of the proposed acquisition, so that Berrettini could assist Pirtle with due diligence work.

93. Pirtle had no credible reason to seek Berrettini's assistance. Philips never entered the due diligence stage on Invacare because Philips identified another company it believed would be a better acquisition target.

94. Philips notified Pirtle by email on March 14, 2006, that Philips was seeking to acquire a target company other than Invacare, but noted that future interest in Invacare had not been ruled out.

95. Berrettini still held his shares in Invacare as late as the summer of 2006.

96. Pirtle breached his duty of trust and confidence to Philips by disclosing material, nonpublic information about Invacare to Berrettini. Berrettini traded on the information and misappropriated it in his own right due to his own relationship of trust and confidence with Philips.

Berrettini's Trading in Intermagnetics Shares

97. Prior to its acquisition by Philips, Intermagnetics supplied Philips with a substantial portion of its magnetic imaging resonance equipment. Philips made a non-binding offer to Intermagnetics on April 24, 2006. An email went out to members of the due diligence team late in the day on April 25, 2006, setting up a telephonic meeting for 9 a.m. Eastern Daylight Time on April 26, 2006.

98. The email contained a one-page agreement for each member of the due diligence team to sign. This agreement contained a strict warning that no information about the transaction or "derivative" information could be shared with anyone other than members of the team, whether inside or outside Philips.

99. Pirtle was on the due diligence team. He received the email. The PIF for this acquisition had not been circulated to Pirtle or other team leaders prior to the due diligence email.

100. On or before April 28, 2006, Pirtle tipped Berrettini about Philips' plans to acquire Intermagnetics.

101. Berrettini began buying shares of Intermagnetics stock the morning of Friday, April 28, 2006. That day, he purchased 9,000 shares through his personal account and 2,000 shares through his Northchase I Venture LLC account at $22.05 per share. He bought 5,000 more shares in his own account the following Monday, May 1, 2006, at $21.82 per share. In total, Berrettini purchased approximately $351,600 of Intermagnetics stock.

102. Pirtle and Berrettini asserted that they discussed aspects of the proposed acquisition, so that Berrettini could assist Pirtle with due diligence work. They also discussed Intermagnetics prior to Berrettini's purchases of Intermagnetics stock.

103. Pirtle never signed the Intermagnetics confidentiality agreement and never performed any due diligence work on the Intermagnetics transaction. At the time, he was planning to change jobs and had accepted another job offer.

104. In February 2006, Pirtle interviewed with Panasonic for a job comparable to his job at Philips. By early April 2006, Panasonic had expressed serious interest. Pirtle accepted an offer from Panasonic on or about April 19, 2006 and took a required drug test within two days.

105. After a weekend of negotiation over details, Panasonic presented Pirtle with a written offer on April 25, 2006, which Pirtle executed on April 27, 2006.

106. On the following Monday, May 1, 2006, Pirtle informed his direct supervisor that he wanted to leave in two weeks. On May 4, 2006, after considering a request to remain, Pirtle formally tendered his resignation in writing and agreed to stay for a few more weeks to ensure a smooth transition.

107. The email announcing the Intermagnetics transaction to due diligence team members was sent out late in the day on April 25, 2006. Pirtle did not participate in the telephonic meeting the following day. It was the responsibility of the team leader, Ed Siegel, to contact Pirtle and ensure Pirtle knew what he should be doing.

108. When Siegel eventually reached Pirtle in mid-May, Pirtle told him he was leaving Philips. Pirtle also told him that he had not done and would not be doing any due diligence work on the transaction.

109. Philips announced the acquisition of Intermagnetics on June 15, 2006, for $27.50 per share. The price of Intermagnetics stock closed at $26.98—a one-day increase of 27% from the previous day's close of $21.28.

110. On September 11 and September 13, 2006, Berrettini sold his Intermagnetics shares in both accounts for total actual profits of approximately $84,000.

111. Pirtle breached his duty of trust and confidence to Philips by disclosing material, nonpublic information about Intermagnetics to Berrettini. Berrettini traded on the information and misappropriated it in his own right due to his own relationship of trust and confidence with Philips.

The Attempted Cover-Up

112. In May 2006, Pirtle responded to an inquiry from the National Association of Securities Dealers' (the "NASD") about names on a list of people who had purchased Lifeline shares at or near the time of Philips' acquisition. Berrettini's name was on the list. The inquiry from the NASD asked recipients to identify anyone they knew on the list.

113. In early May 2006, Pirtle responded to the NASD email and indicated that he knew Berrettini.

114. A law firm representing Philips then sent an email to Pirtle asking Pirtle a series of five questions directed at learning how Berrettini might have come to learn about the Lifeline acquisition.

115. Pirtle responded on May 9, 2006. Pirtle's answers were intentionally deceptive and misleading. He said only that Berrettini was generally aware of Philips business activities. Pirtle did not disclose that he had tipped Berrettini about the Lifeline

acquisition. Nor did he disclose to the NASD any communications with Berrettini relating to Lifeline prior to Berrettini's purchase of Lifeline stock.

116. When he responded to the NASD, Pirtle also knew that Berrettini had purchased or was considering purchasing Intermagnetics shares. Nonetheless, Pirtle failed to inform the NASD or anyone within Philips about his understanding that Berrettini had purchased or was reasonably likely to purchase Intermagnetics shares.

COUNT ONE

Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5)
(Berrettini and Pirtle)

117. The Commission hereby incorporates by reference and realleges paragraphs 1-116 of the Complaint.

118. During December 2005 and January 2006, defendants Pirtle and Berrettini in connection with the purchase and sale of Lifeline securities, namely common stock, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud; 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; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon purchasers and sellers of such securities.

119. The defendants acted with scienter when they engaged in the conduct alleged above.

120. As a result of the activities described above, defendants Pirtle and Berrettini violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5).

COUNT TWO

Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5) (Berrettini and Pirtle)

121. The Commission hereby incorporates by reference and realleges paragraphs 1-116 of the Complaint.

122. During January and February 2006, defendants Pirtle and Berrettini in connection with the purchase and sale of Invacare securities, namely common stock, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud; 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; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon purchasers and sellers of such securities.

123. The defendants acted with scienter when they engaged in the conduct alleged above.

124. As a result of the activities described above, defendants Pirtle and Berrettini violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5).

COUNT THREE

Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5) (Berrettini and Pirtle)

125. The Commission hereby incorporates by reference and realleges paragraphs 1-116 of the Complaint.

126. During April through June 2006, defendants Pirtle and Berrettini in connection with the purchase and sale of Intermagnetics securities, namely common stock, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud; 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; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon purchasers and sellers of such securities.

127. The defendants acted with scienter when they engaged in the conduct alleged above.

128. As a result of the activities described above, defendants Pirtle and Berrettini violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5).

COUNT FOUR

Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5) (Berrettini)

129. The Commission hereby incorporates by reference and realleges paragraphs 1-116 of the Complaint.

130. During December 2005 and January 2006, defendant Berrettini, misappropriated and used for his own benefit, despite his relationship of trust and confidence with Philips, material nonpublic information in connection with the purchase and sale of Lifeline securities, namely common stock, and thereby, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud; 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; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon purchasers and sellers of such securities.

131. Defendant Berrettini acted with scienter when he engaged in the conduct alleged above.

132. As a result of the activities described above, defendant Berrettini independently violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5).

COUNT FIVE

Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5) (Berrettini)

133. The Commission hereby incorporates by reference and realleges paragraphs 1-116 of the Complaint.

134. During January and February 2006, defendant Berrettini misappropriated and used for his own benefit, despite his relationship of trust and confidence with Philips, material nonpublic information in connection with the purchase and sale of Invacare

securities, namely common stock, and thereby, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud; 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; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon purchasers and sellers of such securities.

135. Defendant Berrettini acted with scienter when he engaged in the conduct alleged above.

136. As a result of the activities described above, defendant Berrettini independently violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5).

COUNT SIX

Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5) (Berrettini)

137. The Commission hereby incorporates by reference and realleges paragraphs 1-116 of the Complaint.

138. During April through June 2006, defendant Berrettini misappropriated and used for his own benefit, despite his relationship of trust and confidence with Philips, material nonpublic information in connection with the purchase and sale of Intermagnetics securities, namely common stock, and thereby, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud; 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; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon purchasers and sellers of such securities.

139. Defendant Berrettini acted with scienter when he engaged in the conduct alleged above.

140. As a result of the activities described above, defendant Berrettini independently violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

(a) find that Defendants Berrettini and Pirtle violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5);

(b) permanently enjoin Defendants Berrettini and Pirtle from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5);

(c) order Defendants Berrettini and Pirtle to pay disgorgement of Berrettini's ill-gotten gains resulting from the illegal trading alleged herein plus prejudgment interest; and

(d) order Defendants Berrettini and Pirtle to pay civil penalties pursuant to Sections 21(d) and 21A of the Exchange Act (15 U.S.C. §§ 78(u)(d) and 78u-1); and

(e) retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court; and order such other relief as the Court may deem appropriate.

Respectfully submitted,

s/ John E. Birkenheier_____
John E. Birkenheier
Adolph Dean
Robert T. Swanson
Attorneys for Plaintiff,
U.S. Securities and Exchange Commission
175 W. Jackson Boulevard, Suite 900
Chicago, Illinois 60604-2615
Fax: 312.353.7398
Phone: 312.886.3947 (Birkenheier)
Phone: 312.353.2606 (Dean)
Phone: 312.353.7434 (Swanson)
birkenheierj@sec.gov
deana@sec.gov
swansonr@sec.gov

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