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I. INTRODUCTION

The Enforcement Division's core contention in opposition to respondent Mark Megalli's assertion that the SEC has both waived and is estopped from seeking an associational bar under Advisers Action Section 203(f) is that he acknowledged the debarment exposure resulting from his felony insider trading plea in an early, post-plea communication with Division staff and on the record of the civil and criminal district court actions underlying this follow-on proceeding. But this has nothing to do with the fact that the Division, to secure Mr. Megalli's maximum punishment in its civil enforcement action, flatly told the district court overseeing that action that, because "*we are not seeking to bar the man from the securities industry, nor are we seeking an order to bar him from being an officer or director of a public company, which is on the table in some of our cases,*" she should enter an unabashedly punitive disgorgement and civil penalty order amounting to \$9.2 million, when his personal gain from the illicit trading activity at issue amounted to \$1,945.

All that is legally required to find waiver of an administrative right is a clear and unambiguous statement or act evidencing the intention to waive. Here, to induce the civil court to exert maximum punishment – apparently because Mr. Megalli had declined to admit to extraneous and unsubstantiated facts in the SEC's complaint and because he had invoked the unprecedented and unforeseen holding of *United States v. Newman* to question the SEC's ability to prove its case – the Division represented expressly to that court that, because it had declined to pursue both his administrative debarment and his debarment as a public company director or officer, she would have the final say on this issue. That the Division did not fully prevail (although it certainly prevailed in obtaining a permanent injunction against future securities law violations) has nothing to do with whether it intentionally and unequivocally relinquished its

debarment remedies in seeking to secure draconian financial remedies. To hold otherwise would license the Division to take inconsistent – yet equally prejudicial – positions in civil and administrative litigation without any judicial accountability for such equivocation.

The Division also misses the mark in claiming that entry of an advisory bar here under Advisers Act Section 203(f) is solely remedial, such that this Court must discount the substantial punishment Mr. Megalli has already received in the civil and criminal district court actions underlying this administrative proceeding. Putting to the side that Commission remedies have routinely been calibrated to account for existing civil and criminal punishment, any notion that the associational bar sought by the Division in this case is intended as remediation is flatly contradicted by the fact that the SEC waited more than three years after the entry of final criminal judgment against Mr. Megalli and nearly two years after the entry of final civil judgment against him to institute this proceeding.

Rather, the fundamentally punitive nature of this administrative proceeding is amply demonstrated by the Division's repeated, yet unsupported, contention in its civil enforcement action and in the instant opposition that Mr. Megalli misrepresented his intent to settle his civil liability to the criminal court – when the undisputed evidence reflects that he was *always* willing to settle the SEC's insider trading claims consistently with the facts he had admitted in connection with this guilty plea. The inherently punitive nature of this proceeding is further demonstrated by the Division's ongoing, yet again mistaken, assertion that, after waiving *Newman*-like claims in connection with his sentencing, he later invoked *Newman* to force the Division to litigate his civil liability – when both the DOJ and the SEC characterized the actual *Newman* holding, promulgated months *after* Mr. Megalli's sentencing, as so unprecedented and

so disabling that the government dismissed the indictment of multiple defendants who had previously pled guilty to the dismissed charges.

Further, as punishment, the permanent associational bar the Division seeks here under Advisers Act Section 203(f) is disproportionate to the relative isolation and comparative lack of egregiousness of Mr. Megalli's misconduct, the substance of which (along with the other *Steadman* factors) is more fully addressed in his opposition to the Division's Rule 250 motion. It is also cumulative of the significant criminal and civil punishment he has already endured that ensures he will not re-offend.

II. SUPPLEMENTAL UNDISPUTED FACTS

In both its civil enforcement action and in this proceeding, the Division has consistently maintained that, to secure a lenient criminal sentence (which now apparently justifies significant administrative punishment), Mr. Megalli told the criminal court that he had settled with the SEC, and that he had waived *Newman*'s twin holdings that, in tipping chains that do not involve family members or close personal friends (like the one here) a quantifiable insider benefit and a remote tippee trader's culpable knowledge of such benefit are essential liability elements. (*See, e.g.*, Div. Opp. at 2-4, 6-7). Neither assertion is accurate.

First, aside from the fact that the Division was well aware that Mr. Megalli intended to litigate whether he was liable in disgorgement and for a civil penalty based on his employer's institutional trading profits and avoided losses, as opposed to his personal gain, he remained willing at all times prior to the Second Circuit's release of its *Newman* opinion to settle his civil liability consistently with the facts supporting his criminal conviction and ultimate prison sentence. Second, while Mr. Megalli was aware that the Second Circuit had taken up the issue of insider benefit in relation to criminal insider trading liability for purposes of Exchange Act 10(b) and Exchange Act Rule 10b-5 at the time of his sentencing, no one, including by their own

admission the DOJ and SEC, could have predicted the scope and substance of the Second Circuit's *Newman* ruling, which, in addition to having been issued five months after Mr. Megalli's sentencing, prompted the court-sanctioned withdrawal of several guilty pleas and the government's dismissal of non-compliant insider trading charges in its wake.

A. Mr. Megalli Was *Always* Willing to Settle His Civil Liability on the Same Factual Basis that Supported His Criminal Plea and Sentencing

On November 14, 2013, Mr. Megalli entered a negotiated guilty plea to a single-counte criminal information charging him with conspiracy to engage in insider trading in violation of 18 U.S.C. § 371. The information was docketed in the U.S. District Court for the Northern District of Georgia as *United States v. Mark Megalli*, No. 1:13-CR-442-RWS (the "DOJ Case"), and was assigned to U.S. District Judge Richard W. Story. On the same day as Mr. Megalli's guilty plea, the Commission sued Mr. Megalli in the Northern District of Georgia for civil insider trading violations. The SEC's complaint was docketed as *SEC v. Mark Megalli*, No. 1:13-CV-3783-AT (the "SEC Case"), and was assigned to U.S. District Judge Amy Totenberg.

In light of his November 2013 guilty plea in the parallel criminal action, Mr. Megalli and the SEC commenced settlement discussions in relation to the Commission's civil enforcement action in January 2014. Such discussions, however, always contemplated a bifurcated settlement, meaning that the parties would explore Mr. Megalli's potential entry of a liability consent order separately from settlement of the SEC's pursuit of disgorgement and a civil penalty. (*See* Ex. A, Dec. 7, 2015 Declaration of Paul N. Monnin (the "Declaration"), (SEC Case ECF No. 61-2), at ¶¶ 6-7 and Ex. 1). Further, after the SEC had forwarded its proposed consent order in January 2014, Mr. Megalli objected in February 2014 to certain of its factual provisions; not because he denied his substantive liability, but rather because it required his admission of certain facts at the margin of the SEC's complaint and beyond the scope of his guilty plea. *Id.* at ¶ 8 and Ex. 2.

On March 25, 2014, Mr. Megalli forwarded a mark-up of the SEC's liability consent reflecting his proposed, largely marginal, changes to the assigned Division staff. *Id.* at ¶¶ 11-12 and Exs. 5-6. Mr. Megalli's proposed changes were designed to make the SEC's draft consent order consistent with his criminal plea, while at the same time ensuring his admission of all material facts necessary to support his civil liability. *Id.* The Division responded that same day by stating that Mr. Megalli's proposed changes were likely unacceptable due to the SEC's policy that defendants who enter a criminal plea have to admit the allegations of a parallel civil complaint that are consistent with the facts conceded in connection with their criminal plea. *Id.* at ¶ 13 and Ex. 5. Mr. Megalli addressed the Division's concerns later that day, noting that the liability consent he had proposed was in fact consistent with his guilty plea and, moreover, admitted all material allegations of the SEC's complaint. *Id.* at ¶ 14 and Exs. 5-6. Adopting a take-it-or-leave-it approach, however, the Division rejected Mr. Megalli's proposed liability consent on April 2, 2014, directing that he was required either to sign the liability consent as proposed by the SEC or to answer the SEC's complaint. *Id.* at ¶ 14.

Mr. Megalli thereafter sent an April 14, 2014 letter to the Division regarding resolution of his civil liability on the same basis to which the SEC had agreed with respect to Richard Posey, one of Mr. Megalli's co-conspirators. *Id.* at ¶ 15 and Ex. 7. In particular, because the factual basis of Posey's liability consent simply involved attaching the transcript of his guilty plea hearing before Judge Story to what was effectively a single-paragraph consent, Mr. Megalli proposed, as he had advocated since January 2014, that his liability be similarly resolved by attaching his guilty plea hearing transcript to a short-form consent. *Id.* at ¶ 16 and Ex. 7. For reasons never made clear to Mr. Megalli – other than that the SEC most likely wanted to ensure

that his civil punishment would be based on contested and, moreover, unsubstantiated factual allegations – the Division declined this request. *Id.*

Mr. Megalli advised Judge Story in connection with his July 8, 2014 sentencing that settlement with the SEC was presumably imminent, given that he had admitted multiple times in open court and in his answer to the SEC’s complaint to having relied on material, non-public information in relation to trading activity for which he was being sent to prison. *Id.* at ¶¶ 17-18 and Ex. 8. Contrary to the Division’s representation to this Court, however, he never told the criminal court that he had in fact settled with the SEC. (Div. Opp. at 6-7).

Further, any representations regarding the status of Mr. Megalli’s civil liability had very little to do with Judge Story’s ultimate sentence. At the outset of the sentencing hearing involving Mr. Megalli and his co-conspirators and in plain view of the Division’s counsel herein (who attended the hearing), Judge Story elected, and so stated on the record, to re-order the sequencing of the defendants’ individual sentencings from most to least culpable. This meant that Mr. Megalli’s co-conspirators first received respective custodial terms of 24 and 15 months, effectively capping Mr. Megalli’s prison exposure at 15 months (he was sentenced to a year and a day in custody) before he was called forward for his own sentencing.¹

Following sentencing, Mr. Megalli expressly advised the Division that he remained willing to concede his civil insider trading liability consistently with the facts he had admitted in relation to his guilty plea, which had resulted in a jail term. *Id.* at ¶ 19 and Ex. 9. The SEC,

¹ Nor could Mr. Megalli have represented that he had settled with the SEC when he expressly advised Judge Story that the parties would be litigating before Judge Totenberg whether Mr. Megalli was exposed to an institutional disgorgement and civil penalty lodestar. (See Ex. A, Decl. at ¶ 18 and Ex. 8).

however, continued to insist that he confess facts that were not only beyond his guilty plea, but also without foundation and entirely unnecessary to establish his civil liability. *Id.*

Accordingly, Mr. Megalli never misrepresented his willingness to settle his civil liability to Judge Story. While the parties always understood that the measure of disgorgement and a civil penalty would be litigated before Judge Totenberg, *see id.* at ¶¶ 6, 9-10 and 17-18, Mr. Megalli attempted in good faith for months prior to *Newman* to settle the SEC's civil liability claims consistently with the admissions underlying his criminal plea and sentencing – admissions that had resulted in a crushing criminal conviction followed by a prison sentence. The fact that, as a condition of settlement, the SEC arbitrarily demanded, contrary to its own policy in parallel proceedings, that Mr. Megalli admit to extraneous, unfounded facts falling well outside his guilty plea and sentencing hardly means that he was unwilling to settle.² It is only the SEC's capriciousness in response to Mr. Megalli's good faith and well-documented efforts to settle his pre-*Newman* liability that caused the parties' liability-related settlement negotiations to fail.

B. Mr. Megalli Moved for Summary Judgment on the SEC's Insider Trading Claims Only After the DOJ and SEC Had Characterized *Newman* as Both Unprecedented and Disabling

The Division's contention that Mr. Megalli waived his *Newman* claims pre-sentencing only to resurrect them in contesting his civil liability post-sentencing is equally unavailing. First, while Mr. Megalli assuredly challenged the legal validity of his conviction and sentencing in a petition for collateral relief based on *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), *cert. denied*, ___ U.S. ___, 136 S. Ct. 242 (2015), and *Salman v. United States*, ___ U.S. ___, 137 S.

² Notably, in connection with his criminal plea and sentencing, Mr. Megalli admitted to having traded in reliance on information misappropriated from Carter's Inc. in October 2009 and July 2010, resulting in trading gains of approximately \$2.7 million to his hedge fund employer. The SEC invoked these exact same facts, which Mr. Megalli offered to resolve by consent in early 2014, in moving for summary judgment on its civil claims in 2015.

Ct. 420 (2016), he has *never* denied that he intentionally traded based on access to material, non-public information. In fact, in the memorandum accompanying his habeas petition, Mr. Megalli stated expressly that he “does not seek to re-litigate the facts he admitted in connection with his guilty plea and sentencing for conspiracy to engage in insider trading in violation of 18 U.S.C. § 371.” (DOJ Case ECF No. 40-1 at 4-5). These inculpatory admissions extended to Mr. Megalli’s answer and summary judgment motion in the SEC Case. (*See, e.g.*, SEC Case ECF No. 13 at ¶¶ 1-4 (admitting that Mr. Megalli traded “based in whole or in part on material, non-public information, knowing and consciously avoiding knowledge as to the source of Martin’s information”); *id.* ECF No. 27-1 at 2 (“Mr. Megalli does not, nor could he, dispute that he traded on . . . inside information”). Indeed, Mr. Megalli’s answer herein includes the same admission. (*See Resp.’s Answer at II.B.2* (“Respondent admits that . . . he traded securities . . . based in part on material, non-public information”)).

Second, Mr. Megalli elected to proceed with a collateral attack on his sentence only after the Second Circuit ruled in *Newman* that, for remote tippee traders like Mr. Megalli, the government must prove both that a tangible benefit induced a corporate insider’s breach of fiduciary duty, and that the trader was culpably aware of the nature of such benefit. 773 F.3d at 449. More importantly, after *Newman* was handed down, and while Mr. Megalli remained in prison, the government asserted in separate pleadings that the “decision dramatically . . . departs from thirty years of controlling Supreme Court authority[,]” particularly insofar as it “creates a novel evidentiary bar for tipper benefit, and tippee knowledge of such benefit[.]” (DOJ Case ECF No. 40-1 at 32). The government further argued that, “the Opinion redefines a critical element of insider trading liability . . . holding for the first time that a culpable tippee must know that the insider-tipper who supplied the information acted for . . . a [qualifying] benefit.” *Id.* The

SEC concurred, claiming that, “No other court of appeals has concluded that a friendship between the tipper and tippee is an insufficient basis from which to infer the required personal benefit[.]” *Id.* at 33 n.8. Most critically, *Newman*’s issuance compelled one district court to vacate the guilty pleas of multiple defendants who, like Mr. Megalli, had admitted their criminal insider trading liability under pre-*Newman* law, which was followed by the government’s dismissal of their indictment based on lack of evidence. *Id.* at 13-14.

Finally, any fair reading of Mr. Megalli’s sentencing memorandum makes clear that his advocacy to Judge Story was plainly confined to his pre-*Newman* view that, because Mr. Megalli was never apprised of the identity of his tipper’s inside source, the government might have difficulty proving his knowledge of any insider benefit, regardless of substance. (DOJ Case ECF No. 52 at 20-21). In addition, whenever the parties discussed knowledge of benefit pre-sentencing, the government’s resolute position was that, under existing Eleventh Circuit law, it could prove insider benefit solely by reference to psychic or social gain. *Id.* In other words, Mr. Megalli waived putting the government to its burden on insider benefit and his knowledge of such benefit because, under then-existing law, all the government had to prove was some limited, purely psychic insider benefit that Mr. Megalli merely had to surmise existed based on the substance of a tip; not that, as held by *Newman* and affirmed by *Salman*, the tip was extracted by tangible consideration of which Mr. Megalli was culpably aware. *Id.*

In sum, Mr. Megalli’s acknowledged waiver of his capacity under existing law to challenge the government’s showing of insider benefit and his knowledge of such benefit did not, by the DOJ’s and SEC’s own characterization and the DOJ’s own conduct in dismissing the

indictment of similarly-situated traders, extend to the actual holding in *Newman*, which was handed down months after Mr. Megalli's sentencing while he remained incarcerated.³

III. ARGUMENT

A. **The SEC Has Both Waived and is Estopped from Pursuit of an Associational Bar Here**

The SEC's principal argument in response to Mr. Megalli's assertions of waiver and estoppel is to claim that, because it is responsible for enforcing the federal securities laws, it is itself somehow above the law. (See Div. Opp. at 9-11 (effectively claiming that a government official cannot waive a federal agency's ability to enforce a federal statute)). Notably, however, judicial estoppel cases dominate the SEC's proffered case law. *Id.* This is hardly surprising, of course, given that the doctrine of judicial estoppel "is intended to protect the courts rather than the litigants." *Buckley v. United States*, 57 Fed. Cl. 328, 341 (2003). And because courts are generally capable of protecting themselves, establishing judicial estoppel remains a high bar.

But the SEC is just like any other party to litigation, subject to the same rights and responsibilities as any private party. See, e.g., *SEC v. Merkin*, 283 F.R.D. 689, 696 (S.D. Fla. 2012) ("As a general proposition, government agencies embroiled in litigation are subject to the same discovery rules as private litigants, regardless of the level of government to which the agency belongs"); see also *SEC v. Collins & Aikman Corp.*, 256 F.R.D. 403, 410-13 (S.D.N.Y. 2009) (overruling the SEC's invocation of the work product doctrine and the deliberative process

³ It is also disingenuous for the SEC to assert that Mr. Megalli plainly waived all *Newman*-based contentions in relation to his criminal sentencing, while at the same time arguing that the Division's more than three-year delay in instituting the current administrative proceeding was justified by the pendency of Mr. Megalli's habeas petition contesting such waiver. The Division cannot have it both ways: If, as the Division contends, Mr. Megalli waived any and all *Newman* claims in connection with his sentencing, then it was incumbent on the Division – if Mr. Megalli's debarment is truly remedial – to have pursued this administrative sanction long ago.

privilege in ordering that it produce investigative files in the manner in which they were internally organized for purposes of supporting the Commission's enforcement action). Moreover, while the SEC contends that its status as a government agency responsible for enforcing the federal securities laws trumps any notion that it can waive its enforcement prerogatives, the cases holding otherwise are legion. *See, e.g., SEC v. King Chuen Tang*, 831 F. Supp. 2d 1130, 1143-44 (N.D. Cal. 2011) (denying, on waiver grounds, the SEC's assertion of an opposing counsel's conflict); *SEC v. Boock*, No. 09 Civ. 8261(DLC), 2011 WL 3792819, at *10 n.8 (S.D.N.Y. Aug. 25, 2011) (finding waiver of the SEC's objection to the admissibility of defense evidence on summary judgment); *SEC v. Pinez*, 52 F. Supp. 2d 205, 210 (D. Mass. 1999) (adopting waiver of the SEC's right to collect penalties and attorneys' fees in a contempt proceeding). Indeed, in *SEC v. Razmilovic*, No. CV-04-2276 (SJF)(SIL), 2014 WL 5794871 (E.D.N.Y. Nov. 6, 2014), the district court found that the SEC's response to a Second Circuit mandate and a district court order executing that mandate served to waive its collection of more than seven years of prejudgment interest on approximately \$17.4 million of court-ordered disgorgement that was also subject to a parallel forfeiture order. *Id.* at *3-4. The district court affirmed its ruling on reconsideration, finding that the SEC's response "evinced an intent not to claim the purported advantage of being able to elect whether or not to apply the frozen [*i.e.*, forfeited] funds to the judgment in this action." *SEC v. Razmilovic*, No. CV-04-2276 (SJF)(SIL), 2015 WL 4878482, at *2 (E.D.N.Y. Aug. 14, 2015) (internal quotations and citations omitted).

The Division's protestations notwithstanding, all that is required to find waiver by a federal law enforcement agency is the intentional relinquishment of a known right. *United States v. Olano*, 507 U.S. 725, 733 (1993). This standard is easily satisfied here. As established by Mr. Megalli's opening brief, (Resp.'s Rule 250 Mem. at 7-17), and, indeed, as the Division itself has

conceded in opposition, (Div. Opp. at 6-7), the SEC informed Judge Totenberg expressly that, “We are not seeking to bar the man from the securities industry, nor are we seeking an order to bar him from being an officer or director of a public company, which is on the table in some of our cases,” (Ex. B, *SEC v. Megalli*, No. 1:13-CV-3783-AT (N.D. Ga.), Oct. 27, 2015 Hr’g Tr. (hereinafter, “Hr’g Tr.”) at 119), because it wanted to punish him. (*See* Div. Opp. at 6-7 (characterizing these representations as being “part of Commission counsel’s overall discussion of the misstatements that Megalli’s counsel made at the sentencing hearing in the criminal case. Specifically, at the sentencing hearing, Megalli’s counsel had argued that a light sentence should be imposed because Megalli had settled with the Commission. In fact, however, Megalli had not settled with the Commission, and, after obtaining a lenient sentence, moved for summary judgment seeking dismissal of the Commission’s case.”).

Putting to the side that, as shown above, (i) it was only the SEC’s capriciousness that prevented a civil settlement prior to Mr. Megalli’s sentencing, (ii) he never told Judge Story that he had settled with the SEC and any references to the SEC’s parallel action had little if anything to do with that court’s entry of a custodial sentence that was capped by the jail terms imposed on his co-conspirators, and (iii) he only invoked *Newman* after its issuance had facilitated the dismissal of charges against similarly-situated defendants, the punitive intent of the foregoing representations makes them binding on the SEC. Clearly, it was incompatible with the SEC’s self-acknowledged desire to punish Mr. Megalli for the Division to have informed Judge Totenberg that the requested entry of nearly \$2.7 million in disgorgement, more than \$6 million in civil penalties, and a permanent injunction – all accompanied by potential contempt liability for non-compliance – would be followed by pursuit of a permanent industry bar in the SEC’s administrative forum.

The SEC's opposing contention that it was merely advising Judge Totenberg as to the limits of her civil enforcement jurisdiction, (Div. Opp. at 4-7), is unavailing. First, reference to the remedies hearing transcript makes clear that Judge Totenberg was inquiring at the outset of the hearing about whether the SEC would pursue Mr. Megalli's debarment in any forum:

THE COURT: OKAY, SO YOU'RE NOT LOOKING FOR DEBARMENT.

MR. HUDDLESTON: THAT IS CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT, I MISUNDERSTOOD THAT, THEN.

(Ex. B, Hr'g Tr. at 4). Moreover, any notion that the SEC was distinguishing between civil and administrative remedies in its advocacy to Judge Totenberg is belied by the fact that its representation that it was not seeking his securities industry debarment was accompanied by the representation that it was also not pursuing a public company D&O bar. While civil jurisdiction does not exist with respect to the former, it plainly lies with respect to the latter. (*See* Resp.'s Rule 250 Mem. at 15 (citing *SEC v. Miller*, 744 F. Supp. 2d 1325, 1346-47 (N.D. Ga. 2010), and *SEC v. Aqua Vie Beverage Corp.*, No. CV-04-414-S-EJL, 2008 WL 1914723, at *2 (D. Idaho Apr. 29, 2008)).

It follows that, to achieve its self-acknowledged objective of maximum civil punishment, the Division first fostered Judge Totenberg's misconception that she had jurisdiction to entertain an associational bar by representing that it had simply declined to plead such remedy; not by supplementing this representation with the disclosure that a permanent associational bar would be separately pursued. The Division then compounded its equivocation through the unambiguous assertion at the conclusion of the civil remedies hearing that, in addition to not "seeking to bar the man from the securities industry," the Division had also waived its right to seek a civil court order barring him from serving as public company director or officer. (Ex. B, Hr'g Tr. at 119).

Simply stated, Mr. Megalli has moved for summary disposition because the SEC made the deliberate choice to forego its administrative remedies in the pursuit of maximum civil punishment. To rule otherwise would fail to account not only for the SEC's unambiguous representations on the record of its civil enforcement action (and the unavoidable judicial impression created by these representations), but also its unequivocal admissions herein that these statements were the product of the SEC's desire to secure maximum civil punishment because, at least according to the SEC, he had escaped sufficient criminal punishment.

B. This Court Must Consider the Proportionality and Fairness of a Lifetime Associational Bar Against Mr. Megalli

In his opening brief, Mr. Megalli established that a lifetime advisory bar is inherently punitive insofar as it is imposed as a consequence of violating a public law and is intended to deter, not to compensate. (*See* Resp.'s Rule 250 Mem. at 19 (citing *Kokesh v. SEC*, ___ U.S. ___, 137 S. Ct. 1635, 1644 (2017))). Thus, imposition of a permanent employment bar is governed by considerations of proportionality and fairness. *Id.* Mr. Megalli further established that, due to its punitive nature, this Court is obliged to consider whether a lifetime occupational bar would be excessive or oppressive under the facts and circumstances of this case. *Id.* at 19-23. The Division has responded in opposition: (1) that lifetime occupational bars are remedial, rather than punitive, and (2) that, even if punitive, this does not preclude the imposition of a lifetime occupational bar against Mr. Megalli. (Div. Opp. at 12-15.)

The Division is wrong on its first point. As shown in Mr. Megalli's opening brief, the Supreme Court recently held that sanctions like a permanent employment bar are punitive, rather than remedial. *See Kokesh*, 137 S. Ct. at 1643 ("Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because deterrence is not a legitimate nonpunitive government objective."); *id.* at 1645 ("A civil sanction that cannot fairly be said

solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term.”). Just like disgorgement – which was at issue in *Kokesh* – a lifetime occupational bar “bears all the hallmarks of a penalty.” *Id.* at 1644. It does not “simply restore the status quo; it leaves the defendant worse off and is therefore punitive.” *Id.* at 1645.

Both before and after *Kokesh*, courts have coalesced in the view that civil and administrative sanctions that are directed primarily to deterrence and individual incapacitation are inherently punitive. *See, e.g., SEC v. Gentile*, No. CV 16-1619 (JLL), 2017 WL 6371301, at *2-4 (D.N.J. Dec. 13, 2017) (holding that penny stock bar would “only serve to punish Defendant. The order would not restore any ‘*status quo ante*’ nor would it serve any retributive purposes. Rather, it would merely restrict Defendant’s business structure and methodology, *in perpetuity* Simply, Plaintiff’s requested reliefs herein are ‘*noncompensatory sanctions*’ and must be considered penalties.”); *Saad v. SEC*, 873 F.3d 297, 304-05 (D.C. Cir. 2017) (Kavanaugh, J., concurring) (“Like disgorgement paid to the Government, expulsion or suspension of a securities broker does not provide anything to the victims to make them whole or to remedy their losses. Therefore, in light of the Supreme Court’s analysis in *Kokesh*, expulsion or suspension is a penalty, not a remedy.”); *SEC v. Jones*, 476 F. Supp. 2d 374, 385 (S.D.N.Y. 2007) (holding that a permanent injunction prohibiting the defendants from committing future securities law violations qualified as a penalty, in part, because “the potential collateral consequences of a permanent injunction are quite serious. . . . The practical effect of such an injunction here would be to stigmatize [the defendants] in the investment community and significantly impair their ability to pursue a career. . . . The severity of these collateral consequences indicate that the requested injunction would carry with it the sting of

punishment.”); *Johnson v. SEC*, 87 F.3d 484, 488 n.6 (D.C. Cir. 1996) (“The SEC argues that ‘the history and common understanding of such professional sanctions has always been one associated with regulation and remedial purposes, not with punishment.’ This statement is not persuasive. To the contrary, there is substantial evidence that Congress and the courts have long considered the suspension or revocation of a professional license as a penalty.”) (internal citations omitted)).

Based on this authority, the permanent associational bar the Division has pursued in this case is unquestionably punitive. The Division does not purport to argue that an occupational bar will remedy any past harms or restore the *status quo ante*. Nor does it cite a single remedial purpose for the requested sanction. And it does not point to any evidence indicating that Mr. Megalli is not presently fit to work in the securities industry. The Division instead focuses entirely on Mr. Megalli’s past conduct; a clear indication that the occupational bar it seeks to impose is meant to punish. *See Johnson*, 87 F.3d at 490 (holding that suspension of securities supervisor constituted a penalty where the SEC attempted to justify the sanction “solely in view of . . . past misconduct,” rather than based on present danger to the securities markets). This conclusion is assuredly bolstered by the fact that the Division waited more than three years after Mr. Megalli’s criminal conviction to initiate this proceeding. *See Proffitt v. FDIC*, 200 F.3d 855, 861 (D.C. Cir. 2000) (expulsion of defendant from banking industry constituted civil penalty as “manifested by the fact that the FDIC did not act for more than six years after Proffitt’s misdeeds”); *Johnson*, 87 F.3d at 490 n.9 (“If the SEC really viewed Johnson as a clear and present danger to the public, it is inexplicable why it waited *more than five years* to begin the proceedings to suspend her.”) (emphasis in original). With neither a stated nor even an implied remedial purpose, there is no question that the lifetime bar sought by the Division here is

punitive as a matter of law.

Regarding its second argument, Mr. Megalli agrees with the Division that the punitive nature of a lifetime employment bar does not automatically preclude its imposition. In fact, as Mr. Megalli noted in his opening brief, his invocation of *Kokesh* and its progeny is not meant to supplant this Court's application of the public interest standards set forth in Exchange Act Section 15(b)(6)(A), 15 U.S.C. § 78o(b)(6)(A), which is informed by consideration of the various *Steadman* factors. Rather, Mr. Megalli argues, just as Judge Kavanaugh reasoned in his concurring *Saad* opinion, that because *Kokesh* renders administrative debarment an exercise in retribution rather than remediation, this Court is obliged to ensure that the punishment fits the crime:

My point is not to suggest that FINRA lacks power to impose punitive sanctions such as expulsions or suspensions. After all, FINRA Rule 8301 expressly allows FINRA to impose expulsions and suspensions in appropriate cases. And the SEC may still approve an expulsion or suspension if such a FINRA-imposed sanction is an appropriate (that is, not "excessive or oppressive") penalty in particular cases. The question here therefore is whether the lifetime expulsion of Saad – what our prior opinion in this case called the "securities industry equivalent of capital punishment," was a permissible and appropriate penalty under the relevant statutes and regulations.

If FINRA and the SEC can still impose expulsions and suspensions in certain cases, why does the terminological distinction matter? In other words, why should we care that FINRA and the SEC must characterize certain sanctions as punitive rather than remedial? One answer is this: If FINRA and the SEC must justify expulsions or suspensions as punitive (as I believe they must after *Kokesh*), they will have to explain why such penalties are appropriate under the facts of each case. FINRA and the SEC will have to reasonably explain in each individual case why an expulsion or suspension serves the purposes of punishment and is not excessive or oppressive. Over time, a fairer, more equitable, and less arbitrary system of FINRA and SEC sanctions should ensue.

Saad, 873 F.3d at 306 (internal citations omitted).

As a matter of law, then, the Court's evaluation of whether to impose an occupational bar here must account for Judge Story's and Judge Totenberg's individualized assessment of the

scope, character and substance of Mr. Megalli's offense conduct in connection with resolution of the DOJ and SEC Cases. In other words, *Kokesh* and the authority on which it is based and which it has generated stand for the proposition that an employment sanction in this case, if any, must be proportional and fair, both in terms of the scope and substance of Mr. Megalli's misconduct and by reference to the degree of punishment already imposed in the collateral civil and criminal proceedings. *See, e.g., Saad*, 873 F.3d at 306; *Maher F. Kara*, Release No. 979, at *7 (SEC Mar. 15, 2016) (ALJ Foelak) (rejecting permanent collateral bar and substituting a three year bar to be "congruent with the sentence of three years' probation" imposed in the respondent's criminal case).

As more fully articulated in Mr. Megalli's opposition to the SEC's motion for summary disposition, (*see* Resp.'s Opp. to the SEC's Rule 250 Mot. at 16-29), entry of a permanent advisory bar here is both needlessly excessive and oppressive given that he is subject to a permanent injunction against future securities violations, went to prison, paid restitution, disgorgement and a civil penalty, and has endured the irretrievable diminishment of his personal reputation and professional prospects – all over trading activity for which he realized no meaningful personal gain. This, combined with the fact that his misconduct ended more than seven years ago, he has given sworn assurances against future securities violations, he has recognized the wrongful nature of his misconduct (and the devastating impact of such misconduct on his family), and that there is no likelihood that he would re-offend, leads to the inescapable conclusion that a lifetime bar is neither necessary nor warranted.

C. At Most, the Court Should Impose a Temporary Associational Bar

In the event this Court is inclined to impose an associational bar, Mr. Megalli respectfully submits that a temporary, fixed-term bar, rather than a permanent bar, is the more appropriate sanction. Mr. Megalli's misconduct occurred over seven years ago, and he pled guilty to

securities law violations more than four years ago. Since that time, he has been effectively barred from the securities industry. He has not re-offended during this time period, and the Division has not pointed to any evidence suggesting that he is likely to re-offend.

When combined with the fact that Mr. Megalli is already subject to a permanent injunction against future securities law violations and considering all of the other mitigating factors discussed above and in Mr. Megalli's opposition to the SEC's Rule 250 motion, ample grounds exist supporting entry of a temporary bar. *See, e.g., Kara*, Release No. 979, at *7 (SEC Mar. 15, 2016) (ALJ Foelak) (imposing 3-year bar due to mitigating circumstances that militated against a permanent bar, including recognition of wrongful nature of conduct, no personal profit, small likelihood of reoffending, and congruence with sentence of three years' probation); *Alan E. Rosenthal*, Release No. 40387, at *3 (SEC Sept. 1, 1998) (imposing 3-year bar where conduct underlying conviction was 12 years old, record contained no evidence of either prior or subsequent disciplinary history, and trial judge imposed relatively lenient criminal sanctions); *Prime Capital Services Inc.*, Release No. 398, at *52 (SEC June 25, 2010) (ALJ Foelak) (ordering one-year temporary supervisory bar based, in part, on the existence of other sanctions); *Richard J. Puccio*, Release No. 68, at *11 (SEC July 10, 1995) (ordering five-year temporary bar based, in part, on acknowledgement of wrongdoing and assurances against future violations compelled by compliance with permanent injunction already in place); *SEC v. Miller*, 744 F. Supp. 2d 1325, 1348 (N.D. Ga. 2010) (ordering 15-year bar because it was "proportional to the conduct" and giving credit for 10 years since offense conduct when defendant was absent from the industry); *SEC v. E-Smart Techs, Inc.*, 139 F. Supp. 3d 170, 181-82 (D.D.C. 2015) (ordering 10-year and 5-year bars where permanent injunctions against future securities law violations were already in place); *SEC v. Johnson*, 595 F. Supp. 2d 40, 45-46 (D.D.C. 2009) (ordering five-

year bar despite defendant's knowing and deliberate violations because "a permanent bar . . . is far too draconian a remedy").

In addition, because he has already been constructively removed from the securities industry by virtue of his November 2013 criminal conviction, the details of which any potential employer may learn about simply by conducting an internet search of Mr. Megalli's name, in imposing a temporary bar, if any, the Court should consider according Mr. Megalli credit for the time he has already been incapacitated, which constitutes existing punishment beyond the prison sentence he has already served.

IV. CONCLUSION

Based on the foregoing argument and authority, as well as the argument and authority contained in his opening brief, Mr. Megalli respectfully submits that this Court should conclude that the associational debarment the SEC has pursued herein under Advisers Act Section 203(f) is itself barred by the Division's intentional waiver of such relief and principles of judicial estoppel applicable to the Division's inconsistent positions. To the extent the Court reaches the merits, any analysis of the propriety of an employment sanction must account for the substantial civil and criminal punishment already imposed, which militates strongly in favor of the assessment of either no debarment or merely temporary debarment as a proportional administrative sanction here.

Dated: January 16, 2018

Respectfully submitted,



Paul N. Monnin
paul.monnin@alston.com
Georgia Bar No. 516612
Andrew T. Sumner
Georgia Bar No. 269659
andy.sumner@alston.com

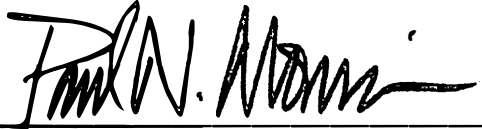
ALSTON & BIRD LLP
1201 West Peachtree Street
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Tel: (404) 881-7000
Fax: (404) 881-7777

Attorneys for Respondent Mark Megalli

RULE 154(C) CERTIFICATE

The undersigned hereby certifies that the foregoing document complies with the length limitation set forth in Rule 154(c) of the SEC Rules of Practice. This brief contains 6,577 words, exclusive of any table of contents or table of authorities.

Dated: January 16, 2018

By: 
Paul N. Monnin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was delivered to the following via facsimile (exclusive of exhibits) and by depositing three copies of it (inclusive of exhibits) in the U.S. mail, first class postage prepaid:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Mailstop 1090
Attn: Secretary of the Commission Brent J. Fields
703.813.9793 (fax)

A true and correct copy of the foregoing document was delivered to the following via email and by depositing it in the U.S. mail, first class postage prepaid:

Pat Huddleston
Senior Trial Counsel
U.S. Securities and Exchange Commission
950 E. Paces Ferry Road, NE, Suite 900
Atlanta, GA 30326
huddlestonp@sec.gov

Hon. Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
alj@sec.gov

Dated: January 16, 2018


By:  _____
Paul N. Monnin

EXHIBIT A

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MARK MEGALLI,

Defendant.

CIVIL ACTION

NO. 1:13-CV-3783-AT

DECLARATION OF PAUL N. MONNIN

I, Paul N. Monnin, declare as follows:

1. I am partner with Paul Hastings LLP (“Paul Hastings”) with personal knowledge of the information stated herein.
2. Prior to becoming a partner at Paul Hastings, I was a partner with DLA Piper LLP (US) (“DLA Piper”).
3. I began representing defendant Mark Megalli in connection with a criminal insider trading investigation by the U.S. Attorney’s Office for the Northern District of Georgia in approximately August 2013, while I was still a DLA Piper partner.
4. The criminal investigation culminated in Mr. Megalli’s entry of a negotiated guilty plea, on November 14, 2013, to a single-count criminal

information, styled *United States v. Mark Megalli*, No. 1:13-CR-442-RWS (N.D. Ga.), filed by the United States Attorney for the Northern District of Georgia.

5. On the same day as Mr. Megalli's guilty plea, the U.S. Securities and Exchange Commission sued Mr. Megalli for civil insider trading violations in the above-captioned enforcement proceeding.

6. In light of his guilty plea in the parallel criminal action, Mr. Megalli and the SEC commenced settlement discussions in relation to the above-referenced civil action in January 2014. Such discussions, however, always involved a "bifurcated" settlement, meaning that the parties would explore Mr. Megalli's potential entry of a liability consent order separately from settlement of the SEC's request for disgorgement and a civil penalty.

7. Attached hereto as Exhibit 1 is a true and correct copy of a January 14-15, 2014 email exchange between the undersigned and the SEC Staff evidencing the parties' contemplation of a bifurcated settlement and the SEC's disclosure of a proposed consent order related solely to Mr. Megalli's liability.

8. Attached hereto as Exhibit 2 is a true and correct copy of a February 17-19, 2014 email exchange between the undersigned and the SEC Staff. As reflected in this exchange, Mr. Megalli objected to the SEC's proposed liability consent order; not because he denied his substantive liability, but rather because it

required his admission of certain facts at the margin of the SEC's complaint and outside the scope of this guilty plea.

9. At the same time he forwarded his objections to the SEC's form of liability consent, and consistent with the notion that the parties' always contemplated a bifurcated settlement, the undersigned supplied the Staff with a February 17, 2014 letter analyzing the appropriateness of disgorgement and entry of a civil penalty in this case, a true and correct copy of which is attached hereto as Exhibit 3.

10. Attached hereto as Exhibit 4 is a true and correct copy of a February 26, 2014 letter the undersigned sent the SEC Staff regarding application of the Second Circuit's holding in *SEC v. Contorinis*, 743 F.3d 296 (2d Cir. 2104), to the entry of disgorgement in Mr. Megalli's case. This letter reflects that the parties continued to bifurcate Mr. Megalli's liability from the SEC's financial remedies in their settlement discussions.

11. Attached hereto as Exhibit 5 is a true and correct copy of a March 25-April 2, 2014 email exchange between the undersigned and the SEC Staff. This exchange reflects that, on March 25, 2014, Mr. Megalli forwarded a proposed mark-up of the SEC's liability consent to the Staff, that, in Mr. Megalli's view,

was consistent with his criminal plea and admitted to all material facts necessary to generate liability.

12. A true and correct copy of the marked-up liability consent Mr. Megalli sent the SEC on March 25, 2014 is attached hereto as Exhibit 6. It reflects Mr. Megalli's good faith effort to concede those facts he admitted before Judge Story – which led to his criminal conviction – while at the same time reserving other factual matters falling outside his guilty plea.

13. Per Exhibit 5, the SEC responded on March 25, 2014 that Mr. Megalli's proposed liability consent was likely unacceptable due to the SEC's policy that defendants who enter a criminal plea have to admit the allegations of a parallel civil complaint that are consistent with their criminal plea.

14. As evidenced by Exhibits 5 and 6, however, the undersigned addressed the SEC's concern later that day by noting that the liability consent Mr. Megalli had proposed was in fact consistent with his guilty plea and, moreover, admitted the material allegations of the SEC's complaint. Adopting a take-it-or-leave-it approach, however, the SEC rejected Mr. Megalli's proposed liability consent on April 2, 2014, directing that he was required either to sign the liability consent as proposed by the SEC or to answer the SEC's complaint.

15. Attached hereto as Exhibit 7 is a true and correct copy of an April 14, 2014 letter the undersigned sent the SEC Staff regarding potential resolution of Mr. Megalli's liability on the same basis to which the SEC had agreed with Richard Posey in *SEC v. Posey*, 1:14-CV-664-AT (N.D. Ga.), a parallel enforcement proceeding also pending before this Court.

16. In particular, because the factual basis of Posey's liability consent simply involved attaching the transcript of his change of plea hearing before Judge Story to what was effectively a single-paragraph consent, Mr. Megalli proposed, as he had advocated since January 2014, that his liability also be resolved by attaching his guilty plea hearing transcript to a short-form consent. The SEC, however, once again declined this request.

17. In connection with Mr. Megalli's July 8, 2014 criminal sentencing before Judge Story, the undersigned noted that, although it remained likely given the facts admitted at his criminal plea and sentencing that Mr. Megalli would settle his civil liability with the SEC, the parties intended to litigate disgorgement and entry of a civil penalty, if any, in this enforcement action.

18. Per the transcript of Mr. Megalli's sentencing, a true and correct copy of which is attached hereto as Exhibit 8, and with the SEC's counsel seated in the courtroom, the undersigned expressly advised Judge Story that

The state of the law prior to the Second Circuit returning a decision called *SEC v. Contorinis* was that where you have an individual trader who uses institutional trading accounts to trade there is an argument there *that disgorgement goes only so far as the individual trader's personal gain*. . . . [T]he important consideration there, and why I'm going to be asking for leniency as a result of that, is that *we fully intend to litigate that issue. I don't want the Court not to understand that, and that issue is going to be in front of Judge Totenberg*.

(Emphasis added). Accordingly, the undersigned advised the SEC in open court at Mr. Megalli's sentencing of his continued intent to litigate the SEC's entitlement to financial penalties in this case.

19. Attached hereto as Exhibit 9 is a true and correct copy of a July 16-August 13, 2014 email exchange in which the undersigned, following Mr. Megalli's sentencing, expressly advised the Staff that, although Mr. Megalli fully intended to concede liability consistently with his guilty plea and sentencing, he remained unable to execute a liability consent in the form previously proposed by the SEC, given its inclusion of purported facts falling outside his criminal plea that are not only without foundation but also unnecessary to establish his civil liability.

20. Rather than assert that Mr. Megalli had somehow reneged on a promise to resolve his liability – which had always involved the SEC's insistence that Mr. Megalli admit to extraneous facts outside his plea and sentencing – Exhibit 9 reflects that the SEC responded simply by asking for potential deposition dates.

21. Exhibit 9 encompasses the parties' last substantive discussion regarding potential resolution of Mr. Megalli's liability prior to the parties' cross-motions for summary judgment, which in Mr. Megalli's case was based on *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), an appellate opinion post-dating the parties' exchange in Exhibit 9 and one that the SEC has characterized as being unprecedented.

22. Accordingly, the facts recited in this declaration and evidenced by the attached exhibits reflect that the parties never intended to resolve the SEC's entitlement to disgorgement and a civil penalty in advance of litigation. Further, although the parties exchanged various liability consent proposals, including proposals from Mr. Megalli in which the SEC simply could have accepted those admissions leading to his criminal conviction, no agreement on Mr. Megalli's civil liability was ever reached prior to summary judgment.

23. While the SEC has previously contended in this litigation that Mr. Megalli "misrepresented" his willingness to settle the SEC's complaint, purportedly to obtain favorable sentencing consideration from Judge Story, the attached exhibits evidence Mr. Megalli's continued efforts, both well before and after his sentencing, to settle the SEC's liability claims consistently with the

admissions he made at during his criminal plea and sentencing – admissions that resulted in a prison sentence and a criminal restitution order.

24. The fact that, as a condition of settlement, the SEC arbitrarily demanded, contrary to its own policy in parallel civil and criminal proceedings, that Mr. Megalli admit to extraneous, unfounded facts falling outside his guilty plea and sentencing hardly means that he was unwilling to settle. It is only the SEC's capriciousness in response to Mr. Megalli's good faith and well-documented efforts to settle his pre-*Newman* liability that caused the parties' liability-related settlement negotiations to fail.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that, to the best of my personal knowledge, the information set forth above is true and correct.

Executed on December 7, 2015



Paul N. Monnin

EXHIBIT 1

From: Loomis, Madison G. <LoomisM@sec.gov>
Sent: Wednesday, January 15, 2014 12:24 PM
To: Monnin, Paul
Cc: Huddleston, Pat; LeVasseur, Zachary
Subject: RE: Megalli
Attachments: Megalli consent.docx

Noticed a couple of mistakes in the consent. Revised version is attached.

M. Graham Loomis
Regional Trial Counsel
Atlanta Regional Office
404-842-7622

From: Loomis, Madison G.
Sent: Wednesday, January 15, 2014 11:55 AM
To: 'Monnin, Paul'
Cc: Huddleston, Pat; LeVasseur, Zachary
Subject: RE: Megalli

Paul-

Here are the proposed consent and consent order imposing injunctive relief.

M. Graham Loomis
Regional Trial Counsel
Atlanta Regional Office
404-842-7622

From: Monnin, Paul [<mailto:Paul.Monnin@dlapiper.com>]
Sent: Tuesday, January 14, 2014 5:04 PM
To: Loomis, Madison G.
Cc: Huddleston, Pat; LeVasseur, Zachary
Subject: Megalli

Thanks for your VM. Why don't you send me a form of liability consent judgment for a bifurcated settlement. I don't think you sent me one before. I know for the most part what it will look like. I'll send you disgorgement and civil penalty proposal soon.

Paul N. Monnin

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F +1 404.682.7804
M + [REDACTED]
E paul.monnin@dlapiper.com



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EXHIBIT 2

From: Huddleston, Pat <HuddlestonP@SEC.GOV>
Sent: Wednesday, February 19, 2014 9:25 AM
To: Monnin, Paul
Cc: LeVasseur, Zachary; Loomis, Madison G.
Subject: RE: SEC v. Megalli, No. 1:13-CV-3783-AT: Consent, Consent Judgment and Disgorgement/Civil Penalty Letter Brief

Thanks for the email, Paul. If I'm reading the docket correctly, the transcript of Mr. Megalli's plea allocution will be available next week. I will need to review it before I consider the proposed edits.

Best regards,

Pat

Pat Huddleston
Senior Trial Counsel
U.S. Securities and Exchange Commission
950 East Paces Ferry, N.E., Suite 900
Atlanta, GA 30326-1382

404-842-7616

From: Monnin, Paul [<mailto:Paul.Monnin@dlapiper.com>]
Sent: Wednesday, February 19, 2014 9:15 AM
To: Huddleston, Pat
Cc: LeVasseur, Zachary; Loomis, Madison G.
Subject: FW: SEC v. Megalli, No. 1:13-CV-3783-AT: Consent, Consent Judgment and Disgorgement/Civil Penalty Letter Brief

Pat,

I spoke with Graham for a bit yesterday evening. As I related to him, in our plea discussions with the government, the U.S. Attorney's Office was adamant that Mark stipulate to the \$2.5-\$7M insider trading gain increment under Section 2B1.4 of the sentencing guidelines. (For the most part, the guidelines don't distinguish between personal/institution/conspiracy gain for sentencing purposes, particularly in light of relevant conduct principles under Section 1B1.3.) The total gain from the late October 2009 and July 2010 trades is in excess of \$2.5M, so, in addition to the evidence supporting his liability, those were the trades to which Mark entered a plea. We advised the government of the factual/evidentiary issues with respect to the other trades (noted in the attached pdf I sent you on Monday) during our plea negotiations.

Hopefully, this gives you some relevant background on the proposed edits to the consent and consent judgment. I know those need to be taken care of first. I'm around if you have any questions.

Thanks,

Paul

From: Monnin, Paul

Sent: Monday, February 17, 2014 1:12 PM

To: 'Loomis, Madison G.'

Cc: huddlestonp@sec.gov; LeVasseur, Zachary; Burr, Jennifer

Subject: SEC v. Megall, No. 1:13-CV-3783-AT: Consent, Consent Judgment and Disgorgement/Civil Penalty Letter Brief

Graham,

Please see the attached letter and forms of consent and consent judgment in relation to the above-referenced case. Per our voicemail exchange back in January, I've made a few proposed changes to the consent and consent judgment (reflected in the attached black-lines) so that they're consistent with Mr. Megalli's criminal plea. In particular, Mr. Megalli is consenting to liability with respect to the October 2009 and July 2010 Carter's trades, which mirrors his plea to the criminal information filed by the U.S. Attorney's Office. These trades constitute by far the majority of the insider trading gains at issue, and entry of the revised consent will alleviate Mr. Megalli's objections (set forth in the attached document) with respect to certain factual allegations in the pending complaint.

As noted in the attached letter brief, our position regarding disgorgement is largely conceptual – *i.e.*, that Mr. Megalli is solely liable for personal, as opposed to institutional, gain – such that litigation, if any, regarding disgorgement and a civil penalty will focus on the law, rather than the facts.

Please feel free to contact me after you've had a chance to review the attached.

Thanks,

Paul

Paul N. Monnin

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M + [REDACTED]

E paul.monnin@dlapiper.com



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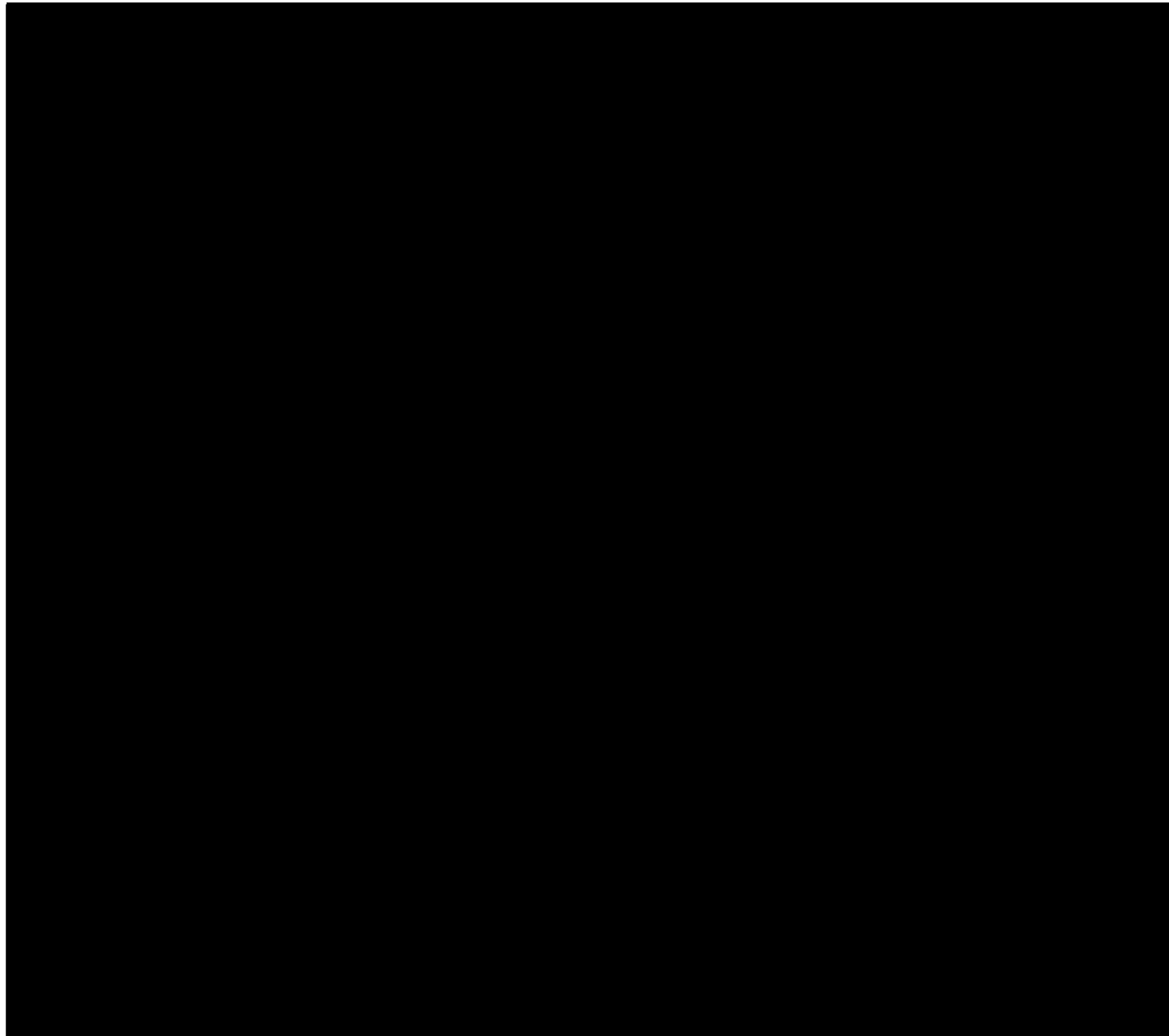
EXHIBIT 3



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Paul N. Monnin
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**CONFIDENTIAL SETTLEMENT
COMMUNICATION SUBJECT TO FRE 408**





M. Graham Loomis, Esq.
SEC v. Megalli, No. 1:13-CV-3783-AT
February 2, 2014
Page Two

make violations unprofitable”); *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998) (“Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable”); *SEC v. Universal Express, Inc.*, 646 F. Supp. 2d 552, 563 (S.D.N.Y. 2009) (citing appellate authority standing for the proposition that the SEC’s array of enforcement remedies are designed primarily “to deter others from engaging in similar conduct”); *see also SEC v. Phoenix Telecom, LLC*, 231 F. Supp. 2d 1223, 1225 (N.D. Ga. 2001) (“The purpose of disgorgement is not to compensate the victims of the fraud, but to deprive the wrongdoer of his ill-gotten gain”) (quotations omitted).

In this regard, the instant SEC enforcement action is not the sole enforcement proceeding Mr. Megalli faces in relation to the trading activity alleged in the SEC’s complaint. In connection with his entry of a negotiated guilty plea in the parallel criminal case, Mr. Megalli faces custodial and fine guideline ranges of, respectively, 41-51 months and \$7,500-\$75,000. In addition, as required by his plea agreement, Mr. Megalli has already deposited \$50,000 in criminal restitution with the clerk of the U.S. District Court for the Northern District of Georgia for eventual disbursement to Carter’s, Inc. in partial reimbursement of its legal fees associated with the government’s and the SEC’s investigation of the subject trading activity. Finally, based on his felony conviction for conspiracy to engage in insider trading, it is virtually assured that Mr. Megalli, who holds an inactive New York law license, will be disbarred.

Accordingly, a strong measure of deterrence is already in place here, even before considering the financial components of the SEC’s enforcement regime. Although Mr. Megalli has reserved the right to argue for a variance from the foregoing custodial and fine guideline ranges, it is likely he will be sentenced to prison and subjected to a criminal fine. And, aside from his eventual disbarment from legal practice, Mr. Megalli will soon be debarred by consent from the securities industry – an industry in which he has worked for most of his adult life. Given that the financial enforcement remedies available to the SEC are inherently equitable, Mr. Megalli believes that the criminal and professional penalties he already faces, both in connection with the parallel criminal proceeding and the permanent liability injunction he is about to enter, should factor substantially into settlement of the economic aspects of the instant enforcement action.

Disgorgement is Legally Confined to Mr. Megalli’s Personal Gain

It is well-settled that disgorgement is an equitable remedy intended to prevent unjust enrichment, rather than constituting some form of punishment. *See generally SEC v. Lauer*, 478 Fed. Appx. 550, 557 (11th Cir. 2012) (“Disgorgement is an equitable remedy intended to prevent



M. Graham Loomis, Esq.
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unjust enrichment”); *SEC v Miller*, 744 F. Supp. 2d 1325, 1342 (N.D. Ga. 2010) (noting that “[t]he primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains,” and, as such, it is “remedial and not punitive”). It follows that the “power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum would constitute a penalty assessment.” *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005) (citation and quotations omitted). In practice, this means that, “[i]n determining the amount of disgorgement to be ordered, a court must focus on the extent to which a defendant has profited from his fraud.” *Universal Express, Inc.*, 646 F. Supp. 2d at 563; accord *SEC v. Gowrish*, No. C 09-5883 SI, 2011 WL 2790482, at *7 (N.D. Cal. July 14, 2011) (“Exercising their discretion . . . courts have ordered defendants to disgorge only the profits they *personally* earned from [an] insider trading scheme”) (emphasis added).

Here, there is no dispute that Mr. Megalli was at all relevant times solely a Level Global employee. He did not own or otherwise hold an equity share in the business and was only entitled to a small percentage of the firm’s incentive fees, which were paid pursuant to his employment contract. Mr. Megalli joined Level Global in August 2009. His employment agreement, which covered only 2009 and 2010, reflects that his compensation consisted primarily of three components: a signing bonus, a salary, and an incentive participation bonus.

With respect to his signing bonus, Mr. Megalli was to receive a total of \$500,000 after three years, with one-third of such bonus vesting at the end of 2010, 2011, and 2012, respectively, assuming he was still with the firm. Ultimately, he received only one-third of this signing bonus, in the amount of \$178,312 (which included some investment return). The 2011 and 2012 bonus amounts never vested, as Level Global shuttered its operations in early 2011. Further, Mr. Megalli did not actually receive the first third of his signing bonus until 2013, as per his contractual arrangement with the firm.

Mr. Megalli’s annual salary was set in the amount of \$250,000 for 2009 and 2010. He received \$98,558 in salary for 2009, corresponding to the fact that his employment commenced in August of that year.

Mr. Megalli’s incentive bonus was based on the performance of Level Global overall, as well as his consumer portfolio within Level Global. It applied only to 2010, not 2009, and was calculated as follows: Mr. Megalli was eligible to receive 1%-3% of Level Global’s incentive fees if his consumer fund returned \$50 million or less, and 3%-5% of Level Global’s incentive fees if his consumer fund returned \$50 million or more. As opposed to a straight formula, these



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ranges reflected management's discretion to award incentive bonus compensation to the firm's portfolio managers. Mr. Megalli was guaranteed, however, that his 2010 compensation (salary plus bonus) would be a minimum of \$750,000.

Ultimately, Mr. Megalli's consumer fund returned approximately \$40 million in 2010, and he received 3% of Level Global's overall incentive fees. As such, his 2009 incentive bonus was \$0, and his 2010 incentive bonus was \$1,195,936 (which, again, is 3% of Level Global's overall incentive fees, not the fees attributable solely to profits on Mr. Megalli's consumer portfolio). Including some minor benefits, his all-in compensation for 2009 was about \$111,000, and his all-in compensation for 2010 was about \$1,478,000.

According to the SEC, the Carter's trades in question netted approximately \$3.2 million (in both loss avoided and profit), a number Mr. Megalli does not contest for present purposes. To the best of Mr. Megalli's knowledge, Level Global was entitled to keep 10% of these profits as an incentive fee (Level Global's investors kept the remainder), such that the \$3.2 million at issue generated approximately \$320,000 in firm gain. As most of this profit occurred in 2009, a year in which Mr. Megalli was contractually ineligible to receive an incentive bonus, it would be technically accurate to hold him accountable in disgorgement solely for the illicit gain realized from the 2010 Carter's trades, or approximately \$650,000. Three percent of \$650,000 (the amount of Level Global's incentive fee associated with the 2010 Carter's trades) corresponds to \$1,950 realized by Mr. Megalli directly.

Rather than parse the Carter's gains by year, however, Mr. Megalli is willing to disgorge \$9,600, corresponding to 3% of Level Global's \$320,000 incentive fees emanating from each of the Carter's trades alleged by complaint. He understands that this amount is subject to the assessment of prejudgment interest.

Although there is certainly precedent supporting the notion that disgorgement liability may be imposed jointly, as opposed to severally, this authority is limited to jointly undertaken securities law violations. *See, e.g., SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004) ("It is a well settled principle that joint and several liability is appropriate in securities law cases where two or more individuals or entities have close relationships in engaging in illegal conduct"); *SEC v. JT Wallenbrock & Associates*, 440 F.3d 1109, 1117 (9th Cir. 2006) ("Where two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws, they may be held jointly and severally liable for the disgorgement of illegally obtained proceeds"); *SEC v. Cavanagh*, No. 98 CV 1818DLC, 2004 WL 1594818, at *29e (S.D.N.Y. July 10, 2004) ("When apportioning liability for disgorgement among multiple



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defendants, courts have discretion to find joint and several liability when two or more individuals collaborate in the illegal conduct”).

We have yet to find a case where an employee of a hedge fund, whose compensation (including bonus) was exclusively a creature of contract, has been held liable in disgorgement for the entire amount of insider trading profits realized by his employer, particularly where, as here, he merely received a small percentage of these profits as a benefit of employment. Indeed, “[t]o the extent that joint liability requires payment of a sum greater than the profits unlawfully gained by the fraudulent transactions, it is a penalty and is therefore improper.” *SEC v. World Gambling Corp.*, 555 F. Supp. 930, 931 (S.D.N.Y. 1983); *see also Gowrish*, 2011 WL 2790482, at *7 (“[W]here one party to a fraudulent scheme has an agreement with the principal to participate in the scheme but retain only a small portion of the proceeds, it is an abuse of discretion to require that party to disgorge all proceeds.”).

It follows that, because disgorgement is synonymous with unjust enrichment – *i.e.*, “the amount with interest by which the defendant profited from his wrongdoing,” *Miller*, 744 F. Supp. 2d at 1342 – disgorgement here is limited to the compensation Mr. Megalli received from Level Global based on its gain from the subject Carter’s trading. *See generally Calvo*, 378 F.3d at 1217 (limiting disgorgement to a reasonable approximation of profits “causally connected to the violation”). Confining disgorgement in this case to Mr. Megalli’s Carter’s-related compensation is eminently fair for multiple other reasons, including, without limitation, the following:

First, it is beyond dispute that a majority of the approximately \$3.2 million in “gain” at issue is actually comprised of loss avoided when Mr. Megalli sold Carter’s shares in late October 2009. According to the United States Supreme Court, the *absence* of actual proceeds over which to impose a constructive trust or an implied lien renders any remedy directed to the amelioration of such avoided loss effectively legal, rather than equitable:

But where the property [sought to be recovered] or its proceeds have been dissipated so that no product remains, [the plaintiff’s] claim is only that of a general creditor, and the plaintiff cannot enforce a constructive trust of or an equitable lien upon other property of the [defendant]. *Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant’s possession.*



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Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 213-14 (2002) (alterations in original) (emphasis added).

Accordingly, the SEC is effectively disabled from seeking equitable recovery of avoided loss, which generates no tangible corpus of funds, in insider trading enforcement. Indeed, the only cases we have uncovered in which disgorgement was imposed in relation to illicitly avoided losses involved the liquidation of long positions and the initiation of short selling, which is not at issue in Mr. Megalli's late October 2009 Carter's trades. In offering to settle disgorgement on the terms related herein, Mr. Megalli is not making an issue of the fact that the SEC's collection of ill-gotten gains based on avoided loss implicates legal, as opposed to equitable, relief.

Second, in January 2012, the SEC sued Level Global, along with its individual principals, for alleged insider trading violations in the Southern District of New York in an enforcement action styled, *SEC v. Adondakis, et al.*, No. 12 Civ. 409 (HB). Level Global settled the SEC's claims by consent in late May 2013, with the final judgment ordering disgorgement in the amount of \$10,082,725.78 and a civil penalty in the same amount. (See Doc. 88, Final Judgment as to Defendant Level Global Investors, L.P., *SEC v. Adondakis, et al.*, Case No. 2:12-cv-409-HB (S.D.N.Y.)) Although the insider trading claims Level Global settled in the Southern District of New York enforcement proceeding related to trading in shares of Dell, Inc. and Nvidia Corporation, the point is that, presumably in recognition of the foregoing authority confining disgorgement to a defendant's particularized gain, Level Global was a necessary and indispensable party to complete equitable relief, notwithstanding joinder of its former principals. Simply put, Mr. Megalli is not liable for gains realized by Level Global and any enforcement proceeding to recover such gains must be brought against Level Global (or its successors) directly.

Third, because courts have routinely accepted the SEC's position that a disgorgement order is enforceable through contempt sanctions, *see, e.g., SEC v. Huffman*, 996 F.2d 800, 803 (5th Cir. 1993) (finding that a disgorgement order is enforceable by contempt because it is "more like a continuing injunction in the public interest than a debt"); *SEC v. Goldfarb*, 2012 U.S. Dist. e LEXIS 85628, at *10-17 (N.D. Cal. 2012) (contempt available), it would be grossly inequitable to require that Mr. Megalli fund, at the risk of contempt, a disgorgement amount corresponding to millions of dollars in gains he never personally realized.

Finally, it is important to note that, with respect to criminal forfeiture (the criminal analogue of civil disgorgement), applicable law has coalesced around the concept that forfeiture is confined to proceeds personally realized by a defendant, rather than those obtained by the



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investment fund for which he worked. *See, e.g., United States v. Contorinis*, 692 F.3d 136, 145-48 (2d Cir. 2012) (vacating criminal forfeiture order imposed on hedge fund portfolio manager because the subject proceeds had been acquired by the fund, rather than the defendant, and thus “the district court erred in ordering [the defendant] to forfeit funds that were never possessed or controlled by himself or others acting in concert with him”). Indeed, in connection with the criminal insider trading conviction of Level Global founder Anthony Chiasson in the Southern District of New York, the district court ordered that Chiasson personally forfeit only \$1,382,217 when the government’s evidence established to the jury’s satisfaction that he had generated approximately \$68 million in illicit profits for his fund based on illegal access to material, nonpublic information of Dell and Nvidia. (*See* Doc. 179, Brief for the United States, *United States v. Newman and Chiasson*, Case No. 13-1387 (2d Cir.), at 2 and 4).

Mr. Megalli Consents to a Reasonable Civil Monetary Penalty

Mr. Megalli understands that, per the injunction to which he will consent, he is exposed to the assessment of a civil monetary penalty under Exchange Act Section 21A. 15 U.S.C. § 77u-1. Mr. Megalli understands that the statutory maximum penalty for insider trading is potentially greater than the corresponding maximum penalty under Exchange Act Section 21(d)(3). *Compare id.* at § 77u-1(a)(2) and § 78u(d)(3)(B)(ii). Nonetheless, in light of the significant criminal penalties he already faces, coupled with his consent to a permanent injunction barring him from the securities industry, Mr. Megalli believes that a one-time civil penalty somewhere within the Tier II statutory maximum of \$50,000 per violation (*i.e.*, subject to the parties’ negotiation) would be appropriate.

Summary of Mr. Megalli’s Settlement Offer

Based on the foregoing, Mr. Megalli proposes to settle the above-referenced enforcement action through his consent (per the attached terms) to entry of a permanent injunction that, among other things, bars him from the securities industry in which he has spent the majority of his career. This is in addition to the penalties he faces in relation to the parallel criminal prosecution, including exposure to prison time, imposition of a criminal fine, and his existing satisfaction of \$50,000 in criminal restitution to Carter’s. Mr. Megalli further agrees to disgorge \$9,600 in compensation, plus prejudgment interest, associated with the subject trading activity. Finally, Mr. Megalli understands that his misconduct exposes him to a civil penalty, subject to the parties’ negotiation.



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Pursuant to Rule 83 of the Commission's Rules on Information and Requests, 17 C.F.R. § 200.83, Mr. Megalli hereby requests that the information contained in this letter and its enclosures not be disclosed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*, without advance notice to the undersigned pursuant to 17 C.F.R. § 200.83(d).

Thank you for your attention to this correspondence. Please feel free to contact me after you have reviewed it.

Very truly yours,

DLA Piper LLP (US)

/s/ Paul N. Monnin

Paul N. Monnin

PNM/jmb
Enclosures

cc: SEC Senior Trial Counsel Pat Huddleston, II (by e-mail w/ enclosures)
Mr. Mark Megalli (by e-mail w/ enclosures)
Zachary M. LeVasseur, Esq. (by e-mail w/ enclosures)

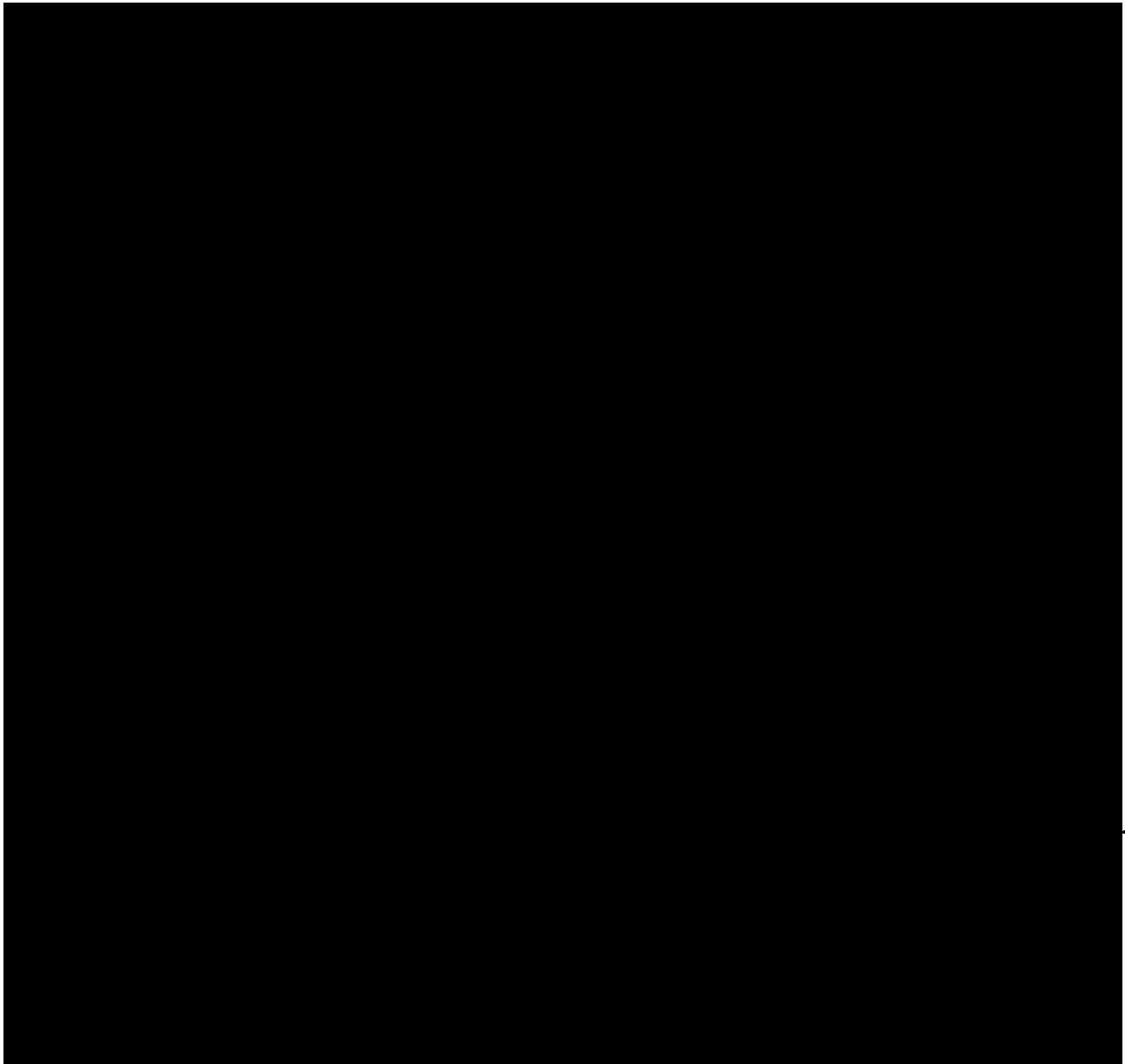
EXHIBIT 4



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CONFIDENTIAL SETTLEMENT





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Eleventh Circuit. See *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*).

Indeed, both the Eleventh Circuit and courts of the Northern District of Georgia continue to cite *Blatt* as controlling authority for the proposition that “[a district] court’s power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum would constitute a penalty assessment.” *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005) (quoting *Blatt*, 583 F.2d at 1335) (emphasis added); see also *SEC v. Miller*, 744 F. Supp. 2d 1325, 1342 (N.D. Ga. 2010) (same); *SEC v. Phoenix Telecom, LLC*, 231 F. Supp. 2d 1223, 1225 (N.D. Ga. 2001) (same).

Second, *Contorinis* appears ripe for *en banc* review by the full Second Circuit. As Judge Denny Chin explained in his dissent, the majority opinion in *Contorinis* is inconsistent with the separate Second Circuit panel ruling in Mr. Contorinis’ parallel criminal case, *United States v. Contorinis*, 692 F.3d 136, 145-48 (2nd Cir. 2012), holding that a defendant may not be ordered to forfeit funds that he never received or possessed. Notably, Judge Chin was also on the panel in the criminal appeal. Aside from this intra-circuit split, it is also worth noting that the inter-circuit split identified in *Contorinis* also makes the panel’s holding potentially subject to cert review by the U.S. Supreme Court.

Third, while the trial court order affirmed in *Contorinis* mandated the defendant’s personal disgorgement of \$7.2 million in actual profit the hedge fund had accrued as a result of his illegal trades (less any amount paid pursuant to criminal forfeiture), this figure did not include the additional \$5.3 million in losses avoided by the fund. See *Contorinis*, 2014 WL 593484, at *1-*2. Hence, *Contorinis* further bolsters our position, as set out in our February 17 letter, that Level Global’s avoided losses, which comprise by far the majority of the approximately \$3.2 million in gain at issue, should be excluded from disgorgement in Mr. Megalli’s case.

Finally, it is important to note that the *Contorinis* majority “[did] not conclude that district courts *must* impose disgorgement liability for insider trading upon wrongdoers when the gains accrue to innocent third parties, but rather that the district courts *may* elect to do so in appropriate circumstances.” *Id.* at *5 (emphasis in original). Disgorgement remains fundamentally an equitable remedy entrusted to the district court’s broad discretion. See *id.* (“It is well established that district courts have broad discretion to impose disgorgement”); see generally *SEC v. Lauer*, 478 Fed. Appx. 550, 557 (11th Cir. 2012) (“Disgorgement is an equitable remedy intended to prevent unjust enrichment”); *Miller*, 744 F. Supp. 2d at 1342



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(noting that “[t]he primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains,” and, as such, it is “remedial and not punitive”).

In Mr. Megalli’s case, equitable considerations dictate imposition of a substantially smaller disgorgement figure than that approved at the panel level in *Contorinis*. In contrast to Mr. Contorinis, Mr. Megalli did not have any equity stake in Level Global. Moreover, the subject Carter’s trades had almost no impact on Mr. Megalli’s personal compensation (approximately \$9,600, as opposed to Mr. Contorinis’ compensatory gain of \$427,875 as a result of his trades).

In conclusion, we see no need to alter the settlement offer proposed in our February 17 letter in light of the panel holding in *Contorinis*. To the extent you disagree, we welcome further discussion on this issue.

Pursuant to Rule 83 of the Commission’s Rules on Information and Requests, 17 C.F.R. § 200.83, Mr. Megalli hereby requests that the information contained in this letter and its enclosures not be disclosed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*, without advance notice to the undersigned pursuant to 17 C.F.R. § 200.83(d).

Thank you for your attention to this correspondence.

Very truly yours,

DLA Piper LLP (US)

/s/ Paul N. Monnin

Paul N. Monnin

PNM/jmb

cc: SEC Regional Trial Counsel M. Graham Loomis, Esq. (by e-mail)
Mr. Mark Megalli (by e-mail)
Zachary M. LeVasseur, Esq. (by e-mail)

EXHIBIT 5

From: Huddleston, Pat <HuddlestonP@SEC.GOV>
Sent: Wednesday, April 02, 2014 9:02 AM
To: Monnin, Paul; Loomis, Madison G.
Cc: LeVasseur, Zachary
Subject: RE: SEC v. Megalli, No. 1:13-CV-3783-AT: Consent

Hi, Paul:

We have considered what you proposed. Our position is that what we sent you last is the best we can do. Your client can sign it, as is, or file an answer to the complaint.

Thanks,

Pat

Pat Huddleston
Senior Trial Counsel
U.S. Securities and Exchange Commission
950 East Paces Ferry, N.E., Suite 900
Atlanta, GA 30326-1382

404-842-7616

From: Monnin, Paul [mailto:Paul.Monnin@dlapiper.com]
Sent: Tuesday, April 01, 2014 9:44 AM
To: Loomis, Madison G.; Huddleston, Pat
Cc: LeVasseur, Zachary
Subject: FW: SEC v. Megalli, No. 1:13-CV-3783-AT: Consent

Just following up on the consent. Could you let me know where we are?

From: Monnin, Paul
Sent: Tuesday, March 25, 2014 11:04 AM
To: 'Loomis, Madison G.'; Huddleston, Pat
Cc: LeVasseur, Zachary; Burr, Jennifer
Subject: RE: SEC v. Megalli, No. 1:13-CV-3783-AT: Consent

Thanks, Graham. I don't think the policy regarding criminal convictions is an issue here because the draft consent Pat sent me a few weeks ago directs that Megalli admit several facts (set forth in paragraphs 19, 21 and 43 of your complaint) that weren't part of his guilty plea.

Paragraph 19 alleges that Level Global acquired a \$9 million position in Carter's stock (350,000 shares) based on positive earnings information shared by Martin. We don't dispute that Martin shared Carter's information with Megalli in September 2009, but Megalli also used other analysis and data independent of Martin to recommend that Level Global amass this

position. Our proposed edit to the consent merely clarifies that Martin's information formed part of the rationale to acquire Carter's shares.

Paragraph 43 alleges that Megalli "bragged" to his colleagues about being "max short" after covering the Carter's short positions in July 2010. Mr. Megalli has always denied, including to the government, that the "max short" reference had anything to do with trading on inside information from Martin. Rather, Megalli and one or more of his colleagues had a common former boss named Seth Turkeltaub. Mr. Turkeltaub frequently used expressions like "max short" and "max long" to characterize securities positions, which his former subordinates, including Mr. Megalli, thought was ridiculous, labeling them "Turkisms." The "max short" reference was thus intended solely as a joke and shouldn't be taken out of context to connote boastfulness.

Finally, Mr. Megalli has consented to each of the other complaint allegations related to the October 2009 sales and July 2010 short sales of Carter's stock, with the exception of the last two sentences of paragraph 21, which are also inconsistent with his guilty plea. As I've explained to Pat, during his guilty plea hearing, Megalli denied that Martin called him about an accounting issue at Carter's on October 23, 2009. Rather, and as Mr. Megalli conveyed under oath to Judge Story at the time of his guilty plea, when Megalli and Martin spoke on October 23, Megalli advised Martin that he was selling Carter's shares and Martin confirmed this to be a good idea. Megalli further noted for Judge Story that the advice to sell was a change of course for Martin, and that Megalli consciously avoided delving into Martin's basis for this advice. In accepting Mr. Megalli's guilty plea, Judge Story concluded that such conscious avoidance rendered Megalli criminally liable.

I've attached the entire guilty plea hearing transcript for your reference. The relevant colloquy between Mr. Megalli and Judge Story regarding the October 23 phone call is at pages 22-27.

Hopefully, this once again clarifies our proposed edits to the consent Pat previously forwarded – each of which is consistent with the record of Mr. Megalli's guilty plea and, moreover, is consistent with Mr. Megalli's civil liability in connection with the SEC's enforcement action.

Feel free to let me know if you have any questions.

Paul

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From: Loomis, Madison G. [mailto:LoomisM@sec.gov]
Sent: Tuesday, March 25, 2014 10:01 AM
To: Monnin, Paul; Huddleston, Pat
Cc: LeVasseur, Zachary; Burr, Jennifer
Subject: RE: SEC v. Megalli, No. 1:13-CV-3783-AT: Consent

Paul:

I haven't looked closely at your draft consent, but based on your email I don't think we can accept it. Our general policy is that defendants neither admit nor deny the allegations in the complaint. When the defendant has pled guilty in a parallel criminal case, he must admit those allegations in our complaint to which he pled guilty. If there are additional allegations in our complaint that were not in the criminal case, we revert back to the standard "no admit or deny" policy for those allegations. From your email, it looks like you are trying to have Megalli deny the additional allegations in our complaint.

If your client cannot agree with our policy, then I think you should file an answer and we can proceed from there.

Let me know if you have any questions.

M. Graham Loomis
Regional Trial Counsel
Atlanta Regional Office
404-842-7622

From: Monnin, Paul [mailto:Paul.Monnin@dlapiper.com]
Sent: Tuesday, March 25, 2014 9:38 AM
To: Huddleston, Pat
Cc: Loomis, Madison G.; LeVasseur, Zachary; Burr, Jennifer
Subject: SEC v. Megalli, No. 1:13-CV-3783-AT: Consent

Pat,

Attached is a clean and black-lined liability consent in the above-referenced enforcement matter that reflects Mr. Megalli's proposed changes to the last draft you sent me. As we discussed, there are two principal edits.

The first is with respect to paragraph 19 of the complaint, which alleges in essence that Level Global amassed a 350,000 share position in Carter's stock in September 2009 based on positive earnings information Martin shared with Megalli. While Mr. Megalli concedes that he

directed that Level Global purchase Carter's shares based *in part* on his communications with Martin, he maintains that other facts and analysis independent of Martin also played a significant role. The revised consent reflects that, with respect to paragraph 19, Mr. Megalli admits that Martin's positive earnings information was merely part of the rationale for acquiring Carter's stock, rather than the entire basis for the position.

Second, as noted in our earlier submission disclosing Mr. Megalli's factual objections to the SEC's complaint (see attached), Mr. Megalli's reference to being "max short" in instant messages following the July 2010 short sales and cover of Carter's shares was *not* intended as bragging, but rather was a sarcastic joke directed to overly dramatic phrasing a common boss of Mr. Megalli's and his former colleagues tended to use. In other words, the reference to "max short" does not reflect reliance on material non-public information to execute the subject trades.

Please feel free to let me know if you have any questions or comments regarding the attached.

Thanks,

Paul

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E paul.monnin@dlapiper.com



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EXHIBIT 6

Defendant's initials _____

C.F.R. § 240.10b-5]. In connection with that plea, Defendant admitted certainthe allegations in paragraphs 19 through 24 and paragraphs 38 through ~~42~~43 of the Commission's complaint in this matter ("complaint"), as follows:

- With respect to the allegations of paragraph 19 of the complaint, Defendant admitted that he directed the purchase of Carter's stock based in part on certain positive earning information he received from Eric Martin ("Martin");
- Defendant admitted the allegations in paragraphs 20, 22, and 23 and paragraphs 38 through 42 of the complaint;
- With respect to the allegations in paragraph 21 of the complaint, Defendant admitted that he spoke to Martin in a telephone conversation on October 23, 2009, and that Martin indicated during that conversation that he thought it would be a good idea to sell Carter's stock, but Defendant denied that Martin specifically discussed an accounting delay at Carter's;
- Defendant admitted the allegations in paragraph 24 of the complaint, insofar as Level Global's avoided losses were \$2,034,000, not \$2,110,910 as alleged in the complaint.

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+ Aligned

Defendant's initials _____

Defendant's admissions ~~which~~ are set out in the transcript of his plea allocution, attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Mark Megalli*.

3. Admitting the allegations in paragraphs ~~19, 20, 22, 23, and 38 through 42~~ through 24 and paragraphs ~~38 through 43~~ of the complaint and partially admitting the allegations in paragraphs 19, 21 and 24 as set forth above, and without admitting or denying the remaining allegations of the complaint, Defendant hereby consents to the entry of the *Order of Permanent Injunction As To Defendant Mark Megalli* (the "Order") in the form attached hereto as Exhibit B (the "Order") and incorporated by reference herein, which, among other things, permanently restrains and enjoins Defendant from violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] ("Securities Act") and 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].

4. Defendant agrees that the Court shall order disgorgement of ill-gotten gains and prejudgment interest thereon; that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission;

Defendant's initials _____

and that prejudgment interest shall be calculated from the dates of insider trades alleged in the complaint, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that, upon motion of the Commission, the Court shall determine whether a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] is appropriate and, if so, the amount of the penalty. Defendant further agrees that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the complaint; (b) Defendant may not challenge the validity of this Consent or the Final Judgment; (c) solely for the purposes of such motion, the allegations of the complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate nonparties.

Defendant's initials _____

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Order.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Order with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Order and agrees that entry of the Order by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Order is filed with the Clerk of the

Defendant's initials _____

Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Order.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he

Defendant's initials _____

shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations."

As part of Defendant's agreement to comply with the terms of Section 202.5(e),

Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any admitted allegation in paragraphs 19 and 24 and 38 through 42 of the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any

public statement to the effect that Defendant does not admit the allegations set forth above in paragraphs 19 through 24 and 38 through 42 of the complaint, or

that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent,

Defendant hereby withdraws any papers filed in this action to the extent that they

deny the admitted ~~any~~ allegations of in paragraphs 19 through 24 and 38 through 42

Defendant's initials _____

of the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty, or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree, or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Order and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant's initials _____

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Order.

Dated: February __, 2014.

Mark Megalli

On _____, 2014, _____, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

|

Notary Public
Commission expires:

Approved as to form:

|

Defendant's initials _____

Attorney for Defendant

← **Formate
paragraph**

EXHIBIT 7



DLA Piper LLP (US)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, Georgia 30309-3450
www.dlapiper.com

Paul N. Monnin
paul.monnin@dlapiper.com
T 404.736.7804
F 404.682.7800

**CONFIDENTIAL SETTLEMENT
COMMUNICATION SUBJECT TO FRE 408**





Pat Huddleston II, Esq.
SEC v. Megalli, No. 1:13-CV-3783-AT
April 14, 2014
Page Two

plea allocation, which led Judge Story to accept his guilty plea and to convict him of the government's insider trading conspiracy charge.

Indeed, it would appear given Judge Totenberg's entry of a permanent injunction in the *Posey* enforcement proceeding that, with little or no additional effort on the Commission's part, Mr. Megalli's liability consent could be similarly structured. Namely, Mr. Megalli's consent would reference his guilty plea and conviction on the government's criminal information charging him with participation in a criminal insider trading conspiracy, and the factual basis for Judge Totenberg's permanent injunction would be set forth in the transcript of Mr. Megalli's guilty plea hearing, incorporated by reference in his consent. In short, given Judge Story's acceptance of both Mr. Posey's and Mr. Megalli's criminal pleas and Judge Totenberg's entry of a permanent injunction against Mr. Posey based effectively on the transcript of his guilty plea, there appears to be no reason to believe Judge Totenberg would fail to enter a permanent injunction against Mr. Megalli on the same basis.

I note that the Commission's rejection of Mr. Megalli's last consent mark-up -- which, as opposed to Mr. Posey's consent, was based on a structure obligating Mr. Megalli to admit certain of the Commission's civil allegations verbatim -- occurred on April 2, after the Commission had already obtained and filed the enclosed consent from Mr. Posey. If there is a rational basis for requiring that Mr. Megalli answer and proceed to defend a civil complaint when he has already been adjudicated criminally liable by Judge Story, please advise. If not, Mr. Megalli remains willing to consent to a permanent injunction per the form of consent entered by Mr. Posey and approved by Judge Totenberg.

Thank you for your attention to this correspondence. Please feel free to contact me after you have reviewed it.

Very truly yours,

DLA Piper LLP (US)

/s/ Paul N. Monnin

Paul N. Monnin

PNM/jmb
Enclosures



Pat Huddleston II, Esq.
SEC v. Megalli, No. 1:13-CV-3783-AT
April 14, 2014
Page Three

cc: SEC Regional Trial Counsel M. Graham Loomis (by e-mail w/ enclosures)
Mr. Mark Megalli (by e-mail w/ enclosures)
Zachary M. LeVasseur, Esq. (by e-mail w/ enclosures)

EXHIBIT 8

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

UNITED STATES OF AMERICA,)
Plaintiff,)
) Criminal Information
-vs-) No. 1:13-CR-442-RWS
)
MARK MEGALLI,)
Defendant.)

Transcript of the Sentencing Proceedings
Before the Honorable Richard W. Story,
United States District Court Judge
July 8, 2014
Atlanta, Georgia

APPEARANCES OF COUNSEL:

On behalf of the
Government: David M. Chaiken,
Stephen H. McClain,
Assistant United States Attorneys

On behalf of
the Defendant: Paul Monnin, Esq.

Reported stenographically by:
Amanda Lohnaas, RMR, CRR
Official Court Reporter
United States District Court
Atlanta, Georgia
(404) 215-1546

1 they've done.

2 We are somewhat hamstrung. We're obviously very
3 cognizant of what the Court has done so far today, but,
4 nevertheless, we are authorized only to recommend a sentence at
5 the low end of the guidelines, which I believe is 41 months in
6 this case, and we believe that is a reasonable sentence. If
7 the Court is inclined to go lower than that we think 24 months
8 would be an absolute basement for that in light of the fact
9 that -- given all of the facts and circumstances of the
10 offense. Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. MONNIN: Thank you, Judge. I do have some
13 witnesses. I just wanted to address one point briefly that
14 Mr. Chaiken had raised and I want to thank him for his
15 professionalism, thank him for his statements and sentiments to
16 the Court.

17 This has been an involved process. The Court, I
18 know, has taken a look at our submissions. I know they're
19 lengthy. I know that they're involved and I know the Court has
20 read and wrestled with all of them.

21 The one point that I want to make before I start
22 bringing witnesses up here is that the SEC settlement is
23 absolutely coming, Judge. In fact, I spoke with
24 Mr. Huddleston, who is still here in the courtroom, and said in
25 light of my client's sentencing memorandum, which as succinctly

1 as possible says he did it, I mean in relation to the October
2 2009 trades, you were here for purposes of that Rule 11
3 colloquy, and my client said, yeah, absolutely, I traded and
4 I'm a securities professional and I knew that the information
5 that I was getting, that there were issues with it and I
6 probably should have stepped across that threshold and pursued
7 things further at that point, I'm just too intelligent of a
8 person, you know, there's a lot of money that was at stake, not
9 to have done that.

10 Conscious avoidance, Judge, is equally as culpable as
11 actual knowledge but I'm here to tell you that we also have
12 actual knowledge in this case. I do not dispute -- and I've
13 had many conversations with the government about this -- that
14 if exhibits appeared on the screen that are consistent with
15 what we see in the PSR in terms of after-hours instant
16 messaging, electronic mail, that on its face bespeaks inside
17 information and the passage of inside information, there really
18 isn't a defense to that. There's mitigation with it, which is
19 what I've tried to explain to the Court in terms of our PSR
20 objections, but there's not a liability defense to it.

21 And the point that I'm trying to make there is that
22 because there's no liability defense to it and because we're on
23 record in a plea hearing, because we're on record in a
24 sentencing memorandum, my client is out of this industry,
25 Judge, you know that.

1 We're going to work through a settlement with the SEC
2 that is going to involve permanent debarment from the industry.
3 This is an industry that my client has worked in for,
4 effectively, his adult life, Judge.

5 And the other component of this, and again I know
6 that I'm going to be calling witnesses up here and then I'll
7 briefly cap things off because I know that the Court has made
8 some decisions already today about things, the other part of
9 this is that disgorgement with the SEC is absolutely a huge
10 liability factor for my client and, Judge, that's as recently
11 as 2014.

12 The state of the law prior to the Second Circuit
13 returning a decision called *SEC v. Contorinis* was that where
14 you have an individual trader who uses institutional trading
15 accounts to trade there is an argument there that disgorgement
16 goes only so far as the individual trader's personal gain. And
17 you've seen what our position is with respect to personal gain.
18 His variable compensation was based on a percentage of Level
19 Global's incentive fees, and I've laid that out for the court.

20 Literally on the day that we were presenting that
21 type of argument to Mr. Huddleston and Graham Loomis at the
22 SEC, the Second Circuit came back with *SEC v. Contorinis* and
23 said an individual trader can be liable in disgorgement for
24 institutional gain.

25 And, Judge, the important consideration there, and

1 why I'm going to be asking for leniency as a result of that, is
2 that we fully intend to litigate that issue, I don't want the
3 Court not to understand that, and that issue is going to be in
4 front of Judge Totenberg. But the Second Circuit opinion
5 establishes that it could be likely that Mr. Megalli is facing
6 economic liability in disgorgement of \$3.17 million. And the
7 way that the SEC is able to collect on disgorgement is through
8 contempt. It's an equitable remedy. So what we're facing is
9 that the burden is entirely on us to basically disprove
10 disgorgement liability and then we're facing a contempt remedy
11 when we're dealing with that.

12 So I think as you're factoring in to your decision
13 process where Mr. Megalli should end up, that should be a
14 significant component of this. Jail is not the be-all, end-all
15 of deterrence here. And as I mentioned, I'll sum that up in a
16 moment but I just wanted to let the Court know that we are
17 going to be settling with the SEC, we will be litigating
18 disgorgement. I suspect that that is going to be happening
19 fairly quickly here.

20 With that, I just would like to recognize, I believe
21 that most, other than the Carter's personnel and a few folks
22 from, I believe, your staff, Judge, and the U.S. Attorney's
23 Office, everyone else here on Mr. Megalli's side of the
24 courtroom are friends and family of Mr. Megalli's and they
25 actually flew down here. The vast majority of them came down

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT:
NORTHERN DISTRICT OF GEORGIA:

I hereby certify that the foregoing pages, 1 through 33, are a true and correct copy of the proceedings in the case aforesaid.

This the 21st day of July, 2014.

/s/ Amanda Lohnaas

Amanda Lohnaas, CCR-B-580, RMR, CRR
Official Court Reporter
United States District Court

EXHIBIT 9

From: Huddleston, Pat <HuddlestonP@SEC.GOV>
Sent: Wednesday, August 13, 2014 11:13 AM
To: Monnin, Paul
Cc: LeVasseur, Zachary
Subject: RE: Megalli

Hi, Paul:

Let's get your client deposed before he reports to prison. Please shoot me some dates as soon as possible.

Thanks,

Pat

Pat Huddleston
Senior Trial Counsel
U.S. Securities and Exchange Commission
950 East Paces Ferry, N.E., Suite 900
Atlanta, GA 30326-1382

404-842-7616

From: Monnin, Paul [mailto:Paul.Monnin@dlapiper.com]
Sent: Wednesday, July 23, 2014 4:31 PM
To: Huddleston, Pat
Cc: Loomis, Madison G.; LeVasseur, Zachary; Mattox, Christina R.
Subject: RE: Megalli

Pat,

As promised, attached is Mr. Megalli's sentencing memorandum, which, at pages 18-25 and 29-38, lays out his culpability for the Carter's trades at issue. Per the sentencing memo and the transcript of his guilty plea hearing (which is liberally quoted in the sentencing memo), Mark has maintained from the time of his guilty plea through his criminal sentencing that Martin's tipping was an important factor, although not the sole factor, leading to the subject trades. In addition, Mark has consistently maintained throughout his criminal prosecution that Martin did not tip him as to an accounting delay at Carter's on October 23, 2009, but rather that he traded based on conscious avoidance of the basis for Martin's recommendation that Level Global sell its Carter's position. As a result, Mr. Megalli does not – and cannot – deny that he traded Carter's shares based on actual knowledge of inside information in July 2010 and conscious avoidance as to the basis for Martin's sale recommendation in October 2009.

That said, he is unable to execute the Consent as last presented by the SEC because it requires his admission, contrary to the foregoing, that Level Global amassed a 350,000 share position in

Carter's stock in September 2009 based *solely* on Martin's tips and, further, that Mr. Megalli sold Carter's stock in October 2009 based on *actual knowledge* that Carter's intended to delay its earnings announcement.

Because Mr. Megalli's admissions, as stated at his guilty plea hearing and also set forth in his sentencing memorandum, were sufficient not only to justify his criminal conviction but also to precipitate a custodial sentence from Judge Story, we again request that the Staff consider entry of a Consent (like the consent entered by Richard Posey) stating that it is consistent with the guilty plea – and sentencing – admissions Mark has made. Alternatively, we believe the proposed edits to the Consent previously disclosed to the Staff are consistent with these same guilty plea and sentencing admissions.

To be clear, Mr. Megalli has and will continue to admit his culpability for trading on inside information. Such admission, however, should be consistent with the facts he admitted in pleading guilty and at sentencing.

Happy to discuss if you'd like.

Paul

Paul N. Monnin

T +1 404.736.7804

F +1 404.682.7804

M + [REDACTED]

E paul.monnin@dlapiper.com



DLA Piper LLP (US)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, Georgia 30309-3450
United States
www.dlapiper.com

From: Huddleston, Pat [<mailto:HuddlestonP@SEC.GOV>]

Sent: Friday, July 18, 2014 4:31 PM

To: Monnin, Paul

Cc: Loomis, Madison G.

Subject: Re: Megalli

Thanks, Paul.

Pat

From: Monnin, Paul [<mailto:Paul.Monnin@dlapiper.com>]

Sent: Friday, July 18, 2014 04:15 PM

To: Huddleston, Pat

Cc: LeVasseur, Zachary <Zachary.LeVasseur@dlapiper.com>
Subject: RE: Megalli

Pat,

Thanks for reaching out. I was up in New York on a case during the middle part of this week. As you heard, Judge Story released Mr. Megalli's passports for a final trip to Egypt to see his grandmother. He's there this week. I believe he gets back over the weekend. I've sent him a note to talk about the consent as soon as he gets back. I'll circle back with you ASAP.

Thanks,

Paul

From: Huddleston, Pat [<mailto:HuddlestonP@SEC.GOV>]
Sent: Wednesday, July 16, 2014 11:09 AM
To: Monnin, Paul
Subject: Megalli

Hi, Paul:

I am writing to follow up after the sentencing hearing last week. Given your representations to the Court, do I understand that your client is willing to sign the Consent in the form last presented to him? Please let me know. If not, we will get busy with discovery.

Best regards,

Pat

Pat Huddleston
Senior Trial Counsel
U.S. Securities and Exchange Commission
950 East Paces Ferry, N.E., Suite 900
Atlanta, GA 30326-1382

404-842-7616

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EXHIBIT B

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

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

DOCKET NO. 1:13-CV-03783-AT

-VS-

MARK MEGALLI,

DEFENDANT.

TRANSCRIPT OF HEARING PROCEEDINGS
BEFORE THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT JUDGE
TUESDAY, OCTOBER 27, 2015

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

PAT HUDDLESTON, II, ESQ.

ON BEHALF OF THE DEFENDANT:

PAUL MONNIN, ESQ.
ERIC DAVID STOLZE, ESQ.

ELIZABETH G. COHN, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

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WITNESS	PAGE
MARK MEGALLI	
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1 (ATLANTA, GEORGIA; OCTOBER 27, 2015, AT 1:50 P.M. IN
2 OPEN COURT.)

3 THE COURT: GOOD AFTERNOON. PLEASE HAVE A SEAT.

4 WE'RE HERE IN SEC VERSUS MARK MEGALLI, CIVIL ACTION
5 NUMBER 1:13-CV-3783.

6 GOOD AFTERNOON, COUNSEL. THANK YOU FOR PERSISTING.

7 AND, MR. MEGALLI? GOOD TO SEE YOU.

8 WE'RE GOING TO BE LOOKING AT THE CIVIL PENALTY ISSUE
9 AND THE DISBARMENT ISSUE. IS THERE ANYTHING ELSE THAT WE'RE
10 GOING TO HAVE TO -- DISGORGEMENT AS WELL. GREAT.

11 ANYTHING ELSE?

12 MR. HUDDLESTON: WE HAVEN'T PLED FOR DEBARMENT, AND
13 SO THAT'S NOT PART OF THE CASE.

14 THE COURT: THAT'S NOT PART OF THE CASE.

15 MR. HUDDLESTON: NO, YOUR HONOR.

16 MR. MONNIN: YOUR HONOR, WHAT I UNDERSTAND IS THAT
17 THE SEC HAS PLED AN INJUNCTION AGAINST FUTURE VIOLATIONS, AS
18 OPPOSED TO AN INDUSTRY BAR.

19 MR. HUDDLESTON: RIGHT, CORRECT.

20 THE COURT: ALL RIGHT. JUST EXPLAIN THAT AGAIN WHAT
21 YOU JUST SAID. AND IF YOU COULD JUST GET A LITTLE CLOSER TO
22 THE MICROPHONE SO THAT --

23 MR. HUDDLESTON: CERTAINLY, YOUR HONOR.

24 WHAT WE PLED FOR FIRST IS A PERMANENT INJUNCTION
25 AGAINST FUTURE VIOLATIONS.

1 SECONDLY, FOR DISGORGEMENT AND PREJUDGMENT INTEREST.
2 AND FINALLY FOR CIVIL PENALTIES.

3 THE COURT: OKAY. SO YOU'RE NOT LOOKING FOR
4 DEBARMENT.

5 MR. HUDDLESTON: THAT IS CORRECT, YOUR HONOR.

6 THE COURT: ALL RIGHT. I MISUNDERSTOOD THAT, THEN.
7 ALL RIGHT. VERY GOOD. WELL, LET ME HEAR FROM THE
8 GOVERNMENT FIRST.

9 MR. HUDDLESTON: IF I MIGHT, YOUR HONOR, I WOULD
10 CERTAINLY YIELD THE FLOOR TO THE DEFENDANTS. THEY PREPARED A
11 PRESENTATION WHICH WILL DRAW OUT ALL THE FACTS.

12 THE COURT: THAT'S FINE. THAT'S FINE.

13 MR. HUDDLESTON: OKAY.

14 MR. MONNIN: YES, YOUR HONOR. WE'VE DONE THAT.

15 AND, JUST FOR THE RECORD, I'VE GIVEN YOUR LAW CLERK,
16 MR. BARTHOLOMEW?

17 THE COURT: RIGHT.

18 MR. MONNIN: CORRECT. AND THAT MR. BARTHOLOMEW HAS
19 THE ORIGINAL EXHIBITS 1 THROUGH 7 THAT THE SEC HAS STIPULATED
20 TO.

21 THE COURT: ALL RIGHT.

22 MR. MONNIN: IN LIGHT OF THAT STIPULATION, I GUESS
23 I'LL JUST GO AHEAD AND MOVE THOSE. AND I'LL CERTAINLY HAVE MY
24 CLIENT TESTIFY ABOUT THE FOUNDATION AND WHAT THEY RELATE TO.

25 THE COURT: ALL RIGHT.

1 MR. HUDDLESTON: NO OBJECTIONS.

2 THE COURT: VERY GOOD. THEY ARE ADMITTED, THEN.

3 MR. MONNIN: AND I ALSO HAVE A SLIDE DECK THAT IS IN
4 THE POCKET. YOUR HONOR HAS A BINDER OF THE EXHIBITS. AND WE
5 HAVE A SLIDE DECK AS WELL THAT BOTH THE COURT AND MR.
6 BARTHOLOMEW --

7 THE COURT: AS I UNDERSTAND, MINE ARE COPIES WHERE I
8 CAN WRITE ON MINE.

9 MR. MONNIN: CORRECT.

10 THE COURT: ALL RIGHT. VERY GOOD. BECAUSE I'VE BEEN
11 KNOWN TO WRITE ON ORIGINALS AND MAKE EVERYONE'S LIFE MISERABLE.

12 MR. MONNIN: NO, JUDGE. WE CAME PREPARED.

13 AND I HAVE EXPLAINED TO MY CLIENT THAT THE PURPOSE OF
14 -- HE CERTAINLY UNDERSTANDS WHAT THE PURPOSE OF THE HEARING IS.
15 HE ABSOLUTELY UNDERSTANDS THAT YOU MAY BE ASKING HIM QUESTIONS
16 AS WELL --

17 THE COURT: ALL RIGHT.

18 MR. MONNIN: -- WITH REGARD TO HIS COMPENSATION AND
19 THE BENEFITS HE RECEIVED FROM LEVEL GLOBAL. SO IT WILL BE
20 OBVIOUS WHERE WE'RE HEADED.

21 WHAT WE'RE REALLY TRYING TO DO, JUDGE, IS THAT WE'RE
22 TALKING ABOUT A TWO-YEAR COURSE OF CONDUCT HERE FROM 2009 TO
23 2010. AND WHAT I AM GOING TO HAVE MY CLIENT TESTIFY ABOUT IS
24 THE COMPENSATORY BENEFITS THAT HE RECEIVED CONTRACTUALLY FROM
25 HIS EMPLOYER, LEVEL GLOBAL, DURING THAT TIME.

1 ONCE WE GET THROUGH THOSE COMPENSATORY BENEFITS, I'M
2 THEN GOING TO HAVE MY CLIENT, THROUGH HIS TESTIMONY, ILLUSTRATE
3 WHAT WE BELIEVE IS THE IMMATERIALITY OF THE CARTER'S TRADING IN
4 2009. WHAT WE'RE TALKING ABOUT IS OCTOBER OF 2009, THE SALE OF
5 CARTER'S RELATED -- CARTER'S STOCK IN OCTOBER 2009, OCTOBER
6 26TH OF 2009, JUDGE.

7 AND THE OTHER SALES OR THE OTHER SECURITIES TRADING
8 THAT WE'RE TALKING ABOUT IS JULY 2010, SHORT SALES DURING THAT
9 PERIOD OF TIME. SO WE'RE GOING TO ELICIT THE COMPENSATORY
10 BENEFIT THAT MY CLIENT RECEIVED ASSOCIATED WITH THE 2009
11 TRADES, OR TRADE, WHICH WE BELIEVE THERE WAS REALLY NO
12 COMPENSATORY BENEFIT WHATSOEVER TO MY CLIENT DURING THAT TIME.
13 AND THEN WE'RE GOING TO MOVE INTO THE 2010 TIME FRAME, AND
14 WE'RE GOING TO SHOW THE COURT THAT THERE WAS A PROFIT THAT WAS
15 MONETIZED, IF YOU WILL, DURING THAT TIME FRAME IN JULY 2010.

16 BUT THE AMOUNT OF THE PROFIT, WHEN IT'S COMPARED TO
17 THE OVERALL PROFITABILITY OF THE HEDGE FUND WHERE MY CLIENT WAS
18 EMPLOYED, THAT THAT OVERALL PROFITABILITY DWARFS THE PROFITS OR
19 PROCEEDS THAT MY CLIENT REALIZED -- OR NOT MY CLIENT REALIZED,
20 THAT THE HEDGE FUND REALIZED FROM THE TRADING ACTIVITY IN
21 ISSUE.

22 SO WE'D EXPECT THAT, HOPEFULLY, WE SHOULD BE MAYBE
23 ABOUT 45 MINUTES OR SO.

24 THE COURT: ALL RIGHT.

25 MR. MONNIN: AND THEN WE'LL YIELD TO THE SEC.

1 AND SO WITH THAT, I'LL CALL MARK MEGALLI.

2 THE COURTROOM DEPUTY: MR. MEGALLI, PLEASE RAISE YOUR
3 RIGHT HAND.

4 MARK MEGALLI,
5 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
6 FOLLOWS:

7 THE COURTROOM DEPUTY: THANK YOU. PLEASE BE SEATED.

8 DIRECT EXAMINATION

9 BY MR. MONNIN:

10 Q. MR. MEGALLI, COULD YOU PLEASE GIVE THE COURT A SENSE OF
11 YOUR, JUST STARTING OFF, YOUR EDUCATIONAL BACKGROUND?

12 A. YES. SURE. SO I ATTENDED YALE UNIVERSITY AS AN
13 UNDERGRAD. I GRADUATED IN 1994, MAJORED IN POLITICAL SCIENCE.
14 GRADUATED PHI BETA KAPPA AND MAGNA CUM LAUDE AND THEN ATTENDED
15 YALE LAW SCHOOL AND THE YALE SCHOOL OF MANAGEMENT AND RECEIVED
16 A J.D. AND MBA DEGREE IN 1999.

17 Q. DID YOU PASS THE BAR?

18 A. I PASSED THE BAR IN NEW YORK, YES.

19 Q. DID YOU EVER PRACTICE LAW?

20 A. ONLY AS A 2L. IN MY 2L SUMMER I WORKED AT DEBEVOISE AND
21 PLIMPTON IN NEW YORK FOR ABOUT JUST THE SUMMER.

22 Q. SO YOUR CAREER HAS BEEN MORE FOCUSED ON FINANCIAL SERVICES
23 IN THE HEDGE FUND INDUSTRY?

24 A. CORRECT. WELL, WHEN I GRADUATED FROM --

25 THE COURT: LET ME INTERRUPT YOU FOR ONE SECOND.

1 I HAVE CASEVIEW HERE.

2 (WHEREUPON, AN OFF-THE-RECORD DISCUSSION WAS HAD.)

3 THE COURT: ALL RIGHT. GO AHEAD, CONTINUE.

4 MR. MONNIN: THANK YOU, JUDGE.

5 Q. (BY MR. MONNIN) SO, MR. MEGALLI, I THINK THAT WE WERE TO
6 THE POINT WHERE YOU WERE TALKING ABOUT WHEN YOU ENTERED THE
7 FINANCIAL SERVICES INDUSTRY.

8 A. RIGHT. SO AFTER GRADUATE SCHOOL, I BEGAN MY CAREER REALLY
9 AT MCKINSEY AND COMPANY AND WORKED AS A MANAGEMENT CONSULTANT
10 IN THE FINANCIAL SERVICES FIELD FOR ABOUT FOUR YEARS FROM '99
11 UNTIL 2003.

12 AND THEN STARTING IN 2003, I HAD A CAREER CHANGE AND ENDED
13 UP STARTING TO WORK AT A HEDGE FUND ON WALL STREET AND ENDED UP
14 WORKING FOR A FEW DIFFERENT HEDGE FUNDS FROM 2003 UNTIL A
15 COUPLE OF YEARS AGO.

16 Q. JUST SO THE COURT IS AWARE OF THIS, HOW OLD ARE YOU
17 CURRENTLY?

18 A. FORTY-THREE YEARS OLD.

19 Q. AND YOU STARTED IN THE HEDGE FUND INDUSTRY ABOUT 12 YEARS
20 AGO?

21 A. ABOUT 12 YEARS AGO.

22 Q. TAKE THE COURT FORWARD FROM WHEN YOU FIRST GOT INTO THE
23 HEDGE FUND INDUSTRY TO THE POINT WHERE YOU WERE THINKING ABOUT
24 WORKING WITH LEVEL GLOBAL.

25 A. SURE. OKAY. SO MY FIRST JOB WAS WORKING FOR A COMPANY

1 CALLED JOHN LEVIN AND COMPANY. AND I WAS HIRED TO BE AN
2 ANALYST FOR ONE OF THEIR HEDGE FUNDS THERE. AND THEY WANTED ME
3 TO SPECIALIZE IN THE CONSUMER DISCRETIONARY SPACE. THE
4 CONSUMER DISCRETIONARY SPACE BASICALLY IS COMPRISED OF THE
5 RETAILERS, THE RESTAURANTS, GAMING COMPANIES, LODGING
6 COMPANIES, THINGS THAT CONSUMERS SPEND DISCRETIONARY DOLLARS
7 ON. AND SO THAT WAS THE SECTOR THAT I REALLY STARTED WITH AND
8 ENDED UP SPENDING MY WHOLE CAREER SPECIALIZING IN. AND THAT
9 WOULD INCLUDE APPAREL AND FOOTWEAR-TYPE COMPANIES.

10 SO I STARTED WORKING AT JOHN LEVIN AND COMPANY IN '03,
11 ENDED UP MOVING TO A DIFFERENT COMPANY IN AROUND, OH, END OF
12 '07, BEGINNING OF '08 CALLED BUCKINGHAM CAPITAL. AND
13 BUCKINGHAM CAPITAL SPECIALIZED IN THE CONSUMER DISCRETIONARY
14 SECTOR. AND THAT WAS A BIG PART OF WHY THEY RECRUITED ME TO GO
15 IN AND SORT OF BE A JUNIOR PORTFOLIO MANAGER FOR THEM.

16 SO I HAD BEEN WORKING THERE FOR ABOUT A YEAR AND A HALF
17 WHEN I WAS CONTACTED BY LEVEL GLOBAL IN THE SUMMER OF 2009.
18 AND LEVEL -- GO AHEAD.

19 Q. MR. MEGALLI, LET ME JUST STOP YOU THERE. BRIEFLY TELL THE
20 COURT WHAT YOUR JOB RESPONSIBILITIES WERE AT JOHN LEVIN. HOW
21 MUCH MONEY DID YOU MANAGE OR HAVE INVESTMENT DISCRETION OVER,
22 THINGS LIKE THAT?

23 A. SO REALLY JOHN LEVIN HAD TWO PIECES TO IT. THE FIRST HALF
24 OF THE TIME THAT I WORKED THERE WAS FOR A HEDGE FUND, HEDGE
25 FUND CALLED SR CAPITAL. AND I REALLY DIDN'T HAVE MUCH

1 DISCRETION. I HAD VIRTUALLY NO DISCRETION THERE. SO I WAS
2 REALLY JUST A CONSUMER ANALYST. AND I WOULD HELP THE PORTFOLIO
3 MANAGERS WITH SOURCING IDEAS, BUILDING FINANCIAL MODELS,
4 MEETING WITH COMPANY MANAGEMENT, ATTENDING CONFERENCES, YOU
5 KNOW, THIS SORT OF DUE DILIGENCE THAT YOU WOULD THINK OF AN
6 ANALYST DOING.

7 JOHN LEVIN EVENTUALLY SPUN OUT THIS SR CAPITAL GROUP INTO
8 ANOTHER COMPANY CALLED SEAROCK CAPITAL. AND THAT WAS THE FIRST
9 TIME I HAD SOME DISCRETION OVER, YOU KNOW, THE MONEY THAT WAS
10 BEING MANAGED BY SEAROCK CAPITAL. AND, OVERALL, WE WERE ABOUT
11 A \$700 MILLION FUND, IF I REMEMBER. AND I, I HAD DISCRETION
12 OVER SOMEWHERE AROUND 50 TO \$100 MILLION IN THAT FUND.

13 Q. HOW ABOUT AT BUCKINGHAM, SAME TYPES OF --

14 A. WHEN I, WHEN I GOT TO BUCKINGHAM, BUCKINGHAM MANAGED A
15 LITTLE BIT MORE CAPITAL THAN THAT. IT WAS MORE LIKE 800
16 MILLION TO A BILLION DOLLARS. AND THE WAY THAT IT WORKED AT
17 BUCKINGHAM IS THAT THERE WERE FOUR PORTFOLIO MANAGERS. AND WE
18 ALL HAD, NOT EQUAL SAY, BUT WE ALL CONTRIBUTED TO THE
19 MANAGEMENT OF THE PORTFOLIO. SO I WAS SORT OF A CO-PORTFOLIO
20 MANAGER IN THE SENSE OF BEING, YOU KNOW, A JUNIOR GUY THERE.
21 BUT I GAVE INPUT INTO BUYING AND SELLING DECISIONS ON THE
22 OVERALL PORTFOLIO.

23 Q. NOW, TAKING US FORWARD TO LEVEL GLOBAL, WAS THAT MORE OF A
24 PUSH ON YOUR PART, A PULL ON LEVEL'S PART? TELL US ABOUT THAT.

25 A. NO. I HAD REALLY NEVER HEARD OF LEVEL GLOBAL. IN THE

1 SUMMER OF 2009, THEY CONTACTED ME. AND LEVEL GLOBAL HAD
2 TRADITIONALLY FOCUSED ON TECHNOLOGY STOCKS. THE TWO MAIN
3 COFOUNDERS HAD DONE TECH THEIR WHOLE CAREERS BASICALLY. AND
4 THEY WANTED TO START UP A CONSUMER VERTICAL, IF YOU WILL,
5 WITHIN LEVEL GLOBAL WHERE THEY WANTED TO HIRE ME TO BE THE
6 PORTFOLIO MANAGER WITHIN THAT CONSUMER VERTICAL AND THEN HIRE A
7 TEAM OF ANALYSTS, HIRE CONSULTANTS AND SO FORTH AND REALLY
8 BUILD OUT AN EFFORT WITHIN CONSUMER. AND THEY HAD ALREADY DONE
9 THIS SUCCESSFULLY IN A COUPLE OF OTHER VERTICALS. THEY HAD
10 DONE FINANCIALS. THEY HAD DONE INDUSTRIALS. THEY WERE ALREADY
11 IN TECHNOLOGY.

12 THE COURT: WHEN YOU SAY A VERTICAL TEAM, I KNOW WHAT
13 THAT MEANS FOR ANTITRUST PURPOSES. BUT I DON'T KNOW THAT IT'S
14 THE SAME, WHAT IT MEANS HERE FOR SURE. SO WHY DON'T YOU JUST
15 CLARIFY WHAT YOU MEAN BY, THEY HAD A NUMBER OF OTHER VERTICALS.

16 THE WITNESS: SURE. BASICALLY JUST A GROUP WITHIN
17 THE COMPANY THAT WOULD SPECIALIZE IN A CERTAIN SECTOR. SO IT
18 WOULD BE RUN BY, SAY, IN THE INDUSTRIALS GROUP, THEY HAD AN
19 INDUSTRIALS PORTFOLIO MANAGER. THEY HAD INDUSTRIAL ANALYSTS,
20 AND THEY WOULD BASICALLY CARVE OUT A PIECE OF THE OVERALL
21 PORTFOLIO TO JUST FOCUS ON THAT INDUSTRIAL SPACE.

22 SO IT WAS REALLY JUST A TEAM OF SPECIALISTS WITHIN
23 INDUSTRIALS THAT WOULD MANAGE MONEY ON BEHALF OF LEVEL GLOBAL
24 WITHIN THAT SECTOR.

25 Q. (BY MR. MONNIN) WITH WHOM WERE YOU MEETING AT LEVEL

1 GLOBAL REGARDING ITS RECRUITMENT OF YOU?

2 A. WELL, REALLY, THE HEAD OF THE FIRM, DAVID GANEK, WAS THE
3 ONE ULTIMATELY WHO HIRED ME. AND BASICALLY WHAT HE SAID IS, WE
4 -- YOU KNOW, THEY MANAGED ABOUT THREE TO THREE AND A HALF
5 BILLION DOLLARS, ROUGHLY, WHEN THEY WERE RECRUITING ME. AND HE
6 SAID, LOOK, YOU KNOW, IF YOU LEAVE BUCKINGHAM TO COME HERE,
7 WE'LL GIVE YOU ABOUT \$250 MILLION TO MANAGE WITHIN THE CONSUMER
8 SPACE. IF YOU'RE SUCCESSFUL WITH THAT, WE'LL INCREASE IT OVER
9 TIME. IT WILL BE AN OPPORTUNITY FOR YOU TO TAKE A MORE SENIOR
10 ROLE THAN YOU HAVE, YOU KNOW, PRIOR TO THIS, IN THE SENSE THAT
11 YOU CAN, YOU KNOW, YOU CAN HIRE ANALYSTS TO HELP YOU MANAGE THE
12 MONEY; YOU CAN HAVE MORE DISCRETION OVER THE TRADING AND SO
13 FORTH.

14 AND SO, ULTIMATELY, I DECIDED TO LEAVE BUCKINGHAM TO GO TO
15 THEM. BUT, I MEAN, THE ANSWER TO YOUR QUESTION IS, THEY
16 RECRUITED ME.

17 Q. LAST POINT ON BUCKINGHAM. IN GENERAL TERMS, WHAT WAS YOUR
18 COMPENSATION THERE? HOW MUCH MONEY DID YOU MAKE, LET'S SAY, IN
19 THE LAST FULL YEAR AND THEN THE STUB YEAR?

20 A. WELL, BEFORE I, BEFORE I WENT TO LEVEL. SO, LET'S SEE. I
21 GUESS --

22 Q. JUST GENERALLY.

23 A. IN 2008, I BELIEVE I MADE [REDACTED] THAT YEAR.

24 Q. AND YOU WERE --

25 A. AND IN 2009, TO BE CLEAR, I LEFT IN THE MIDDLE OF THE

1 YEAR. AND SO WHEN YOU LEAVE A HEDGE FUND IN THE MIDDLE OF THE
2 YEAR, YOU REALLY LEAVE BEHIND YOUR COMPENSATION. SO I MADE
3 SOME SALARY THAT YEAR, BUT I DIDN'T GET ANY KIND OF A BONUS
4 FROM BUCKINGHAM THAT YEAR.

5 Q. DO YOU HAVE A SENSE OF WHAT YOUR SALARY WAS?

6 A. OH, SURE. MY SALARY AT BUCKINGHAM WAS [REDACTED] A YEAR.

7 Q. SO LET'S --

8 THE COURT: SO YOU RECEIVED A PORTION OF YOUR SALARY,
9 BECAUSE YOU WEREN'T THERE THE WHOLE YEAR?

10 THE WITNESS: THAT'S CORRECT.

11 THE COURT: AND YOU DIDN'T RECEIVE A BONUS?

12 THE WITNESS: CORRECT.

13 THE COURT: ALL RIGHT.

14 Q. (BY MR. MONNIN) AND, JUST TO BE CLEAR, MR. MEGALLI, WERE
15 YOU TRADING IN CARTER'S SECURITIES AT BUCKINGHAM?

16 A. THERE WAS TRADING IN CARTER'S, NOT BY ME, NECESSARILY,
17 BECAUSE OF THE WAY THAT BUCKINGHAM WAS MANAGED IN A
18 CO-PORTFOLIO MANAGER STRUCTURE. SO SINCE THE FOUR OF US WERE
19 ALL GIVING INPUT INTO DECISIONS, YOU KNOW, THERE WERE SORT OF
20 GROUP DECISIONS BEING MADE. BUT, YES, THERE WAS TRADING IN
21 CARTER'S, GIVEN THAT IT WAS AN APPAREL COMPANY, AND WE WERE A
22 CONSUMER-FOCUSED FUND.

23 Q. WERE YOU ALWAYS AN EMPLOYEE AT BUCKINGHAM?

24 A. AT THAT TIME, I WAS AN EMPLOYEE, YEAH.

25 Q. DIRECTING YOUR ATTENTION -- WE CAN PULL UP THE SLIDE DECK.

1 DIRECTING YOUR ATTENTION TO THE FIRST SLIDE OF THE DECK, AS
2 WELL AS DEFENSE EXHIBIT NUMBER 1, WHICH IS YOUR EMPLOYMENT
3 AGREEMENT, COULD YOU PLEASE WALK THE COURT THROUGH THE,
4 ESSENTIALLY, THREE BUCKETS OR CATEGORIES OF COMPENSATION THAT
5 YOU WERE ELIGIBLE TO RECEIVE IN 2009 AND 2010?

6 A. SURE. SO THE FIRST COMPONENT WAS MY SALARY, WHICH WAS
7 MEANT TO BE [REDACTED] PER YEAR. BECAUSE I WENT IN THE MIDDLE
8 OF THE YEAR IN 2009, IT ENDED UP WORKING OUT TO THAT NUMBER
9 THAT YOU SEE THERE, THE 111,000, WHICH INCLUDED SOME DE MINIMIS
10 BENEFITS, I GUESS.

11 Q. WHEN DID YOU START AT LEVEL GLOBAL?

12 A. I STARTED AUGUST 9TH OF 2009, I BELIEVE.

13 Q. SO THIS IS THE PRO RATA AMOUNT OF \$250,000.00?

14 A. FOR AUGUST, SEPTEMBER, OCTOBER, NOVEMBER, DECEMBER,
15 CORRECT. AND THEN FOR 2010, IT WAS MY SALARY OF [REDACTED]. AND
16 AS I THINK WE'LL SEE LATER, THERE WAS ANOTHER 31,000 OF
17 ADDITIONAL BENEFITS, WHICH THEY TERMED PSP BENEFITS, WHICH I
18 BELIEVE IT WAS A PROFIT-SHARING DESIGNATION.

19 Q. HOW ABOUT SIGNING BONUS, WHAT DOES THAT REFER TO?

20 A. SO THE SECOND COMPONENT WAS, I GUESS, AS AN ENTICEMENT TO
21 GET ME TO LEAVE BUCKINGHAM TO GO TO LEVEL GLOBAL, THEY OFFERED
22 ME A \$500,000.00 SIGNING BONUS, WHICH WAS TO VEST OVER A
23 THREE-YEAR PERIOD. SO I JOINED IN AUGUST OF 2009, AND THE
24 AGREEMENT STIPULATED THAT AS LONG AS I WAS AN EMPLOYEE, AS LONG
25 AS I WAS EMPLOYED AT LEVEL GLOBAL, ON DECEMBER 31ST OF 2010, I

1 WOULD GET THE FIRST THIRD OF THAT SIGNING BONUS. AND THEN
2 DECEMBER 31ST OF 2011, I WOULD GET THE SECOND THIRD. AND
3 DECEMBER 31ST OF 2012, I WOULD GET THE FIRST -- THE LAST THIRD.
4 AND ALL OF THAT WOULD BE PAID OUT IN FEBRUARY OF 2013.

5 SO THAT REPRESENTED -- THE 178,000 YOU SEE THERE IS THE
6 FIRST THIRD THAT VESTED OF MY SIGNING BONUS. AND BECAUSE THEY
7 INVESTED IT IN THE FUND, IT WORKED OUT TO 178,000. IT WASN'T
8 166,667.

9 Q. JUST SO THE COURT KNOWS, WHEN WERE YOU ACTUALLY PAID THE
10 178,000?

11 A. I WAS PAID THAT IN FEBRUARY OF 2013. I NEVER RECEIVED THE
12 SECOND AND THIRD PORTIONS OF THE SIGNING BONUS BECAUSE LEVEL
13 GLOBAL CEASED TO BE AN ONGOING CONCERN SOMETIME IN 2011.

14 Q. SO YOU HAD A BASE SALARY OF [REDACTED]. YOU HAD A
15 SIGNING BONUS OF 500,000 THAT VESTED PERIODICALLY STARTING IN
16 2010.

17 A. CORRECT.

18 Q. SO YOU DIDN'T RECEIVE ANY SIGNING BONUS IN 2009. CORRECT?

19 A. CORRECT. AND I DIDN'T RECEIVE THE FINAL TWO-THIRDS OF MY
20 SIGNING BONUS FOR '11 AND '12.

21 Q. LET ME ASK YOU THIS. WE'LL GET TO IT IN A MOMENT. BUT
22 DID YOUR INVESTMENT MANAGEMENT PERFORMANCE HAVE ANY IMPACT ON
23 YOUR BASE SALARY OR YOUR SIGNING BONUS?

24 A. NO, IT DID NOT.

25 Q. LET'S TALK ABOUT INCENTIVE PAYMENTS. WHAT DOES THAT MEAN

1 GENERALLY?

2 A. INCENTIVE PAYMENTS -- SO LET ME TAKE A STEP BACK.

3 THE COURT: MAKE SURE I UNDERSTAND. THE TWO
4 REMAINING ██████████ WAS THE FULL SALARY, BASE SALARY YOU
5 RECEIVED?

6 THE WITNESS: IT WAS ██████████ IN SALARY PLUS ██████████ OF
7 BENEFITS, WHICH WERE CALLED PSP. AND I BELIEVE THEY HAD TO DO
8 WITH A PROFIT-SHARING PROGRAM.

9 THE COURT: ALL RIGHT.

10 Q. (BY MR. MONNIN) WHAT WAS THE INTENT OF THE ROUGHLY
11 31,000?

12 A. TO BE HONEST, I DON'T KNOW.

13 THE COURT: SO YOU ACTUALLY TOOK A SUBSTANTIAL PAY
14 CUT IN TERMS OF THE ACTUAL SALARY WHEN YOU MOVED THERE FROM
15 BUCKINGHAM.

16 THE WITNESS: CORRECT. THAT'S EXACTLY RIGHT.

17 THE COURT: ALL RIGHT.

18 Q. (BY MR. MONNIN) WHY DID YOU DO THAT, MR. MEGALLI?

19 A. I THOUGHT OVER THE LONG RUN IT WOULD BE A GOOD INVESTMENT
20 IN MY FUTURE TO ADVANCE, YOU KNOW, TO MAYBE A SLIGHTLY MORE
21 SENIOR ROLE THAN WHERE I WAS AT BUCKINGHAM.

22 Q. YOU MAY NEED TO SPEAK MORE INTO THE MICROPHONE.

23 A. I'M SORRY. I APOLOGIZE.

24 YEAH, I THOUGHT IT WOULD BE A GOOD CAREER MOVE, I GUESS.

25 Q. WAS THERE A PERCEPTION ON YOUR PART THAT YOU WOULD HAVE

1 MORE INCENTIVE-BASED COMPENSATION WITHIN THE SUBJECT MATTER
2 AREA THAT YOU DO?

3 A. CAN YOU REPEAT THAT? I'M SORRY, PAUL.

4 Q. WAS THERE A THOUGHT THAT YOU MIGHT HAVE MORE OF AN
5 INCENTIVE-BASED UPSIDE AT LEVEL, AS OPPOSED TO BUCKINGHAM?

6 A. YOU KNOW, I ASSUMED THAT, BECAUSE LEVEL MANAGED MORE
7 ASSETS THAN BUCKINGHAM, THAT AS YOU BECAME MORE SENIOR AT
8 LEVEL, THERE WAS POTENTIAL TO EARN MORE. BUT, TO BE HONEST,
9 YOU KNOW, HAD I STAYED AT BUCKINGHAM, MY COMPENSATION, YOU
10 KNOW, ULTIMATELY PROBABLY WOULD HAVE BEEN BETTER IN THE SHORT
11 RUN. SO I WASN'T TRYING TO MAKE, YOU KNOW, DIRECT DECISIONS
12 BASED ON WHAT IS MY INCENTIVE COMPENSATION GOING TO BE AT A
13 VERSUS B. I WAS JUST TRYING TO THINK KIND OF LONGER TERM
14 ABOUT, YOU KNOW, WHERE AM I BETTER SITUATED.

15 Q. OKAY. YOU WERE STARTING TO DESCRIBE FOR THE COURT IN
16 GENERAL TERMS -- AND WE'LL GET INTO THIS FURTHER -- BUT WHAT
17 WAS THE INCENTIVE COMPONENT OF YOUR COMPENSATION?

18 A. WELL, THAT WAS THE LAST, THE 1.2 MILLION, ROUGHLY, THAT
19 YOU SEE THERE.

20 Q. BUT IN TERMS OF THE CONTRACT, HOW WAS IT DEFINED, JUST IN
21 BROAD TERMS?

22 A. WELL, LET ME, LET ME JUST MAYBE DESCRIBE WHAT INCENTIVE
23 COMPENSATION IS. HEDGE FUNDS ARE PAID REALLY IN TWO WAYS.
24 THEY COLLECT A MANAGEMENT FEE EVERY YEAR, WHICH, FOR MOST HEDGE
25 FUNDS, TENDS TO BE ABOUT TWO PERCENT A YEAR OF THE ASSETS UNDER

1 MANAGEMENT. AND THAT TWO PERCENT TYPICALLY IS USED TO PAY FOR
2 SALARIES AND RENT AND COSTS OF RUNNING THE BUSINESS.

3 THE SECOND WAY HEDGE FUNDS ARE COMPENSATED TYPICALLY IS
4 THROUGH AN INCENTIVE FEE, WHICH, FOR LEVEL GLOBAL AT THE TIME,
5 WAS ABOUT A TEN PERCENT INCENTIVE FEE. AND BASICALLY WHAT THAT
6 MEANS IS THAT WHEN YOU, WHEN YOU INVEST MONEY ON BEHALF OF YOUR
7 INVESTORS, YOU'RE GOING TO HOPEFULLY GENERATE A RETURN ON THOSE
8 FUNDS. OF THAT RETURN, 90 PERCENT WOULD BE RETURNED TO THE
9 INVESTORS, AND LEVEL GLOBAL WOULD KEEP TEN PERCENT IN THE FORM
10 OF AN INCENTIVE FEE. OF THAT TEN PERCENT THAT WE KEPT, THE
11 SENIOR MANAGEMENT WOULD USE THAT TO PAY OUT PEOPLE'S BONUSES AT
12 THE END OF THE YEAR. SO THAT 1.2 MILLION REFLECTS MY PORTION
13 OF THE TEN PERCENT INCENTIVE FEE THAT LEVEL GLOBAL RETAINED.

14 Q. AND WE WILL GET INTO IN A MOMENT WHAT PERCENTAGE OF LEVEL
15 GLOBAL'S INCENTIVE FEE YOU WERE ENTITLED TO.

16 A. RIGHT.

17 Q. SO WHAT WE'VE GOT FOR 2009 IS ROUGHLY 111,000 IN
18 COMPENSATION AND, FOR 2010, ROUGHLY 1.65 MILLION. DID YOU
19 RECEIVE, TO THE BEST OF YOUR RECOLLECTION, ANY OTHER AMOUNTS
20 OTHER THAN WHAT'S REFLECTED ON THE SCREEN?

21 A. NO. THAT'S EVERYTHING.

22 Q. DID YOU HAVE ANY OTHER INCOME, ANY OTHER EMPLOYMENT --

23 A. NO.

24 Q. -- DURING THIS TIME FRAME?

25 A. NO.

1 Q. SO LET'S MOVE ALONG TO THE NEXT SLIDE, WHICH --

2 MR. MONNIN: AND WE'LL RUN THROUGH THIS VERY QUICKLY,
3 YOUR HONOR.

4 Q. (BY MR. MONNIN) -- WHICH IS YOUR BASE SALARY.

5 A. RIGHT.

6 Q. AND WHAT I'D LIKE YOU TO DO, MARK, IS REFER TO EXHIBIT
7 NUMBER 1 IN FRONT OF YOU, WHICH IS YOUR EMPLOYMENT AGREEMENT.

8 A. I THINK YOU NEED TO -- DO I NEED THE HANDOUT? I'LL JUST
9 GO OFF THE SCREEN. THAT'S FINE. DON'T WORRY.

10 Q. WELL, YOU KNOW WHAT? I'LL JUST HAND THEM TO YOU. SO LET
11 ME --

12 MR. MONNIN: MAY I APPROACH THE WITNESS, YOUR HONOR?

13 THE COURT: YES.

14 Q. (BY MR. MONNIN) LET ME SHOW YOU EXHIBITS 1, 2, AND 3 FOR
15 THIS HEARING. AND LET ME DIRECT YOU SPECIFICALLY, MR. MEGALLI,
16 TO PARAGRAPH 4(A) OF YOUR EMPLOYMENT AGREEMENT.

17 WELL, FIRST OF ALL, LET ME ASK YOU, WHAT IS EXHIBIT NUMBER
18 1?

19 A. THIS WAS MY EMPLOYMENT CONTRACT WITH LEVEL GLOBAL.

20 Q. AND IS THAT A COMPLETE COPY OF YOUR AGREEMENT SIGNED BY
21 YOU AND SIGNED BY LEVEL?

22 A. I BELIEVE IT IS, YES.

23 Q. DID YOU HAVE ANY OTHER EMPLOYMENT AGREEMENT WITH LEVEL
24 GLOBAL DURING 2009 AND 2010?

25 A. THIS WAS THE ONLY AGREEMENT I EVER HAD WITH LEVEL GLOBAL.

1 Q. AND DIRECTING YOU TO PARAGRAPH 4(A), IS THAT THE PARAGRAPH
2 THAT PERTAINS TO YOUR BASE SALARY?

3 A. YES, IT IS.

4 Q. AND, IN ESSENCE, WHAT DOES IT -- I'M NOT ASKING YOU TO
5 CALL FOR OR TESTIFY ABOUT A LEGAL CONCLUSION, BUT WHAT DOES IT
6 PROVIDE WITH REGARD TO YOUR BASE SALARY?

7 A. PROVIDES FOR ANNUALIZED BASE SALARY OF [REDACTED],
8 SUBJECT TO ANNUAL REVIEW AND ADJUSTMENT BY THE INVESTMENT
9 MANAGER AT ITS SOLE DISCRETION.

10 Q. AND LET ME DIRECT YOU OVER TO EXHIBIT 2 AS WELL. WHAT'S
11 THAT DOCUMENT?

12 A. EXHIBIT 2 IS WHAT I ENDED UP MAKING WHILE I WAS WORKING AT
13 LEVEL GLOBAL. AND IT INCLUDES BOTH AN ESTIMATE OF WHAT I WAS
14 GOING TO BE PAID AND THEN AN ACTUAL IN TERMS OF WHAT I WAS
15 ACTUALLY PAID FOR '09, '10, AND THE FIRST LITTLE BIT OF '11.

16 Q. IS EXHIBIT 2 ACCURATE IN TERMS OF WHAT YOU ACTUALLY MADE
17 IN TERMS OF BASE SALARY FROM LEVEL GLOBAL?

18 A. YES, IT IS.

19 Q. AND JUST WALK THE COURT VERY BRIEFLY THROUGH WHAT YOUR
20 BASE SALARY WAS FOR 2009 AND YOUR BASE SALARY FOR 2010.

21 A. IT WAS [REDACTED].

22 Q. AND THEN, BUT WHAT WERE YOU ACTUALLY PAID ON THE BASE
23 SALARY?

24 A. SO ON THE BASE SALARY IN '09, I WAS PAID [REDACTED] PLUS
25 THE BENEFITS WE DISCUSSED EARLIER, PSP BENEFITS OF \$12,733.00.

1 IN 2010, I WAS PAID A BASE SALARY OF [REDACTED], AND THE PSP
2 BENEFITS WERE \$31,850.00.

3 Q. WAS ANY OF THE COMPENSATION, EITHER THE 111,000 OR THE
4 281,000, DID THAT VARY AT ALL BASED ON YOUR PERFORMANCE AS A
5 MANAGER?

6 A. NO, IT DID NOT.

7 Q. AND SINCE I'M THERE, TELL THE COURT BASICALLY, WHAT WERE
8 YOU HIRED TO DO? WHAT WERE YOU RESPONSIBLE FOR AT LEVEL
9 GLOBAL?

10 A. MY ROLE WAS TO START UP A CONSUMER DISCRETIONARY-FOCUSED
11 EFFORT WITHIN LEVEL GLOBAL. AND WHEN I SAY EFFORT, WHAT I MEAN
12 IS, I WAS MEANT TO MANAGE MONEY, HIRE A TEAM OF ANALYSTS, HIRE
13 CONSULTANTS, AND CONDUCT DUE DILIGENCE ON THAT PORTION OF LEVEL
14 GLOBAL THAT I WAS INVESTING.

15 Q. HOW MUCH MONEY WERE YOU MANAGING, OR HOW MUCH CAPITAL DID
16 YOU HAVE AVAILABLE TO YOU?

17 A. WHEN I BEGAN, IT WAS 250 MILLION OF CAPITAL. AND THAT WAS
18 AUGUST OF 2009 WHEN I BEGAN WORKING THERE. AND THEN IN JANUARY
19 OF 2010, THAT WAS INCREASED TO 500 MILLION OF TOTAL CAPITAL.

20 THE COURT: WHEN IN 2010?

21 THE WITNESS: JANUARY 1ST, 2010.

22 THE COURT: OKAY.

23 Q. (BY MR. MONNIN) LET'S MOVE ON TO PARAGRAPH 4(B) OF
24 EXHIBIT 1, MR. MEGALLI. IS THIS THE PARAGRAPH THAT RELATES TO
25 YOUR SIGNING BONUS?

1 A. YES, IT IS.

2 Q. AND YOU TESTIFIED ABOUT THIS EARLIER. BUT WHAT'S THE
3 ESSENCE OF THE CONTRACTUAL PROVISION RELATED TO YOUR SIGNING
4 BONUS?

5 A. THE SIGNING BONUS WAS MEANT TO BE \$500,000.00, AND IT WAS
6 TO VEST OVER THREE YEARS. SO, AS I SAID EARLIER, IT WAS TO
7 VEST AT THE END OF 2010, 2011, 2012. AND THEN WHATEVER AMOUNT
8 WAS VESTED WOULD BE PAID IN 2013.

9 Q. SO DOES THE CONTRACT PROVIDE THAT ANY OF THE VESTING WAS
10 BASED ON YOUR PERFORMANCE? COULD THE VESTING CHANGE IF YOU
11 DIDN'T DO WELL AS A PORTFOLIO MANAGER?

12 A. NO. IT WAS NOT RELATED.

13 Q. IS THAT A PRETTY COMMON TYPE OF PROVISION IN THE HEDGE
14 FUND INDUSTRY IN TERMS OF THE SIGNING BONUS?

15 A. YES, IT IS.

16 MR. MONNIN: JUDGE, WE CAN GO, MOVE ALONG --

17 THE COURT: OKAY.

18 MR. MONNIN: -- WITH OUR HARD COPY, IF YOU LIKE.

19 THE COURTROOM DEPUTY: I CAN BRING IT BACK UP.

20 THE COURT: IT WON'T TAKE A SECOND.

21 THERE WE GO.

22 Q. (BY MR. MONNIN) OKAY. AND, AGAIN, THIS AMOUNT FOR 2010,
23 THAT'S NOT A THIRD OF 500,000. RIGHT?

24 A. CORRECT. SO A THIRD WOULD BE ABOUT 167,000. AND THE
25 REASON IT'S DIFFERENT IS BECAUSE, AS IT SAYS IN THE CONTRACT,

1 DURING THE VESTING PERIOD, THAT BONUS SHALL BE INDEXED TO THE
2 FUND, TO THE OFFSHORE FUND. SO BASICALLY THE FUND WAS UP A
3 LITTLE BIT, AND THAT'S WHY IT INCREASED FROM 167,000 TO
4 178,000.

5 Q. AND THIS WAS PAID WHEN?

6 A. THAT WAS PAID IN FEBRUARY OF 2013.

7 Q. SO WE'VE TALKED ABOUT YOUR BASE SALARY. WE'VE TALKED
8 ABOUT YOUR SIGNING BONUS. IN EITHER OF THOSE TWO CATEGORIES,
9 WAS YOUR PERFORMANCE AS A PORTFOLIO MANAGER RELEVANT TO WHAT
10 YOU GOT PAID WITHIN THOSE CATEGORIES?

11 A. NO.

12 Q. LET ME DIRECT YOU TO PARAGRAPH 4(C) OF YOUR EMPLOYMENT
13 AGREEMENT. WHAT DOES THAT RELATE TO?

14 A. 4(C) SAYS, 2009 DISCRETIONARY BONUS. AND BASICALLY WHAT
15 THIS SAYS IS THAT IT WOULD BE UP TO THE INVESTMENT MANAGER, WHO
16 WOULD BE THE HEAD OF LEVEL GLOBAL, THAT, AT HIS SOLE
17 DISCRETION, THAT YOU WOULD BE ELIGIBLE TO RECEIVE A
18 DISCRETIONARY BONUS. BUT IT WAS REALLY AT HIS SOLE DISCRETION.

19 Q. DID YOU GET A DISCRETIONARY BONUS IN 2009?

20 A. I DID NOT.

21 Q. LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT THAT. LET ME
22 SHOW YOU WHAT HAS BEEN ADMITTED IN EVIDENCE AS DEFENSE EXHIBIT
23 4. COULD YOU PLEASE TELL THE COURT WHAT THAT DOCUMENT IS?

24 A. THIS DOCUMENT IS A SUMMARY OF WHAT MY PERFORMANCE WAS IN
25 EACH OF THE TWO YEARS THAT I MANAGED MONEY AT LEVEL GLOBAL.

1 AND SO THIS PARTICULAR DOCUMENT RELATES TO MY PERFORMANCE IN
2 2009. AND IT'S A YEAR-END SUMMARY THAT DISCUSSES STATISTICS OF
3 MY MONEY MANAGEMENT, I GUESS, INCLUDING HOW MUCH MONEY I
4 INVESTED, WHAT MY PROFIT WAS ON THOSE INVESTMENTS, WHAT MY
5 BATTING AVERAGE WAS, WHAT MY RETURN ON EQUITY WAS, WHAT MY
6 WINNERS AND LOSERS WERE, ALL THOSE SORTS OF STATISTICS THAT
7 WOULD HELP THE INVESTMENT MANAGER ANALYZE MY PERFORMANCE.

8 Q. WHAT WERE THE MOST IMPORTANT CONSIDERATIONS IN YOU BEING
9 EVALUATED BY LEVEL GLOBAL?

10 A. I WOULD SAY PROBABLY THE MOST IMPORTANT WOULD BE HOW MUCH
11 PROFIT YOU WERE CONTRIBUTING OR NOT CONTRIBUTING RELATIVE TO
12 THE AMOUNT OF CAPITAL THAT YOU WERE GIVEN.

13 Q. IS THAT HIGHLIGHTED IN EXHIBIT 4?

14 A. IT IS.

15 Q. WHERE IS IT HIGHLIGHTED, AND WHAT'S THE AMOUNT?

16 A. IT'S HIGHLIGHTED UNDER TOTAL P&L. AND THE AMOUNT IS
17 \$7,964,238.00.

18 Q. SO, MR. MEGALLI, IF THAT'S THE NUMERATOR, WHAT WAS
19 THE DENOMINATOR?

20 THE COURT: I'M LOOKING AT EXHIBIT 4. ARE YOU
21 LOOKING AT SOMETHING ELSE?

22 MR. MONNIN: NO, JUDGE. IT'S THE FIRST LINE OF
23 EXHIBIT 4, THE TOP LINE.

24 THE COURT: ALL RIGHT. AND SO YOU'RE LOOKING AT?

25 MR. MONNIN: TOTAL P&L, WHICH HAS BEEN HIGHLIGHTED IN

1 7.9 MILLION.

2 THE COURT: ALL RIGHT.

3 Q. (BY MR. MONNIN) SO, MARK, YOU MADE -- SO, BASICALLY, YOU
4 MADE A TRADING PROFIT OR GAIN OF RETURN OF 7.9 MILLION FOR THAT
5 YEAR. IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND THE PERIOD WE'RE TALKING ABOUT IS SEPTEMBER THROUGH
8 THE END OF THE YEAR?

9 A. AUGUST THROUGH THE END OF THE YEAR, UH-HUH.

10 Q. AND TELL THE COURT WHAT TYPE OF -- WHAT PERCENTAGE RETURN,
11 HOW MUCH CAPITAL YOU HAD INVESTED.

12 A. WELL, THE AVERAGE CAPITAL IS WRITTEN IN HERE AS
13 189,876,000. IF YOU SEE, IT'S ABOUT THE THIRD, FOURTH COLUMN
14 OVER.

15 Q. AND THAT'S UNDER THE INITIALS GMV?

16 A. YEAH. THAT STANDS FOR GROSS MARKET VALUE. AND IF YOU
17 LOOK, THERE'S ALSO THE CURRENT MARKET VALUE WHICH, AT THE END
18 OF THE YEAR, WAS \$239,649,000.00. SO BECAUSE I WAS RAMPING UP
19 OVER THE COURSE OF THAT FIVE-MONTH PERIOD OF TIME, IT TOOK ME A
20 WHILE TO GET TO THE 250-ROUGHLY MILLION DOLLARS. SO THAT'S WHY
21 THE AVERAGE WAS 189 MILLION. AND IF YOU LOOK AT THE EIGHT
22 MILLION ON BASE OF -- THERE ARE REALLY TWO WAYS YOU CAN LOOK AT
23 IT. YOU CAN LOOK AT IT UNDER -- AND I DON'T WANT TO GET TOO
24 TECHNICAL HERE -- THE GROSS MARKET VALUE, WHICH WOULD BE THE
25 LONGS PLUS THE SHORTS, WHERE THERE'S SOMETHING CALLED YOUR

1 ASSETS UNDER MANAGEMENT, WHICH IS THAT \$113 MILLION NUMBER.
2 AND THAT WAS SORT OF AN ESTIMATE OF THE EQUIVALENT EQUITY THAT
3 YOU WOULD BE MANAGING IF YOUR FUND WERE A SEPARATE FUND.

4 SO THE BOTTOM LINE, YOU ASKED THE QUESTION ABOUT, WHAT WAS
5 THAT RETURN. AND IT SAYS ROE, THAT'S RETURN ON EQUITY, SEVEN
6 PERCENT. SO THAT WAS ROUGHLY THE EQUIVALENT RETURN THAT I
7 GENERATED, ABOUT A SEVEN PERCENT RETURN.

8 Q. SO JUST TO SUM UP, WHAT WE'RE TALKING ABOUT IS BASICALLY A
9 SEVEN PERCENT RETURN ON THE CAPITAL THAT YOU HAD INVESTED. AND
10 THE ECONOMIC VALUE OF THAT WAS ROUGHLY EIGHT MILLION.

11 A. CORRECT.

12 Q. NOW, JUDGE TOTENBERG, IN HER LIABILITY ORDER ON SUMMARY
13 JUDGMENT, HAS FOUND YOU LIABLE FOR INSIDER TRADING ASSOCIATED
14 WITH THE LIQUIDATION OF A CARTER'S LONG POSITION. IS THAT
15 CORRECT?

16 A. THAT'S CORRECT.

17 Q. SO TELL THE COURT WHAT'S, WHAT'S THE VALUE HERE OF 2.034
18 MILLION? WHAT DOES THAT REFER TO?

19 A. THAT REFERS TO WHAT I GUESS IS CALLED AN AVOIDED LOSS. SO
20 I SOLD 300,000 SHARES OF STOCK IN CARTER'S DURING THE RUN-UP, A
21 COUPLE OF DAYS DURING THE RUN-UP INTO AN EARNINGS ANNOUNCEMENT.
22 AND WHEN THEY ANNOUNCED THEIR EARNINGS, THEY SAID THAT THEY HAD
23 FOUND AN ACCOUNTING PROBLEM, AND THAT CAUSED THE STOCK TO GO
24 DOWN APPROXIMATELY 20 OR 25 PERCENT THE DAY THAT THEY WERE
25 SUPPOSED TO REPORT EARNINGS. AND BECAUSE THAT EQUATED TO ABOUT

1 A SIX- OR SEVEN-DOLLAR DROP IN THE STOCK, HAD WE NOT SOLD THE
2 300,000 SHARES LEADING UP TO THAT EARNINGS EVENT, WE WOULD HAVE
3 LOST \$2,034,000.00. AND THAT'S WHY IT'S NOT CALLED A DIRECT
4 PROFIT, BUT IT'S AN AVOIDED LOSS. AND THAT'S WHAT THAT
5 REPRESENTS IS THE SALE OF THOSE 300,000 SHARES IN THE DAYS
6 BEFORE THAT EARNINGS EVENT.

7 THE COURT: SO WHERE IS THAT ON THIS PAGE? I AM
8 MISSING THAT. I UNDERSTAND THE CONCEPT. I JUST DON'T
9 UNDERSTAND WHERE I SEE THAT FIGURE, THE 2.43.

10 Q. (BY MR. MONNIN) MARK, IS THE LOSS AVOIDED REFLECTED ON
11 YOUR ANALYST DOCUMENT?

12 A. NO, BECAUSE THAT WOULD HAVE BEEN ONE TRADING RESULT OUT OF
13 MANY DOZENS OR HUNDREDS OF TRADING RESULTS. SO IT WOULDN'T BE
14 BROKEN DOWN.

15 THE COURT: ALL RIGHT. SO OF THE 2.43, THE PART OF
16 THE 7.9 MILLION, APPROXIMATELY, ARE YOUR PROFITS AND LOSS?

17 THE WITNESS: THAT'S CORRECT.

18 THE COURT: OKAY.

19 Q. (BY MR. MONNIN) SO IF YOU HAD NOT SOLD THE LONG POSITION
20 IN CARTER'S IN OCTOBER 2009, YOUR PROFIT ON THE PORTFOLIO WOULD
21 HAVE BEEN REDUCED BY TWO MILLION.

22 A. CORRECT. IT WOULD HAVE BEEN ABOUT SIX MILLION INSTEAD OF
23 ABOUT EIGHT MILLION.

24 Q. AND WE'VE DONE THE MATH HERE FOR THE COURT. THE LOSS
25 AVOIDED ON THE CARTER'S POSITION WAS APPROXIMATELY 25.5 PERCENT

1 OF YOUR OVERALL PROFIT. IS THAT RIGHT?

2 A. THAT'S CORRECT.

3 Q. NOW, I GUESS THE QUESTION IS, SINCE YOU HAD THE ABILITY TO
4 GET A DISCRETIONARY BONUS FOR 2009 UNDER SECTION FOUR POINT --
5 OR 4(C) OF YOUR CONTRACT, IS THAT CORRECT, YOU WOULD HAVE
6 GOTTEN A BONUS?

7 A. UH-HUH.

8 Q. WHY DIDN'T YOU PURSUE A SIGNING -- OR NOT A SIGNING BONUS,
9 BUT WHY DIDN'T YOU SEEK TO MONETIZE OR SEEK TO GET SOME TYPE OF
10 RETURN BASED ON YOUR PROFIT FOR 2009?

11 A. I DIDN'T THINK I WAS ENTITLED TO IT IN THE SENSE THAT MY
12 -- AND WE'LL GET INTO MY EQUITY POINTS, I GUESS, SHORTLY. BUT
13 MY EQUITY PARTICIPATION AT LEVEL GLOBAL REALLY STARTED IN 2010.
14 2009, I JOINED IN AUGUST, AND IT WAS A STUB YEAR. AND
15 TYPICALLY WHEN THAT HAPPENS, YOU DON'T HAVE AN EXPECTATION OF
16 PARTICIPATING IN THE PROFITABILITY OF THE FUND BECAUSE IT'S
17 CONSIDERED UNFAIR TO PEOPLE WHO HAVE BEEN THERE FOR THE FULL
18 YEAR OR WHO HAVE BEEN THERE FOR LONGER PERIODS OF TIME. SO,
19 YOU KNOW, IT JUST WAS NOT SOMETHING THAT WE REALLY CONSIDERED
20 WAS GOING TO BE PART OF MY OVERALL COMPENSATION PACKAGE.

21 Q. SO MY QUESTION IS -- AND YOU ANSWERED MY QUESTION. MY
22 NEXT QUESTION IS, DID YOU GET ANY COMPENSATORY BENEFIT IN TERMS
23 OF A BONUS FOR THE LOSS AVOIDED RELATED TO THE CARTER'S SALE?

24 A. NO, I DID NOT.

25 Q. WERE YOU CONTRACTUALLY ELIGIBLE, POTENTIALLY, TO GET A

1 BONUS?

2 A. POTENTIALLY, UH-HUH.

3 THE COURT: WHAT DOES IT SAY, \$2.34 MILLION,
4 \$3,334,000.00, AND THEN PLUS SEVEN MILLION I THOUGHT WERE PART
5 OF THE --

6 MR. MONNIN: I'M SORRY, JUDGE. THAT'S A DIVISION
7 SYMBOL.

8 THE COURT: OH. THAT'S WHAT HAPPENS WHEN YOU'RE
9 GOING BACK AND FORTH HERE. SORRY.

10 MR. MONNIN: SO THE NUMERATOR IS THE LOSS AVOIDED.
11 DENOMINATOR IS THE PROFITABILITY. AND WHAT WE'RE SAYING IS IS
12 THAT 25.5 PERCENT IS LOSS AVOIDED.

13 THE COURT: I SEE.

14 MR. MONNIN: AND HE DIDN'T GET ANY COMPENSATORY
15 BENEFIT FROM THAT.

16 THE COURT: OKAY.

17 Q. (BY MR. MONNIN) SO MOVING ON, MR. MEGALLI, LET'S GO TO
18 THE NEXT SLIDE HERE. DIRECTING YOUR ATTENTION TO PARAGRAPHS
19 4(D) AND 4(E) OF YOUR EMPLOYMENT AGREEMENT, COULD YOU JUST WALK
20 THE COURT THROUGH? THIS IS WHERE WE'RE GETTING TO WHAT YOUR
21 INTEREST WAS IN LEVEL GLOBAL'S PROFITS OR LEVEL GLOBAL'S
22 INCENTIVE FEES. JUST DESCRIBE IN BASIC TERMS WHAT THE CONTRACT
23 PROVIDES.

24 A. SURE. OKAY. SO I DESCRIBED THE INCENTIVE FEES EARLIER
25 THAT LEVEL GLOBAL WOULD RECEIVE AT THE END OF THE YEAR FROM THE

1 INVESTORS, WHICH WAS TEN PERCENT OF THE COMPANY'S PROFITS. AND
2 I WAS ELIGIBLE TO RECEIVE A PORTION OF THAT TEN PERCENT
3 DEPENDING ON HOW MY CONSUMER DISCRETIONARY FUND DID.

4 SO IF MY CONSUMER DISCRETIONARY FUND IN 2010 -- AND,
5 AGAIN, IT WAS A \$500 MILLION FUND -- IF I WAS UP ZERO TO \$50
6 MILLION, I WAS TO RECEIVE SOMEWHERE BETWEEN ONE AND THREE
7 PERCENT OF LEVEL GLOBAL'S INCENTIVE FEES. AND IF I WAS UP 50
8 MILLION OR MORE DOLLARS, I WAS TO RECEIVE THREE TO FIVE PERCENT
9 OF LEVEL GLOBAL'S INVESTMENT FEES. AND THE REASON THERE'S A
10 RANGE WAS TO GIVE THE INVESTMENT MANAGER DISCRETION OVER WHERE
11 I ENDED UP WITHIN THAT.

12 Q. SO LET'S BREAK THAT DOWN A LITTLE BIT. WHAT WE'RE TALKING
13 ABOUT IN THESE GREY BOXES, THIS IS YOUR PERFORMANCE. CORRECT?

14 A. CORRECT. IT'S HOW I DID ON THE 500 MILLION THAT I WAS
15 RESPONSIBLE FOR.

16 Q. SO IF YOU -- I KNOW YOU WEREN'T ELIGIBLE FOR AN INCENTIVE
17 BONUS IN 2009, BUT JUST TO ILLUSTRATE, THE RETURN DURING THAT
18 YEAR WAS 7.9 MILLION. CORRECT?

19 A. THAT'S CORRECT.

20 Q. SO UNDER THE CONTRACT, WHERE, CONCEIVABLY, WOULD THAT HAVE
21 PLACED YOU IN TERMS OF POINTS?

22 A. HAD I BEEN ELIGIBLE, IT WOULD HAVE BEEN IN THAT FIRST
23 CATEGORY, ONE TO THREE PERCENT.

24 Q. AND LET ME SHOW YOU EXHIBIT 5, WHICH IS YOUR PERFORMANCE
25 DOCUMENT FOR 2010. TELL THE COURT WHAT, WHAT PROFITABILITY DID

1 YOU RETURN TO LEVEL GLOBAL FOR 2010?

2 A. SO ON THE 500 MILLION, MY PROFITS WERE \$39,198,356.00.

3 Q. AND WHAT WAS THE PERCENTAGE RETURN THAT YOU WERE
4 GENERATING?

5 A. WELL, HERE IT HAS RETURN ON ASSETS UNDER MANAGEMENT ABOUT
6 15.6 PERCENT.

7 Q. WAS THAT A PRETTY FAVORABLE PERFORMANCE IN RELATION TO THE
8 OTHER PORTFOLIO MANAGERS?

9 A. YEAH. I MEAN, IT WAS PRETTY GOOD.

10 Q. BUT THAT \$39 MILLION PROFIT THAT YOU HAD, WHAT DID THAT
11 POTENTIALLY ENTITLE YOU TO IN TERMS OF POINTS AGAINST LEVEL
12 GLOBAL'S PROFITS?

13 A. WELL, BECAUSE IT WAS BETWEEN ZERO AND \$50 MILLION, THEN I
14 WOULD BE ENTITLED TO GET ONE TO THREE PERCENT OF LEVEL GLOBAL'S
15 INCENTIVE FEES.

16 Q. AND WHO DECIDED AS BETWEEN THE ONE TO THREE PERCENT?

17 A. DAVID GANEK, THE INVESTMENT MANAGER.

18 Q. HOW DID THAT DISCUSSION WORK?

19 A. THERE WAS NO DISCUSSION. I WAS TOLD IT WOULD BE THREE
20 PERCENT.

21 Q. DO YOU HAVE ANY INSIGHT AS TO WHY IT WAS SET AT THREE
22 PERCENT AS OPPOSED TO TWO PERCENT?

23 A. MY GUESS IS BECAUSE IT WAS TOWARDS THE VERY HIGH END OF
24 THAT RANGE.

25 Q. SO, BASED ON YOUR PERFORMANCE IN 2010, THE MAXIMUM POINTS

1 THAT YOU HAD WERE THREE PERCENT. CORRECT?

2 A. CORRECT.

3 Q. NOW, WE'VE DONE THE SAME ANALYSIS FOR 2010. IN 2009, WE
4 WERE TALKING ABOUT A LOSS AVOIDED OF 2.043 MILLION. WHAT HAS
5 JUDGE TOTENBERG FOUND YOU LIABLE FOR IN TERMS OF AN ILLEGAL
6 PROFIT IN 2010?

7 A. \$648,655.00.

8 Q. WHAT DOES THAT RELATE TO, SIR?

9 A. THAT RELATES TO A SHORT SALE IN CARTER'S THAT OCCURRED IN
10 JULY OF 2010 WHERE WE SHORTED STOCK AT THE BEGINNING OF JULY.
11 WE COVERED THAT STOCK AT THE END OF JULY AND GENERATED A PROFIT
12 ON THAT TRADE OF 648,000, ROUGHLY, DOLLARS.

13 Q. AND JUST SO I'M CLEAR FOR THE RECORD, SO IN 2009, THE SALE
14 OF THE CARTER'S LONG POSITION, FOR WHICH JUDGE TOTENBERG HAS
15 FOUND YOU LIABLE, CONSTITUTED 25.5 PERCENT OF THE PROFIT THAT
16 YOU RETURNED. IS THAT RIGHT?

17 A. CORRECT.

18 Q. AND WHAT PERCENT OF THE PROFIT THAT YOU RETURNED IN 2010
19 DID THE SHORT SALE COMPRISE?

20 A. IT WAS 1.65 PERCENT, WHICH IS THE 650,000 OVER THE 39.2
21 MILLION OF TOTAL RETURN WITHIN MY CONSUMER FUND.

22 Q. SO, IN ESSENCE, IN TERMS OF JUDGE TOTENBERG'S LIABILITY
23 ORDER, YOU HAD A 25.5 PERCENT IMPACT IN 2009. OR THE TRADING
24 DID.

25 A. CORRECT.

1 Q. AND IT HAD A 1.65 PERCENT IMPACT IN 2010.

2 A. CORRECT.

3 Q. DID YOU GET PAID ON THE CARTER'S PROFITS IN 2010?

4 A. WELL, I GOT PAID ON HOW LEVEL GLOBAL DID OVERALL. I
5 DIDN'T GET PAID DIRECTLY ON MY CONSUMER FUND PERFORMANCE. MY
6 CONSUMER FUND PERFORMANCE WAS MEANT TO BE A TRIGGER TO GET ME
7 INTO THE ONE TO THREE PERCENT OR THE THREE TO FIVE PERCENT.
8 BUT I WAS NOT MEANT TO GET PAID DIRECTLY ON HOW THE CONSUMER
9 FUND DID. MY COMPENSATION HAD TO DO WITH HOW LEVEL GLOBAL DID
10 OVERALL.

11 Q. SO LET'S RUN THE ILLUSTRATION. LET'S MOVE FORWARD. TELL
12 THE COURT AGAIN, THIS IS ESSENTIALLY A SUMMARY OF YOUR PERSONAL
13 INTEREST IN LEVEL GLOBAL'S PROFIT. CORRECT?

14 A. CORRECT. SO LEVEL GLOBAL WOULD COLLECT INCENTIVE FEES,
15 WHICH WERE TEN PERCENT OF THE RETURNS GENERATED BY THE FUND,
16 THE PARENT COMPANY.

17 Q. IS THAT PRETTY STANDARD?

18 A. YEAH. THAT'S STANDARD. IT COULD BE TEN TO 20. WE WERE
19 AT TEN BECAUSE THE COMPANY, BEFORE I JOINED, HAD GONE UNDER
20 WHAT THEY CALL A HIGH-WATER MARK. AND IT WAS ONLY GOING TO
21 COLLECT INCENTIVE FEES AT A RATE OF TEN PERCENT UNTIL IT GOT
22 BACK TO THE HIGH-WATER MARK, PLUS AN ADDITIONAL AMOUNT. SO,
23 YOU KNOW, IT WAS TEN PERCENT OF WHATEVER THE RETURN WAS.

24 AND THEN, AS WE SAID EARLIER, I WAS TO RECEIVE THREE
25 PERCENT, ULTIMATELY, OF THE TEN PERCENT. SO THAT'S THE 0.3

1 PERCENT OF THE TOTAL INCENTIVE FEES AT THE COMPANY.

2 MR. MONNIN: AND, YOUR HONOR, I APOLOGIZE IF THIS IS
3 BASIC, BUT WE'VE GOT IN THE NEXT SLIDE A VERY BASIC
4 ILLUSTRATION.

5 THE COURT: BASIC IS GOOD.

6 MR. MONNIN: THAT'S WHAT I FIGURED.

7 Q. (BY MR. MONNIN) SO LET'S MOVE FORWARD. SO YOU'RE
8 ENTITLED TO POINT THREE PERCENT ESSENTIALLY OF WHAT LEVEL
9 GLOBAL PROFITS. IS THAT RIGHT?

10 A. CORRECT.

11 Q. SO LET'S RUN THE ILLUSTRATION. SO IF THE OVERALL FUND
12 RETURNS \$10.00, WALK THE COURSE OF WHAT YOU REALIZED.

13 A. SURE. WELL, LET ME TAKE A STEP BACK. LET'S JUST ASSUME
14 THAT LEVEL GLOBAL MANAGED \$100.00 IN TOTAL. AND LET'S SAY ON
15 THAT \$100.00, THEY WERE UP TEN PERCENT FOR THE YEAR. SO NOW
16 THEY'VE GENERATED \$10.00 OF PROFITS. SO THE WAY IT WORKS IS,
17 THE \$9.00 OF THOSE \$10.00 WOULD GO BACK TO THE INVESTORS. AND
18 LEVEL GLOBAL WOULD RETAIN \$1.00 OF THAT \$10.00 AS AN INCENTIVE
19 FEE. AND THAT'S THE TEN PERCENT I TALKED ABOUT EARLIER THAT WE
20 TALKED ABOUT.

21 NOW, OF THAT \$1.00 THAT'S RETAINED BY LEVEL GLOBAL, I WAS
22 TO GET THREE PERCENT OF THE \$1.00 AND THE COMPANY WOULD USE THE
23 OTHER 97 CENTS FOR OTHER PURPOSES. SO FOR EVERY \$10.00 THAT
24 THE COMPANY GENERATED IN PROFITS, I WAS TO RECEIVE THREE CENTS
25 OF THE \$10.00 BY CONTRACT.

1 Q. AND THAT'S ASSUMING THAT YOUR PERSONAL PERFORMANCE PUTS
2 YOU -- GAVE YOU THREE POINTS, IF YOU WILL?

3 A. CORRECT. AND THAT COULD HAVE BEEN ONE PERCENT. IT COULD
4 HAVE BEEN AS HIGH AS FIVE, BUT ULTIMATELY IT WAS THREE.

5 Q. SO IF THE COURT IS GOING BACK TO CHAMBERS TO TAKE A LOOK
6 AT YOUR EMPLOYMENT AGREEMENT TO FIND THE BASIS FOR THIS
7 ILLUSTRATION, IS THAT IN PARAGRAPHS 4(D) AND 4(E)?

8 A. YES, IT IS.

9 THE COURT: SO WHAT DOES THAT MEAN, OTHER PEOPLE WERE
10 RECEIVING MONEY AND MAKING THIS ALL WORK? I MEAN, YOU'RE
11 GETTING THREE CENTS ON THE DOLLAR. HOW MANY OTHER PEOPLE WERE
12 RECEIVING MONEY?

13 THE WITNESS: WELL, THERE WERE ABOUT -- I BELIEVE
14 THERE WERE ABOUT 60 TO 70 EMPLOYEES AT LEVEL GLOBAL, BUT NOT
15 ALL OF THOSE EMPLOYEES WERE INVESTMENT PROFESSIONALS. THEY
16 WERE, YOU KNOW, TRADERS AND ADMINISTRATIVE PERSONNEL AND SO
17 FORTH. I DON'T KNOW HOW MANY PEOPLE EXACTLY WERE ELIGIBLE TO
18 RECEIVE INCENTIVE COMPENSATION, BUT I CAN TELL YOU THERE WERE
19 FOUR SECTOR VERTICALS. AND THOSE PEOPLE WOULD HAVE BEEN
20 ELIGIBLE. THERE WAS DAVID GANEK, OF COURSE, THE HEAD OF THE
21 FIRM. THERE WAS HIS COFOUNDER, ANTHONY CHIASSON, WHO WOULD
22 HAVE BEEN ELIGIBLE. I WOULD ESTIMATE, ESTIMATE THAT THERE WERE
23 PROBABLY ABOUT 20 PEOPLE, BUT THAT'S REALLY AN ESTIMATION.

24 Q. (BY MR. MONNIN) AND THE BEST THAT YOU COULD POSSIBLY EVER
25 DO, IF YOU WERE ABOVE 50 MILLION IN TERMS OF YOUR OWN SECTOR'S

1 PROFITABILITY, WOULD BE .5 PERCENT. CORRECT?

2 A. WOULD BE .5 PERCENT OF THE COMPANY, YEAH, RETURNS, THAT'S
3 CORRECT.

4 Q. SO THE BEST YOU COULD DO ON A \$10.00 PROFIT WOULD BE FIVE
5 CENTS.

6 A. THAT'S CORRECT.

7 Q. WERE YOU EVER -- DID YOU EVER HAVE AN EQUITY STAKE OR
8 OWNERSHIP INTEREST IN LEVEL GLOBAL?

9 A. NO, I DID NOT.

10 Q. WERE YOU ALWAYS AN EMPLOYEE OF LEVEL GLOBAL?

11 A. YES, I WAS.

12 Q. TELL THE COURT WHERE, TO YOUR KNOWLEDGE, THE MAJORITY OF
13 THE 97 CENTS WENT, OR THE .97?

14 A. WELL, THE MAJORITY WENT TO THE FOUNDER, THE TOP TWO OR
15 THREE PEOPLE IN THE COMPANY, YOU KNOW. THEY KEPT THE MAJORITY
16 OF THAT. AND THEN ANOTHER PORTION WOULD GO TO --

17 Q. WHO WERE THE TOP THREE?

18 A. DAVID GANEK WAS THE NUMBER ONE GUY. ANTHONY CHIASSON WAS
19 THE NUMBER TWO GUY AND ALSO A COFOUNDER. AND WILL MCCLANAHAN
20 WAS THE NUMBER THREE GUY.

21 THE COURT: AND WHO WAS HE?

22 THE WITNESS: HE WAS THE HEAD OF THE FINANCIALS
23 SECTOR VERTICAL AND ONE OF THE FIRST EMPLOYEES THERE.

24 Q. (BY MR. MONNIN) TO YOUR KNOWLEDGE, MARK, DID ANY OF THE
25 PORTFOLIO MANAGERS HAVE A BETTER DEAL THAN WHAT YOU HAD UNDER

1 PARAGRAPHS 4(D) AND 4(E)?

2 A. I HAVE NO IDEA WHAT OTHER DEALS PEOPLE HAD, TO BE HONEST.
3 I JUST DON'T KNOW.

4 Q. NOW, LET'S MOVE ON TO WHAT YOU ACTUALLY GOT PAID IN TERMS
5 OF INCENTIVE COMPENSATION. ROUGHLY, WHAT WE'RE TALKING ABOUT
6 IS 1.2 MILLION?

7 A. THAT'S CORRECT.

8 Q. NOW, THERE'S A REFERENCE IN PARAGRAPH 4(E) OF YOUR
9 EMPLOYMENT AGREEMENT TO LEVEL RADAR. AND THE COURT IS GOING TO
10 SEE THAT AS SHE REVIEWS THE CONTRACT. WHAT IS LEVEL RADAR, AS
11 OPPOSED TO LEVEL GLOBAL?

12 A. LEVEL RADAR WAS A TECHNOLOGY-FOCUSED FUND MANAGED BY
13 ANTHONY CHIASSON, ONE OF THE COFOUNDERS OF THE FIRM, THAT
14 FOCUSED EXCLUSIVELY ON TECHNOLOGY-RELATED STOCKS. I DON'T KNOW
15 EXACTLY HOW MUCH OF THE THREE TO THREE AND A HALF BILLION WAS
16 IN RADAR, SO IT'S HARD FOR ME TO KNOW EXACTLY. BUT THE VAST
17 MAJORITY WAS IN LEVEL GLOBAL.

18 Q. DID YOUR CARTER'S TRADING OR YOUR CONSUMER PORTFOLIO
19 TRADING IMPACT LEVEL RADAR'S PROFITABILITY IN ANY WAY?

20 A. NO, IT DID NOT.

21 Q. WHY IS IT THAT YOU STILL GOT AN INCENTIVE BONUS BASED ON
22 LEVEL RADAR'S PERFORMANCE?

23 A. BECAUSE MY INCENTIVE BONUS WAS MEANT TO BE ON HOW THE
24 OVERALL COMPANY WHOLISTICALLY DID, AND NOT JUST LEVEL GLOBAL OR
25 JUST LEVEL RADAR. IT WAS MEANT TO BE HOW THE COMPANY DID. AND

1 LEVEL RADAR WAS PART OF THE COMPANY, EVEN THOUGH I REALLY HAD
2 NOTHING TO DO WITH IT.

3 MR. MONNIN: AND LET ME REFER YOU IF I MAY, YOUR
4 HONOR, TO EXHIBIT -- JUST SO THAT WE'VE GOT IT CLEAR IN THE
5 RECORD, EXHIBIT 3.

6 Q. (BY MR. MONNIN) COULD YOU PLEASE TELL THE COURT WHAT THAT
7 DOCUMENT IS?

8 A. SURE. THIS WAS AN ESTIMATE OF WHAT MY COMPENSATION WAS TO
9 BE FOR THE YEAR 2010. AND I GUESS WHAT IT ILLUSTRATES IS THAT,
10 ULTIMATELY, I WAS PAID 3.00 POINTS OR PERCENT OF THE COMPANY'S
11 PROFITS.

12 THE COURT: THAT'S NOT -- YOU'RE LOOKING AT THAT.

13 THE WITNESS: YEAH.

14 Q. (BY MR. MONNIN) SO JUST FOR THE COURT'S REFERENCE, WHAT I
15 AM REALLY FOCUSING YOU IN ON, MARK, IS THE 3.00. WHAT DOES
16 THAT REFER TO?

17 A. THAT WAS MY THREE PERCENT THAT WE DISCUSSED EARLIER, THREE
18 PERCENT OF THE COMPANY INCENTIVE FEES.

19 Q. SO YOU RECEIVED THREE POINTS, IF YOU WILL, RELATED TO
20 LEVEL GLOBAL'S INCENTIVE FEES, AS WELL AS LEVEL RADAR'S
21 INCENTIVE FEES?

22 A. CORRECT. AND SO YOU SEE IT'S LISTED AS LG. IT'S LEVEL
23 GLOBAL. AND THEN BELOW THAT WHERE IT SAYS LR, THAT STANDS FOR
24 LEVEL RADAR.

25 Q. AND THEN GOING BACK TO THE POWERPOINT DECK, WHAT'S IN

1 EXHIBIT 3 WERE ESTIMATED NUMBERS. WHAT'S IN THIS, I GUESS IT'S
2 EXHIBIT 2, AS WELL, WERE ACTUAL -- OUR ACTUAL NUMBERS?

3 A. TRUE. THAT'S ACTUAL NUMBERS, CORRECT.

4 Q. AND TO THE BEST OF YOUR RECOLLECTION, IS 1.195 MILLION
5 WHAT YOU RECEIVED IN 2010 IN TERMS OF INCENTIVE-BASED
6 COMPENSATION?

7 A. THAT'S CORRECT. AND IF I MAY JUST POINT ONE OTHER THING
8 OUT, GOING BACK TO THE OTHER SLIDE WITH THE THREE PERCENT ON
9 IT?

10 Q. SURE. LET'S DO THAT.

11 A. THERE IS A MISTAKE IN HERE IN THE SENSE THAT IT INCLUDES
12 MY ENTIRE SIGNING BONUS AS PART OF MY COMPENSATION, WHICH IS
13 OBVIOUSLY WRONG BECAUSE IT HADN'T VESTED. I AM TALKING ABOUT
14 THE 486,300. YOU KNOW, THEY SORT OF THREW THAT IN THERE AS
15 PART OF YOUR COMPENSATION. BUT TWO-THIRDS OF THAT HAD NOT
16 VESTED AT THAT POINT. SO THAT'S WHY THE NUMBERS AREN'T GOING
17 TO BE THE SAME AS THE NUMBERS WE WERE SHOWING EARLIER. I JUST
18 WANT TO MAKE THAT CLEAR.

19 Q. BUT THE NUMBERS THAT ARE IN THE SLIDE DECK -- WE'VE MET
20 OVER THE LAST NUMBER OF WEEKS; WE MET YESTERDAY -- THOSE
21 NUMBERS, TO THE BEST OF YOUR KNOWLEDGE, ARE ACCURATE IN TERMS
22 OF YOUR COMPENSATION?

23 A. CORRECT. CORRECT.

24 Q. ALL RIGHT. LET'S MOVE ON. WHAT I WANT TO GET TO HERE IS
25 REVERSING THE THREE-PENNY COMPUTATION, BECAUSE WHAT I WANT THE

1 COURT TO UNDERSTAND IS, WHAT WAS THE OVERALL, YOUR PORTFOLIO
2 PROFITABILITY, AS WELL AS LEVEL GLOBAL'S OVERALL PROFITABILITY
3 FOR 2010, BECAUSE WE'RE GOING TO RUN SOME ARITHMETIC.

4 A. RIGHT. SO IF YOU REVERSE ENGINEER MY \$1.2 MILLION
5 YEAR-END INCENTIVE BONUS, THAT WAS THREE PERCENT, AS WE'VE
6 DISCUSSED, OF THE COMPANY'S INCENTIVE FEES. SO THAT'S THREE
7 PERCENT OF THAT \$39.9 MILLION NUMBER RIGHT BELOW IT. SO THAT
8 IS ROUGHLY WHAT LEVEL GLOBAL COLLECTED IN 2010 IN THE FORM OF
9 INCENTIVE FEES. AND BECAUSE THEIR INCENTIVE FEES COMPRISE TEN
10 PERCENT OF THE TOTAL RETURNS, THE TOTAL RETURNS TO THE COMPANY
11 WERE \$398.6 MILLION. SO, IN OTHER WORDS, OF THE THREE AND A
12 HALF OR SO BILLION THAT LEVEL WAS INVESTING, THEY GENERATED 398
13 MILLION OF RETURN. AND OF THE 398 MILLION OF RETURN, THEY
14 RETAINED 39.8 MILLION IN THE FORM OF INCENTIVE FEES. AND OF
15 THE 39.8 MILLION IN INCENTIVE FEES, I WAS PAID THREE PERCENT OF
16 THAT, WHICH IS 1.2 MILLION.

17 Q. SO WE RAN A COMPUTATION EARLIER FOR THE COURT. THE 648
18 GRAND IS THE PROFIT THAT HER HONOR HAS FOUND YOU LIABLE FOR IN
19 INSIDER TRADING. CORRECT?

20 A. CORRECT.

21 Q. AND WHAT PERCENTAGE WAS THAT OF THE ROUGHLY 40 MILLION IN
22 PROFIT THAT YOU RETURNED TO LEVEL GLOBAL?

23 A. WELL, OF THE 400 MILLION TO LEVEL GLOBAL HERE, IT WAS
24 .1627 PERCENT.

25 Q. RIGHT. SO ROUGHLY WHAT WE HAVE IS THAT THE 648,000 WAS

1 1.65 PERCENT OF YOUR PERSONAL PROFIT.

2 A. RIGHT.

3 Q. AND IT'S .1627 OF LEVEL GLOBAL OVERALL?

4 A. OF LEVEL GLOBAL, RIGHT, UH-HUH.

5 Q. SO JUST TO SUM UP, LET'S MOVE ALONG TO THE NEXT SLIDE.

6 YOU HEARD ME INTRODUCE OUR PRESENTATION TO THE COURT WHEN I
7 INITIALLY STOOD UP. WHAT I'D LIKE TO DO NOW IS, WHAT I ADVISED
8 THE COURT WAS THAT YOU REALLY DIDN'T RECEIVE ANY COMPENSATORY
9 BENEFIT FOR THE 2.034 MILLION IN LOSS AVOIDED IN 2009.

10 CORRECT?

11 A. CORRECT.

12 Q. WALK THE COURT THROUGH WHY THAT'S THE CASE IN 2009.

13 A. THAT'S THE CASE BECAUSE I DIDN'T RECEIVE ANY YEAR-END
14 BONUS IN 2009.

15 Q. WHAT WAS THE CONTRACTUAL MEANS THAT YOU MAY HAVE HAD TO
16 RECEIVE A BONUS OR SOME TYPE OF COMPENSATORY BENEFIT FOR WHAT
17 HER HONOR HAS FOUND YOU DID ILLEGALLY IN 2009?

18 A. THAT MECHANISM WOULD HAVE BEEN 4.C IN MY CONTRACT, WHICH
19 IS CALLED 2009 DISCRETIONARY BONUS, WHICH WAS NEVER EXERCISED
20 OR OFFERED.

21 Q. AND YOUR ALL-IN COMPENSATION FOR 2010 INCLUDES WHAT?

22 A. SO THE THREE COMPONENTS WE DISCUSSED, MY SALARY, MY FIRST
23 YEAR OF MY SIGNING BONUS, AND MY INCENTIVE BONUS AT THE END OF
24 THE YEAR. AND THAT AMOUNTS TO 1.65 MILLION ROUGHLY.

25 MR. MONNIN: JUDGE, WHAT I'D LIKE TO DO NOW IS RUN

1 THROUGH WHAT WE BELIEVE ARE APPROPRIATE DISGORGEMENT MODELS
2 BASED ON THE CASE LAW AND THE AUTHORITY. AND WE'LL DO THOSE
3 MATHEMATICALLY. AND, REALLY, WHAT WE'RE TRYING TO GET TO IS
4 WHAT WAS MR. MEGALLI'S DIRECT COMPENSATORY BENEFIT, WHICH WAS A
5 PART OF OUR SUMMARY JUDGMENT BRIEFING. BUT WE'RE GOING TO DO
6 IT MATHEMATICALLY NOW FOR THE COURT'S REFERENCE IN THE SLIDE
7 DECK.

8 THE COURT: OKAY.

9 Q. (BY MR. MONNIN) SO, MR. MEGALLI, YOU'VE HELPED ME RUN
10 SOME OF THESE COMPUTATIONS. AND YOU'RE THE WITNESS UP THERE.
11 IF YOU COULD PLEASE WALK THE COURT THROUGH WHAT IS BEING
12 ILLUSTRATED IN THIS NEXT SLIDE.

13 A. SURE. THE \$648,655.00 WAS THE PROFITS ON THE SHORT SALE
14 IN JULY OF 2010, WHICH WE'VE ALREADY DISCUSSED. AND SO THIS
15 CALCULATION SHOWS THAT IF YOU TAKE TEN PERCENT OF THE 648,000,
16 THAT'S \$64,865.00. THAT'S THE PORTION THAT LEVEL GLOBAL, THE
17 PARENT COMPANY, WOULD RETAIN OF THOSE PROFITS. THE REMAINING
18 90 PERCENT WOULD BE RETURNED TO THE INVESTORS. SO LEVEL GLOBAL
19 WOULD RETAIN TEN PERCENT OF -- I'M JUST GOING TO SAY 648,000.
20 SO THAT'S \$64,000.00, ROUGHLY. AND OF THAT \$64,000.00, I WAS
21 TO BE PAID THREE PERCENT, WHICH IS \$1946.00 ROUGHLY.

22 Q. SO IS IT FAIR TO SAY THAT, ESSENTIALLY WHAT YOU'VE DONE
23 HERE IS RUN -- OR WHAT WE'VE DONE HERE IS RUN THE WATERFALL
24 UNDER 4(D) AND 4(E) OF YOUR EMPLOYMENT AGREEMENT?

25 A. CORRECT.

1 Q. SO YOU WERE ENTITLED TO THREE PERCENT OF LEVEL GLOBAL'S
2 TEN PERCENT.

3 A. CORRECT.

4 Q. AND THE TOP LINE NUMBER IS THE ILLEGAL PROFIT.

5 A. CORRECT.

6 Q. LET'S LOOK AT IT ANOTHER WAY BASED ON YOUR PERCENTAGE
7 CONTRIBUTION OR THE PERCENTAGE CONTRIBUTION OF YOUR ILLEGAL
8 CONDUCT OR THE CONDUCT THAT THE COURT HAS FOUND TO BE
9 ILLEGAL --

10 A. RIGHT.

11 Q. -- IN TERMS OF LEVEL GLOBAL'S OVERALL PROFITABILITY.

12 A. RIGHT. SO, AGAIN, I WAS PAID ON LEVEL GLOBAL'S OVERALL
13 PROFITABILITY, WHICH WAS APPROXIMATELY \$398 MILLION THAT YEAR.
14 THE CARTER'S TRADE, THAT SHORT SALE TRADE IN JULY OF '10,
15 REPRESENTED 648,000 OUT OF 400 MILLION, WHICH WAS .1627 PERCENT
16 OF LEVEL GLOBAL'S PROFITS. AND IF YOU LOOK AT .1627 PERCENT OF
17 MY BONUS, WHICH, AGAIN, WAS BASED ON LEVEL GLOBAL'S TOTAL
18 PROFITS, IT WAS THE SAME, \$1946.00.

19 Q. NOW, LET ME ASK YOU, THIS \$1.2 MILLION FIGURE, DOES THAT
20 INCLUDE LEVEL RADAR INCENTIVE COMPENSATION?

21 A. YES, IT DOES.

22 Q. WOULD THERE HAVE BEEN A BASIS TO EXCLUDE LEVEL RADAR FROM
23 THIS COMPUTATION?

24 A. PERHAPS, YES, YOU COULD EXCLUDE THAT IN THE SENSE THAT I
25 HAD NOTHING TO DO WITH IT. SO PERHAPS.

1 Q. BUT YOU STILL GOT BONUSED ON IT.

2 A. CORRECT.

3 Q. SO YOU STILL GOT BONUSED ON IT. SO IT'S BEEN INCLUDED
4 HERE IN TERMS OF THE CALCULATION.

5 A. CORRECT.

6 MR. MONNIN: AND, YOUR HONOR, THESE ARE THE TWO
7 NUMBERS THAT WE ARE -- THE NUMBER THAT WE INCLUDED IN OUR
8 SUMMARY JUDGMENT BRIEFING ESSENTIALLY RUNNING THE WATERFALL OF
9 WHAT THE ILLEGAL PROFIT WAS FOR 2010 AND REDUCING THAT TO HIS
10 ACTUAL COMPENSATORY BENEFIT. THAT'S THE FIRST SLIDE. THAT'S,
11 THAT'S SLIDE NUMBER 14.

12 SLIDE NUMBER 15 IS TAKING HIS OVERALL INCENTIVE-BASED
13 COMPENSATION AND RUNNING THE PERCENTAGE OF PROFITABILITY
14 CONTRIBUTED BY MR. MEGALLI'S ILLEGAL CONDUCT AS FOUND BY THE
15 COURT. SO TAKING THE 648 GRAND PROFIT, ILLEGAL PROFIT, RUNNING
16 THAT INTO THE OVERALL PROFITABILITY OF LEVEL GLOBAL, AND THEN
17 MULTIPLYING THAT PERCENTAGE TIMES HIS BONUS. SO I THINK,
18 EITHER WAY, WE COME UP WITH THE SAME NUMBER, JUDGE. WE'RE KIND
19 OF TALKING ABOUT THE SAME TYPES OF FACTORS. BUT IT'S JUST A
20 DIFFERENT WAY ANALYTICALLY TO LOOK AT IT, WHICH WE BELIEVE, MR.
21 MEGALLI BELIEVES IS WELL SITUATED WITHIN THE DISGORGEMENT
22 AUTHORITY.

23 GIVEN THE COURT'S COMMENTARY IN YOUR HONOR'S ORDER,
24 WE HAVE RUN ANOTHER COMPUTATION, JUDGE, WHICH IS SLIDE 16.

25 Q. (BY MR. MONNIN) SO, MR. MEGALLI, WHY DON'T YOU TAKE THE

1 COURT THROUGH THE TOP LINE COMPUTATION.

2 A. SURE.

3 Q. WHAT ARE YOU DOING?

4 A. THE 648,000, AGAIN, IT'S THE PROFIT ON THE SHORT SALE FROM
5 JULY OF 2010. THE 39.2 MILLION IS THE AMOUNT THAT MY CONSUMER
6 DISCRETIONARY FUND RETURNED IN 2010. AND, THEREFORE, THE
7 648,000 WAS ABOUT 1.65 PERCENT OF THE PROFITS THAT WERE
8 GENERATED IN MY CONSUMER-FOCUSED FUND THAT YEAR.

9 Q. AND WHEN YOU RUN -- SO WE'RE APPLYING THAT 1.65 PERCENT
10 FIGURE AGAINST YOUR INCENTIVE COMP?

11 A. CORRECT.

12 Q. AND THE TOTAL IS 19,000?

13 A. CORRECT, YEAH, \$19,790.00.

14 MR. MONNIN: SO, YOUR HONOR, WHAT WE HAVE ATTEMPTED
15 TO DO, OR WHAT WE'VE DONE IN SLIDE 15 VERSUS SLIDE 16 IS, WE'VE
16 TAKEN MR. MEGALLI'S ILLEGAL TRADING ACTIVITY AS FOUND BY THE
17 COURT, AND WE'VE RUN IT THROUGH HIS PORTFOLIO'S INDIVIDUAL
18 PROFITABILITY OF 40 MILLION, AS WELL AS THE OVERALL LEVEL
19 GLOBAL PROFITABILITY OF 398 MILLION.

20 THE COURT: I KNOW YOU'VE GIVEN ME DISCRETIONARY
21 INCENTIVE PAY IN 2009, ARE YOU JUST BASICALLY WIPING 2009 OUT
22 OF THE PICTURE?

23 MR. MONNIN: YES, YOUR HONOR. FROM A DISGORGEMENT
24 PERSPECTIVE, GIVEN OUR ARGUMENT THAT WHAT DISGORGEMENT IS
25 GETTING AT IS, WHAT DID MY CLIENT PERSONALLY PROFIT FROM HIS

1 ILLEGAL ACTIVITY, AND WHAT WAS HIS PERSONAL COMPENSATORY
2 BENEFIT, GIVEN THAT THE CASE LAW IS DIRECTED TO HOW ARE YOU
3 GOING TO RETURN HIM TO THE POSITION PRIOR TO THE ILLEGAL
4 ACTIVITY. AND OUR ARGUMENT WITH RESPECT TO THE 2009 TRADE IS
5 THAT, BECAUSE HE DIDN'T GET ANY COMPENSATORY BENEFIT FOR IT, IT
6 ESSENTIALLY REALLY DOESN'T FACTOR INTO THE DISGORGEMENT
7 ANALYSIS.

8 I UNDERSTAND THAT THE COURT MAY WANT TO CONSIDER IT
9 IN TERMS OF AN APPROPRIATE CIVIL PENALTY IN TERMS OF A FACTOR
10 IN AGGRAVATION OR MITIGATION, WHICH IS A SEPARATE ISSUE. BUT
11 OUR POSITION WITH RESPECT TO -- AND I'LL JUST SAY IT -- OUR
12 POSITION WITH RESPECT TO APPROPRIATE DISGORGEMENT, YOUR HONOR,
13 IS THE \$1900.00 FIGURE, THE 1945.97 FIGURE, WHICH IS, WHAT DID
14 MR. MEGALLI'S ILLEGAL CONDUCT IN 2010 CONTRIBUTE TO HIS
15 PERSONAL COMPENSATION DURING THAT YEAR, AND THE WAY WE GET
16 THERE IS THAT, SO MANY OF THE OTHER CONTRIBUTORS TO HIS
17 COMPENSATION DURING 2010 WERE FIXED, REALLY DIDN'T -- HIS
18 PERFORMANCE REALLY ONLY CAME INTO PLAY WITH RESPECT TO THE
19 INCENTIVE-BASED COMPENSATION.

20 SO WE BELIEVE UNDER THE DISGORGEMENT CASE LAW, ALL HE
21 SHOULD BE LIABLE FOR IN DISGORGEMENT IS WHERE, IS WHERE THAT
22 TRADING ACTIVITY, THAT ILLEGAL TRADING ACTIVITY AS FOUND BY THE
23 COURT ACTUALLY FACTORED IN AND HAD AN IMPACT ON HIS VARIABLE
24 COMPENSATION. AND, CERTAINLY, YOU KNOW, WE WANT --

25 THE COURT: SO WHY THE FIGURE 1945 RATHER THAN 19,790

1 ON SLIDE 15.

2 MR. MONNIN: WELL --

3 THE COURT: CONCEPTUALLY.

4 MR. MONNIN: CONCEPTUALLY, JUDGE, I THINK THAT THE
5 IDEA THERE IS THAT, IN REALITY, UNDER HIS EMPLOYMENT AGREEMENT,
6 THE OPERATIVE FACTOR THAT GOVERNS WHAT HE WAS SUPPOSED TO BE
7 PAID IS ACTUALLY LEVEL GLOBAL'S OVERALL PROFITABILITY, WHICH IS
8 THE \$398 MILLION FIGURE, AS OPPOSED TO HIS PERSONAL
9 PROFITABILITY, WHICH WAS REALLY ONLY RELEVANT TO SETTING THE
10 POINT TOTAL, THE THREE POINTS VERSUS THE FIVE POINTS UNDER
11 SECTIONS 4(D) AND 4(E). SO WHAT WE'RE TALKING ABOUT, JUDGE, IS
12 THAT THE 648 GRAND IN 2010 HAD A 1.65 PERCENT IMPACT ON MR.
13 MEGALLI'S CONSUMER PORTFOLIO'S RETURN OF APPROXIMATELY 40
14 MILLION.

15 SO, YOU KNOW, WE WOULD CONTEND THAT THE REASONABLE
16 INFERENCE FROM THAT MATH IS THAT THE VAST MAJORITY OF WHAT MR.
17 MEGALLI WAS DOING DID NOT AT ALL RELATE TO CARTER'S, DID NOT AT
18 ALL RELATE TO ANY CRIMINAL ACTIVITY, AND, REALLY, THE ONLY WAY
19 THAT IT FACTORS INTO HIS PERSONAL COMPENSATORY BENEFIT IS IN
20 SETTING THE POINT TOTAL UNDER SECTIONS 4(D) AND 4(E) OF HIS
21 AGREEMENT.

22 WHEN YOU'RE REALLY LOOKING TO SEE WHAT HIS PERSONAL
23 COMPENSATORY BENEFIT WAS IN TERMS OF RETURNING HIM TO THE
24 STATUS QUO ANTE BEFORE HE ENGAGED IN THIS CONDUCT, YOU LOOK AT
25 WHAT HE PUT IN HIS POCKET. AND OUR POSITION THERE IS THAT IT'S

1 THE 1945 FIGURE, AS OPPOSED TO THE 19,000 FIGURE. BUT, YOU
2 KNOW, WE UNDERSTAND THAT IT MAY BE LOGICAL FOR THE COURT, AS AN
3 ALTERNATIVE, TO SAY, WELL, YOU KNOW, HE IMPACTED HIS OWN
4 PERSONAL PROFITABILITY OR HIS OWN CONSUMER PORTFOLIO
5 PROFITABILITY TO THE TUNE OF 1.65 PERCENT. AND 1.65 PERCENT OF
6 HIS BONUS IS THE \$19,000.00 FIGURE.

7 ANOTHER THING THAT I'D LIKE TO POINT THE COURT TO
8 AND, FRANKLY, ANOTHER ANALYTIC, JUDGE, IS --

9 Q. (BY MR. MONNIN) MR. MEGALLI, LET ME POINT YOU TO
10 PARAGRAPH 4(F) OF YOUR EMPLOYMENT AGREEMENT. WERE YOU ENTITLED
11 TO A MINIMUM AMOUNT OF COMPENSATION DURING 2010?

12 A. YES.

13 Q. AND PLEASE TELL THE COURT WHAT, WHAT THAT AMOUNT WAS.

14 A. THE MINIMUM COMPENSATION FOR CALENDAR YEAR 2010 SHALL BE
15 NO LESS THAN \$750,000.00.

16 Q. SO TELL THE COURT WHAT, WHAT'S BEING ILLUSTRATED IN SLIDE
17 17.

18 A. SLIDE 17 SHOWS THAT, IF YOU LOOK AT MY TOTAL COMPENSATION
19 IN 2010, WHICH WAS ABOUT \$1.65 MILLION --

20 Q. AND THAT'S NOT THE 1.2 INCENTIVE-BASED COMPENSATION.

21 A. CORRECT, BECAUSE THAT INCLUDES MY FIXED -- MY SALARY AND
22 MY FIXED BONUS, MY SIGNING BONUS. BUT THAT'S MY ALL-IN
23 COMPENSATION, INCLUDING FIXED AND VARIABLE. BUT IF YOU DEDUCT
24 THE 750,000 GUARANTEE, THEN THAT LEAVES A REMAINDER OF
25 \$906,000.00, WHICH WAS ABOVE AND BEYOND WHAT MY GUARANTEE WAS

1 FOR THAT YEAR.

2 Q. SO, IN ESSENCE, WHAT'S BEING ILLUSTRATED IS THAT YOU HAD A
3 MINIMUM AMOUNT OF COMPENSATION. AND THE DELTA BETWEEN WHAT YOU
4 ACTUALLY MADE VERSUS THE MINIMUM AMOUNT IS 900 GRAND?

5 A. RIGHT.

6 Q. APPROXIMATELY? AND THEN WHAT ARE THE MULTIPLIERS THERE,
7 THE .1627?

8 A. THESE ARE THE SAME ONES YOU JUST DISCUSSED. BUT THE .1627
9 PERCENT IS THE 648,000 FROM THE SHORT SALE, DIVIDED BY THE \$398
10 MILLION OF TOTAL PROFITS FOR LEVEL GLOBAL. SO, IN OTHER WORDS,
11 THE CARTER'S PROFITS REPRESENTED POINT SIX -- POINT 1627
12 PERCENT OF WHAT LEVEL GLOBAL MADE THAT YEAR. THE 1.65 PERCENT
13 IS THE SAME \$648,000.00 EXCEPT AS A PERCENTAGE OF WHAT MY
14 CONSUMER FUND CONTRIBUTED IN PROFITS THAT YEAR, WHICH WAS \$39.2
15 MILLION.

16 SO THESE ARE THE TWO DIFFERENT WAYS YOU JUST SUGGESTED
17 LOOKING AT CARTER'S AS A PERCENTAGE OF PROFITS. THE FIRST WAY
18 IS CARTER'S AS A PERCENTAGE LEVEL GLOBAL'S PROFITS. AND THE
19 SECOND WAY IS CARTER'S AS A PERCENTAGE OF THE CONSUMER FUND
20 PROFITS.

21 MR. MONNIN: SO, YOUR HONOR, WHAT WE'VE DONE BETWEEN
22 SLIDES 14 THROUGH 17 IS, 14 THROUGH 16, WHAT WE'RE ACCOUNTING
23 FOR IS MR. MEGALLI'S INCENTIVE-BASED COMPENSATION OF 1.2
24 MILLION FOR 2010. WHAT WE'RE ACCOUNTING FOR ON SLIDE 17 IS
25 THAT HE HAD A MINIMUM AMOUNT OF COMPENSATION BY CONTRACT,

1 WHICH, BY THE WAY AND FOR THE RECORD --

2 Q. (BY MR. MONNIN) DID YOUR PERFORMANCE AS A PORTFOLIO
3 MANAGER IN ANY WAY IMPACT WHETHER YOU WERE ENTITLED TO A
4 MINIMUM AMOUNT OF 750 GRAND?

5 A. NO.

6 MR. MONNIN: SO WE'RE ESSENTIALLY FILTERING OUT
7 EITHER MR. MEGALLI'S INCENTIVE-BASED COMPENSATION OF 1.2
8 MILLION OR HIS COMPENSATION ABOVE AND BEYOND WHAT HE WAS
9 CONTRACTUALLY ENTITLED TO IN 2010 AND THEN EFFECTIVELY RUNNING
10 THE SAME PERCENTAGES, HOW MATERIAL WAS HIS CRIMINAL CONDUCT OR
11 HIS ILLEGAL TRADING ACTIVITY AS FOUND BY THE COURT, HOW
12 MATERIAL WAS THAT AND WHAT IMPACT DID THAT HAVE ON WHAT HE PUT
13 IN HIS POCKET. SO, LARGELY, THE SAME TYPE OF ANALYSIS, JUDGE,
14 WHETHER YOU USE THE -- HIS CONSUMER PORTFOLIO PROFIT VERSUS
15 LEVEL GLOBAL'S OVERALL PROFIT.

16 I'LL WRAP UP HOPEFULLY FAIRLY QUICKLY WITH THE LAST
17 PART OF MY PRESENTATION, JUDGE, WHICH IS, WHAT WAS THE
18 MATERIALITY OF THE CARTER'S TRADING ACTIVITY. AND THIS IS
19 REALLY MORE DIRECTED TO THE CIVIL PENALTY DETERMINATION,
20 ALTHOUGH, I DON'T KNOW, IT MAY HAVE SOME IMPACT ON THE COURT'S
21 DISGORGEMENT ANALYSIS.

22 Q. (BY MR. MONNIN) BUT, MR. MEGALLI, WERE YOU ABLE TO OBTAIN
23 EVIDENCE OF YOUR OVERALL TRADING ACTIVITY AT LEVEL GLOBAL IN
24 THE COURSE OF THE CRIMINAL INVESTIGATION?

25 A. YES.

1 Q. AND HOW WAS THAT DOCUMENTATION SORTED?

2 A. THESE ARE THE DOCUMENTS THAT WE TALKED ABOUT EARLIER THAT
3 SHOWED THE EIGHT MILLION PROFIT IN THE CONSUMER FUND IN '09 AND
4 THE 39.2 MILLION OF PROFIT IN THE CONSUMER FUND IN 2010. IN
5 THOSE DOCUMENTS, IT ALSO INCLUDES A LIST OF ALL OF THE STOCKS
6 THAT I TRADED IN EACH OF THOSE YEARS.

7 Q. AND THE EXHIBIT NUMBER FOR 2009 IS WHAT?

8 A. FOR '09, IT'S EXHIBIT 4. AND FOR '10, IT'S EXHIBIT 5.

9 Q. SO THE COURT ASKED YOU ABOUT THIS EARLIER. CAN YOU POINT
10 THE COURT TO WHERE THE CARTER'S TRADING IS REFLECTED IN
11 EXHIBITS 4 AND 5?

12 A. YEAH. TOWARDS THE END OF THE DOCUMENT ON -- I DON'T THINK
13 THESE HAVE PAGE NUMBERS, BUT IT'S ABOUT THE THIRD-TO-LAST PAGE.

14 Q. AND ARE YOU TALKING ABOUT EXHIBIT 4?

15 A. I'M TALKING ABOUT EXHIBIT 4.

16 Q. SO THIS IS THE LIQUIDATION OF THE LONG POSITION?

17 A. WELL, IT'S NOT THE LIQUIDATION, PER SE. IT'S THE SUM OF
18 ALL OF THE PROFITS IN CARTER'S FOR THAT GIVEN YEAR. REALLY
19 WHAT IT'S MEANT TO BE IS A SUMMARY OF ALL THE STOCKS YOU TRADED
20 IN A GIVEN YEAR. AND I GUESS THE POINT HERE IS THAT THERE WERE
21 105 STOCKS THAT WERE ON THIS LIST IN 2009. AND IN THE SIMILAR
22 DOCUMENT FOR 2010, EXHIBIT 5, THERE WERE 98 STOCKS THAT I
23 TRADED. SO IT WAS ONE OUT OF ROUGHLY 100 STOCKS THAT I HAD
24 TRADED IN EACH OF THOSE TWO YEARS.

25 Q. SO IN TERMS OF JUST THE OVERALL NUMBER OF ISSUERS THAT YOU

1 WERE TRADING IN, CARTER'S WAS BASICALLY ONE PERCENT?

2 A. CORRECT.

3 Q. AND YOU'RE GETTING -- THE BASIS FOR THAT IS EXHIBITS 4 AND
4 5, YOU JUST MANUALLY COUNTED?

5 A. CORRECT.

6 Q. LET'S TALK ABOUT THE CARTER'S TRADES.

7 THE COURT: WHAT ARE ALL THESE INITIALS HERE?

8 THE WITNESS: THOSE ARE STOCK TICKERS FOR DIFFERENT
9 COMPANIES IN THE CONSUMER SPACE THAT I TRADED IN A GIVEN YEAR.
10 SO, FOR EXAMPLE, COH IS COACH, THE HANDBAG COMPANY. GPS IS GAP
11 STORES. YOU KNOW, THEY ARE TICKERS FOR STOCKS.

12 THE COURT: OKAY.

13 Q. (BY MR. MONNIN) AND THEY ARE ALPHABETICAL, CORRECT?

14 A. THEY ARE ALPHABETICAL, UH-HUH.

15 THE COURT: IS THAT THE SAME IN THE -- ALL THE
16 INITIALS ON THE FIRST PAGE OF EXHIBIT 4 WHERE IT SAYS TOP FIVE
17 SKEW PROSPECT COST WILL BE UTILIZED? WHAT ARE THOSE?

18 THE WITNESS: A SKEW IS A RISK-REWARD RATIO. SO, IN
19 OTHER WORDS, IF I THINK A STOCK MIGHT BE WORTH SOMEWHERE
20 BETWEEN 100 IN THE WORST CASE AND 200 IN THE BEST CASE, IF THE
21 STOCK IS TRADING AT 150, YOU WOULD SAY THAT'S \$50.00 OF
22 DOWNSIDE RISK AND \$50.00 OF UPSIDE POTENTIAL. SO THE RATIO
23 THERE IS 1.0. IT'S ONE-TO-ONE UPSIDE VERSUS DOWNSIDE. SO WHEN
24 I CREATE PRICE TARGETS FOR THESE CONSUMER NAMES, THIS IS
25 LOOKING TO SEE WHICH HAS THE BEST AND WORST RISK REWARDS ON A

1 SHORT SIDE AND LONG SIDE.

2 MR. MONNIN: AND, JUDGE, WE HAVE OTHER HOPEFULLY MORE
3 USER-FRIENDLY EXTENSIONS OF MATERIALITY. SO --

4 THE COURT: ASSUMING, MAKING NO ASSUMPTIONS WITH THE
5 MATH SKILLS HERE, I APPRECIATE IT.

6 Q. (BY MR. MONNIN) LET'S MOVE ON TO SLIDE 19. SO LET'S TALK
7 ABOUT --

8 MR. MONNIN: AND, JUDGE, I'M GOING TO REFER THE COURT
9 AND MR. MEGALLI TO EXHIBIT 6 AND 7 FOR THE UNDERLYING DATA ON
10 THIS SLIDE.

11 Q. (BY MR. MONNIN) SO DID YOU UNDERTAKE AN ANALYSIS OF HOW
12 MANY TIMES YOU HAD POSITIONS OR TRADED POSITIONS IN CARTER'S
13 VERSUS ALL OF YOUR CONSUMER PORTFOLIO TRADING?

14 A. YES.

15 Q. AND TELL THE COURT HOW YOU DID THAT, WHAT YOU REFERRED TO.

16 A. WELL, IN THE PARALLEL CRIMINAL INVESTIGATION, WE WERE
17 PROVIDED WITH A MICROSOFT EXCEL SPREADSHEET, WHICH LISTED EVERY
18 TRADE I DID OR THAT I WAS RESPONSIBLE FOR DURING THE ROUGHLY
19 ONE-AND-A-HALF-YEAR PERIOD THAT I WORKED AT LEVEL GLOBAL. AND
20 IT AMOUNTED TO 1861 INDIVIDUAL TRADES IN COMPANY STOCK.

21 Q. AND WAS THAT JUST -- REFERRING TO EXHIBIT 6, YOU JUST
22 MANUALLY COUNTED THEM UP? I KNOW IT'S AN EXCEL SPREADSHEET AND
23 IT WILL DO IT FOR YOU.

24 A. WELL, IN MICROSOFT EXCEL, IT WILL COUNT FOR YOU HOW MANY
25 CELLS THERE ARE, SO, YES.

1 Q. AND THIS IS EXHIBIT 6?

2 A. UH-HUH.

3 Q. WHAT'S, WHAT'S BEING HIGHLIGHTED ON THE DOCUMENT?

4 A. EACH TIME THERE WAS A TRADE EXECUTED IN CARTER'S IN MY
5 CONSUMER FUND.

6 Q. WHAT DOES LGMO REFER TO?

7 A. THAT'S LEVEL GLOBAL. I'M NOT -- SOMETHING ABOUT THE
8 OPERATE -- IT'S AN OPERATIONAL TERM, LEVEL GLOBAL MANAGEMENT
9 OPERATIONS. IT'S A TRADING BOILERPLATE TERM.

10 Q. SO IF THE COURT REFERS TO EXHIBIT 6, HAVE WE -- WHAT HAVE
11 WE HIGHLIGHTED IN EXHIBIT 6?

12 A. TRADING IN CARTER'S. CRI IS THE TICKER.

13 Q. AND THEN HOW DID YOU BUILD ON EXHIBIT 6 TO CREATE EXHIBIT
14 7?

15 A. WELL, EXHIBIT 6 IS VERY HARD TO ANALYZE BECAUSE IT'S NOT
16 SORTED BY COMPANY. IT'S SORTED BY TRADING DATE. SO I JUST
17 TOOK EXHIBIT 6, AND I SORTED IT BY COMPANY SO THAT ALL OF THE
18 CARTER'S STOCKS WOULD BE NEXT TO EACH -- ALL OF THE CARTER'S
19 TRADES WOULD BE NEXT TO EACH OTHER; ALL OF THE MCDONALD'S
20 TRADES WOULD BE NEXT TO EACH OTHER AND SO FORTH.

21 Q. SO EXHIBIT 7 REFLECTS CONTIGUOUSLY, IF YOU WILL, ALL OF
22 THE CARTER'S TRADING.

23 A. RIGHT. SO, FOR EXAMPLE, IN EXHIBIT 7, WHICH IS, AGAIN, A
24 SUMMARY OF EXHIBIT 6, IF YOU OWNED 100,000 SHARES OF CARTER'S
25 AND YOU BOUGHT AN ADDITIONAL 100,000 SHARES OF CARTER'S, IT

1 WOULD SHOW AS OWNING 200,000 TOTAL CUMULATIVE SHARES OF
2 CARTER'S. IN OTHER WORDS, IT WOULD KEEP TRACK OF THE TOTAL
3 POSITION SIZE IN EACH OF THE NAMES.

4 Q. AND, JUST FOR THE RECORD AND SO THAT WE'RE CLEAR, TELL THE
5 COURT, WHAT ARE THE THUMBNAILS OF THE TRADES THAT SHE'S FOUND
6 YOU LIABLE FOR IN INSIDER TRADING? WHAT'S --

7 THE COURT: WHAT LINE IS THE BEGINNING PART OF THIS?
8 BECAUSE I DON'T THINK GIVING ME -- THE HIGHLIGHTING DOESN'T
9 APPEAR ON MINE.

10 MR. MONNIN: IT SHOULD BE EXHIBIT 7, YOUR HONOR.

11 THE COURT: YES. I'M ON SEVEN.

12 MR. MONNIN: SHOULD BEGIN ON PAGE SEVEN.

13 THE COURT: I SEE IT. THANK YOU.

14 Q. (BY MR. MONNIN) SO, REALLY, MARK, WHAT I AM ASKING YOU TO
15 TELL THE COURT IS, DESCRIBE THE TWO TRADES. I MEAN, I'VE BEEN
16 REFERRING TO A LONG POSITION. I'VE BEEN REFERRING TO SHORT
17 SALES. JUST TELL THE COURT WHAT WE'RE TALKING ABOUT.

18 A. SURE. SO THE FIRST POSITION IN CARTER'S THAT I HAD I
19 INITIATED ON SEPTEMBER 14TH OF 2009. AND THAT WAS THE LONG
20 POSITION, MEANING WE BOUGHT STOCK IN THE COMPANY. AND WE
21 LIQUIDATED THAT POSITION ABOUT A MONTH AND A HALF LATER. I
22 THINK THE LAST SALE THERE WAS AROUND OCTOBER 26TH OF 2009. AND
23 THAT POSITION ULTIMATELY BECAME A 350,000-SHARE POSITION, I
24 BELIEVE. AND IT WAS -- WE SOLD OUT OF THAT POSITION AROUND THE
25 END OF OCTOBER. AND THAT'S WHAT YOU COULD CALL THE LONG

1 POSITION IN CARTER'S BECAUSE THE SECOND TRADE YOU WERE ASKING
2 ABOUT WAS A SHORT POSITION IN CARTER'S WHICH WAS INITIATED IN
3 JULY OF 2010 AND COVERED -- WHICH MEANS GOTTEN OUT OF -- IN
4 JULY, THE SAME MONTH, OF 2010.

5 Q. SO I'M SURE THE COURT PROBABLY WANTS TO KNOW, WHAT ARE THE
6 INTERVENING CARTER'S TRADES?

7 A. WELL, THE INTERVENING CARTER'S TRADES WAS, AFTER THE STOCK
8 WENT DOWN FOLLOWING THE ACCOUNTING ANNOUNCEMENT, WE BOUGHT BACK
9 STOCK BECAUSE IT WAS VERY DEPRESSED AND HELD THAT STOCK FROM
10 LATE OCTOBER OF 2009 THROUGH ABOUT MAY OF 2010. HOWEVER, THE
11 PROFIT FROM THAT PERIOD OF TIME FOR PURPOSES OF TODAY WAS NOT
12 ALLEGED TO HAVE WRONGLY TO BE ASSOCIATED WITH.

13 Q. SO WE ESSENTIALLY HAVE THREE BUCKETS OF TRADES.

14 A. RIGHT.

15 Q. THERE'S A FIRST LONG POSITION?

16 A. CORRECT.

17 Q. THERE'S A SECOND -- FIRST LONG POSITION INITIATED IN
18 SEPTEMBER 2009, LIQUIDATED IN OCTOBER 2009.

19 A. CORRECT.

20 Q. SECOND LONG POSITION --

21 A. AND THAT RESULTED IN THE 2,034,000 OF LOSS AVOIDANCE
22 PROFIT.

23 Q. SECOND LONG POSITION OCTOBER OF 2009 UNTIL WHEN?

24 A. APPROXIMATELY MAY OF 2010.

25 Q. AND SHORT POSITION --

1 THE COURT: WHERE DID THE SECOND ONE BEGIN?

2 MR. MONNIN: IT SHOULD BE OCTOBER 29.

3 THE WITNESS: THE SECOND ONE WOULD BE --

4 THE COURT: OCTOBER 29?

5 THE WITNESS: RIGHT, OCTOBER 29.

6 THE COURT: IT SAYS SHORT. YOU DON'T SAY LONG. OR
7 AM I MISSING IT? IT SAYS SHORT ON MAY 28TH, 2010. I GUESS IT
8 SAYS, SHOULD BE SHORT ON JULY 8TH, 2010.

9 THE WITNESS: RIGHT. SO --

10 THE COURT: HOW DO I DISTINGUISH?

11 THE WITNESS: SURE. RIGHT. SO WHEN YOU, WHEN YOU
12 BUY STOCK IN A COMPANY, EFFECTIVELY YOU'RE BETTING THAT THE
13 STOCK IS GOING TO RISE IN PRICE.

14 THE COURT: RIGHT.

15 THE WITNESS: AND SO THE TRADING TERMINOLOGY THERE IS
16 BUY OR SELL. SO WHEN YOU ADD TO YOUR POSITION, YOU'RE BUYING
17 STOCK IN THAT COMPANY. WHEN YOU'RE LIQUIDATING YOUR POSITION,
18 YOU'RE SELLING STOCK IN THAT COMPANY. WHEN YOU SHORT A STOCK,
19 YOU'RE BETTING THAT THE STOCK PRICE IS GOING TO DECLINE. AND
20 SO WHEN YOU BUILD A POSITION, THAT'S CALLED SHORTING A STOCK.
21 AND WHEN YOU'RE EXITING THAT POSITION, IT'S CALLED COVERING A
22 STOCK.

23 THE COURT: RIGHT.

24 THE WITNESS: COVERING A SHORT. AND SO, FOR EXAMPLE,
25 IF YOU BELIEVED THE STOCK WAS OVERVALUED AND IT WAS TRADING AT

1 \$50.00 A SHARE AND YOU BELIEVED THAT IT WAS WORTH 40, YOU MIGHT
2 SHORT IT AT 50. AND WHEN THE STOCK GETS TO 40, YOU MIGHT COVER
3 IT. AND IN THAT CASE, YOU WOULD MAKE A \$10.00 PROFIT. IT'S
4 SORT OF THE FLIP SIDE OF BEING LONG IN STOCK. IT'S A BET THAT
5 A STOCK WILL DECLINE.

6 MR. MONNIN: OKAY. AND, YOUR HONOR, WE'RE NOT HERE
7 AT ALL TO CONTEST --

8 THE COURT: ALL RIGHT.

9 MR. MONNIN: -- THE LOSS AVOIDED WAS 2.034 MILLION ON
10 THE INITIAL LONG POSITION, AND HIS PROFIT -- OR NOT HIS, BUT
11 LEVEL GLOBAL'S PROFIT IN JULY 2010 WAS 648,000. WE'RE JUST
12 TRYING TO DRIVE DOWN TO COMPENSATORY BENEFIT.

13 THE COURT: I UNDERSTAND. JUST TRYING TO UNDERSTAND
14 THE DATA.

15 Q. (BY MR. MONNIN) WELL, AND JUST TO HIT THE HIGH POINT
16 HERE, I MEAN, HOW OFTEN WERE YOU TRADING IN CARTER'S VERSUS THE
17 OTHER CONSUMER PORTFOLIO STOCKS?

18 A. A TOTAL OF 46 TRADES IN CARTER'S RELATIVE TO 1861 TRADES
19 OVERALL. NOW, LET ME THROW IN A CAVEAT, WHICH IS, SOMETIMES IF
20 YOU PLACE AN ORDER TO SELL 100,000 SHARES, IT MIGHT TAKE THE
21 TRADER TWO BLOCKS OF SHARES TO SELL THAT 100,000. SHE MIGHT
22 SELL 50,000 AND THEN ANOTHER 50,000. THAT WOULD BE COUNTED AS
23 TWO TRADES, EVEN THOUGH IT WAS ONLY ONE TRADING ORDER. SO I
24 JUST WANT TO BE CLEAR. THERE WEREN'T 46 SEPARATE ORDERS TO
25 TRADE CARTER'S, BUT THERE WERE 46 INSTANCES OF TRADING IN

1 CARTER'S.

2 Q. UNDERSTOOD. SO LET'S MOVE ON TO THE NEXT SLIDE. AND
3 WE'RE DRIVING TOWARD THE END HERE. SO WE TALKED ABOUT THE
4 INITIAL CARTER'S LONG POSITION IN ROUGHLY SEPTEMBER 2009?

5 A. RIGHT.

6 Q. WHERE DOES THAT FIT IN IN TERMS OF OVERALL SIZE IN TERMS
7 OF THE OTHER CONSUMER PORTFOLIO LONG POSITIONS?

8 A. SO THIS IS A LIST OF NAMES WITHIN MY CONSUMER-FOCUSED
9 FUND. AND IT SHOWS THEIR AVERAGE AND MAXIMUM POSITION SIZES.
10 SO, FOR EXAMPLE, DOLLAR TREE WAS ABOUT A \$33 MILLION POSITION
11 ON AVERAGE AND GOT TO BE AS BIG AS A \$68 MILLION POSITION.
12 FOSSIL WAS 37 MILLION AND ULTIMATELY GOT TO BE AT ITS MAXIMUM
13 POSITION 63.9 MILLION. AND THESE ARE EXAMPLES OF STOCKS THAT I
14 WOULD SAY I WAS MORE FOCUSED ON, FRANKLY, THAN CARTER'S.
15 CARTER'S WAS AT THE BOTTOM. I MEAN, THIS ISN'T A COMPREHENSIVE
16 LIST, BUT THIS IS SORT OF A SAMPLING JUST TO PROVIDE SOME
17 CONTEXT WHERE IT SHOWS THAT CARTER'S IN THAT FIRST PERIOD, THAT
18 SEPTEMBER-OCTOBER OF '09 PERIOD, WAS ABOUT A \$6 MILLION
19 POSITION ON AVERAGE AND GOT TO BE ABOUT A \$9.2 MILLION
20 POSITION, ROUGHLY, AT ITS MAXIMUM POINT. SO I GUESS --

21 THE COURT: SO THIS IS '09, PAGE 20?

22 THE WITNESS: THIS IS '09, YEAH.

23 Q. (BY MR. MONNIN) AND YOU REFERENCED IT BRIEFLY, IT'S FAIR
24 TO SAY THAT YOU WERE SPENDING THE MAJORITY OF YOUR ANALYTICAL
25 ATTENTION ON THE BIGGER POSITIONS. RIGHT?

1 A. WELL, CORRECT. I MEAN, NOT ONLY WERE THEY BIGGER
2 POSITIONS, I WOULD ALSO ADD ONE OTHER THING, JUST FOR CONTEXT,
3 WHICH IS, SOMETIMES IF YOU REALLY WERE FOCUSED ON AN IDEA, YOU
4 WOULD GO TO THE INVESTMENT MANAGER, MR. GANEK, AND YOU WOULD
5 SUGGEST THAT HE ALSO BUY STOCK ALONG WITH YOU AND ISSUE IN A
6 COMPANY. SO A LOT OF THOSE BIGGER NAMES, FOR EXAMPLE, LET'S
7 TAKE MCDONALD'S, I HAD ABOUT A 30 -- 29 AND A HALF MILLION, \$30
8 MILLION POSITION IN MCDONALD'S IN MY FUND. BUT DAVID ALSO HAD
9 AN ADDITIONAL ROUGHLY \$150 MILLION AT MCDONALD'S BASED ON MY
10 RECOMMENDATION IN HIS FUND. AND IT WAS CALLED A CENTER BOOK
11 WHERE HE CHERRY-PICKS EVERYONE'S BEST IDEAS. AND IF HE SOUNDS
12 LIKE YOU'RE CONFIDENT AND, YOU KNOW, FOCUSED ON SOMETHING, HE
13 WOULD BUY IT ALONG WITH YOU IN HIS OWN CENTER BOOK, IT WAS
14 CALLED.

15 NOW, A LOT OF THOSE TOP NAMES THERE WERE NAMES THAT I
16 WOULD PITCH TO DAVID GANEK TO GO INTO HIS CENTER BOOK.
17 CARTER'S I NEVER PITCHED TO HIM BECAUSE IT JUST WASN'T A BIG
18 FOCUS FOR ME.

19 Q. HOW ABOUT WITH RESPECT TO THE SECOND LONG POSITION THAT
20 WAS INITIATED IN OCTOBER 2009?

21 A. NEVER PITCHED IT TO HIM. HE NEVER TRADED IN CARTER'S.

22 Q. DID YOU EVER PERSONALLY TRADE IN CARTER'S?

23 A. I NEVER PERSONALLY TRADED IN ANY STOCK WHEN I WAS AT LEVEL
24 GLOBAL FOR MYSELF.

25 Q. INCLUDING THE CONSUMER STOCKS IN WHICH YOUR PORTFOLIO HAD

1 LARGER POSITIONS THAN CARTER'S.

2 A. CORRECT.

3 Q. NOW, LET'S DO ESSENTIALLY THE SAME ANALYSIS WITH RESPECT
4 TO THE SHORT POSITION FROM JULY 2010. TELL THE COURT WHAT'S
5 ILLUSTRATED.

6 A. SO THESE ARE SAME EXACT THING, EXCEPT THESE ARE SHORT
7 POSITIONS RATHER THAN LONG POSITIONS. AND WHEN YOU LOOK AT --
8 AND THESE ARE IN BILLIONS OF DOLLARS, OBVIOUSLY. I GUESS I
9 SHOULD SAY THAT. WHEN YOU LOOK AT A SHORT POSITION, TYPICALLY
10 YOU LIST IT AS A NEGATIVE NUMBER. THAT'S WHY YOU SEE ALL THESE
11 NEGATIVE NUMBERS THERE. BUT, FOR EXAMPLE, WITH TIFFANY'S, WE
12 WERE SHORT IN MY FUND ABOUT \$19 MILLION WORTH OF TIFFANY STOCK.
13 AND THAT WAS A PRETTY BIG BET THAT TIFFANY WAS OVERVALUED AT
14 THE TIME. AND IT WAS AS BIG AS A \$35 MILLION BET IN MY ROUGHLY
15 \$500 MILLION PORTFOLIO.

16 AND CARTER'S, WHEN I SHORTED CARTER'S IN JULY OF 2010, IT
17 WAS ABOUT A FIVE -- LOOKS LIKE SIX TO \$7 MILLION POSITION
18 AVERAGE IN MAXIMUM. SO, I MEAN, IT WAS SMALLER THAN OTHER
19 NAMES I WAS SHORT.

20 Q. IS IT ACCURATE OR FAIR TO SAY THAT SHORT POSITIONS ARE
21 RISKIER? THERE'S MORE RISK THAT'S INHERENT IN THEM BECAUSE YOU
22 HAVE TO COVER?

23 A. CONCEPTUALLY YOU COULD ARGUE THEY ARE RISKIER BECAUSE YOU
24 HAVE UNLIMITED LOSS. FOR MOST HEDGE FUND MANAGERS, YOU DON'T
25 PARTICULARLY CONSIDER THEM TO BE RISKIER THAN A LONG BECAUSE

1 YOU'RE TRYING TO BALANCE ALL YOUR LONGS WITH ALL YOUR SHORTS,
2 AND YOU NEED A COMBINATION OF BOTH. SO, FOR ME, I WAS PRETTY
3 AGNOSTIC ON WHETHER I WAS GOING LONG SOMETHING OR GOING
4 SHORTED. I WAS JUST TRYING TO FIND THINGS THAT WERE OVERVALUED
5 OR UNDERVALUED.

6 Q. NOW LET'S TALK ABOUT AS THE LAST TOPIC THE PERCENTAGE OF
7 THE CONSUMER PORTFOLIO CAPITAL THAT WAS ASSOCIATED WITH THE
8 CARTER'S LONG AND SHORT POSITIONS.

9 A. WELL, BASED ON THOSE NUMBERS THAT WE JUST HAD ON THE
10 SCREEN, WHEN I WAS LONG CARTER'S, IT WAS ABOUT A TWO AND A HALF
11 POSITION, TWO AND A HALF PERCENT POSITION OUT OF MY CONSUMER
12 FUND, AND IT GOT AS BIG AS A 3.67 POSITION, 3.67 PERCENT
13 POSITION. AND ON THE SHORT SIDE, IT WAS ABOUT 1.15 PERCENT IN
14 TERMS OF THE SIZE RELATIVE TO THE ASSETS I WAS MANAGING, AND
15 THAT WAS ABOUT A ONE AND A HALF PERCENT POSITION AT ITS
16 MAXIMUM.

17 Q. SO CARTER'S WAS NEVER -- ON THE LONG SIDE, CARTER'S WAS
18 NEVER MORE THAN 3.7, 3.67 PERCENT OF YOUR CAPITAL?

19 A. FOR THAT LONG, YEAH, UH-HUH.

20 Q. AND THE SHORT POSITION WAS NEVER GREATER THAN 1.5 PERCENT
21 OF THE SHORT POSITIONS?

22 A. CORRECT, FOR THAT SHORT, UH-HUH.

23 THE COURT: I'M NOT SURE WHAT YOU'RE SAYING WITH THIS
24 PARTICULAR CHART, BECAUSE YOU'RE TALKING ABOUT IN TERMS OF
25 CARTER'S, OR YOU'RE TALKING ABOUT IN TERMS OF SHORT, BECAUSE

1 GENERALLY, SHORT AND LONG, I'M JUST STARTING. SO WHEN YOU SAY
2 INITIATED 9/14/09, IS THAT RELATING TO THE CARTER'S DEAL AT
3 THAT POINT THAT WAS LONG?

4 THE WITNESS: THAT WAS THE FIRST DAY THAT I BOUGHT
5 STOCK IN CARTER'S. SO, IN OTHER WORDS, I INITIATED A LONG
6 POSITION IN IT, AND THEN I SOLD OUT OF THAT LONG POSITION ON
7 OCTOBER 26TH.

8 THE COURT: UH-HUH.

9 THE WITNESS: SO DURING THAT ROUGHLY SIX-WEEK PERIOD,
10 OF THE CAPITAL THAT I WAS MANAGING, IT WAS -- IT REPRESENTED
11 ABOUT TWO AND A HALF PERCENT OF THE CAPITAL THAT I WAS SUPPOSED
12 TO BE INVESTING.

13 THE COURT: OKAY.

14 THE WITNESS: SO WE CALL THAT A TWO AND A HALF
15 PERCENT POSITION. AND IT GOT TO BE AS BIG AS A 3.7 PERCENT
16 POSITION AT ITS MAXIMUM POINT.

17 MR. MONNIN: SO, YOUR HONOR, REALLY WHAT WE'RE TRYING
18 TO GET TO HERE IS THAT IF -- IN CONNECTION WITH A CIVIL PENALTY
19 OR A CIVIL PENALTY ANALYSIS OR POTENTIAL FACTORS IN AGGRAVATION
20 ASSOCIATED WITH THE COURT'S LIABILITY FINDING, REALLY, CARTER'S
21 WAS NOT A MEANINGFUL, MATERIAL, SIGNIFICANT AMOUNT OF THE
22 CAPITAL THAT MY CLIENT HAD INVESTED, A SIGNIFICANT AMOUNT OF
23 THE STOCK THAT MY CLIENT PURCHASED IN THE CONSUMER PORTFOLIO,
24 AND CERTAINLY NOT A SIGNIFICANT PART OF THE PROFITABILITY,
25 EITHER ON A PORTFOLIO BASIS OR CERTAINLY ON A FUND BASIS.

1 AND THOSE ANALYTICS ARE ALL IN THE LAST SLIDE THAT WE
2 HAVE HERE, JUDGE, WHICH IS ESSENTIALLY A SUMMARY OF WHAT -- I
3 KNOW I'VE BEEN ADVOCATING THROUGH THE COURSE OF THE HEARING.
4 AND I APPRECIATE MR. HUDDLESTON'S CONSIDERATION ON THAT AND THE
5 COURT'S CONSIDERATION AS WELL.

6 SO, AS I SAID AT THE OUTSET OF THE HEARING, WE
7 BELIEVE, JUDGE, THAT MR. MEGALLI IN DISGORGEMENT SHOULD ONLY BE
8 LIABLE FOR THE 2010 VARIABLE PERIOD AND REALLY, IN CONNECTION
9 WITH THAT, ONLY AT A \$1900.00 FIGURE, \$1945.00 FIGURE.

10 WE UNDERSTAND THAT THERE ARE OTHER POTENTIAL MEASURES
11 THAT ARE OUT THERE, AND WE'VE GONE THROUGH THOSE FOR THE COURT.
12 CERTAINLY, AS A MAXIMUM, IF WE'RE TALKING ABOUT THE
13 CONTRIBUTION OF THE ILLEGAL SHORT SALES IN JULY 2010 TO THE
14 CONSUMER PORTFOLIO PROFITABILITY, AT A MAXIMUM, AT THE OUTER
15 MARKER, WE BELIEVE THAT \$19,000.00 IS APPROPRIATE.

16 AND THEN IN TERMS OF, REALLY, OUR POSITION, JUDGE, IS
17 THAT THE COURT SHOULD REALLY ORDER NO CIVIL PENALTY HERE GIVEN
18 THE DE MINIMIS IMPACT OF THE ILLEGAL TRADING ACTIVITY AND ALSO
19 THE FACT THAT MY CLIENT WAS FAR MORE -- I MEAN, CERTAINLY A
20 REASONABLE INFERENCE IS THAT HE WAS FAR MORE FOCUSED ON OTHER
21 LEGITIMATE TRADING THROUGHOUT THIS TIME FRAME FROM 2009 TO
22 2010.

23 AS A HOUSEKEEPING MATTER, I JUST WOULD LIKE TO MAKE
24 SURE THAT OUR EXHIBITS HAVE BEEN RECEIVED IN EVIDENCE. THOSE
25 ARE EXHIBITS 1 THROUGH 7.

1 THE COURT: YES.

2 MR. MONNIN: AND, JUDGE, I GUESS, I BELIEVE THAT OUR
3 SLIDES REALLY ARE JUST SUMMARY DOCUMENTATION FOR THE COURT'S
4 REFERENCE. SO I WOULD LIKE TO MARK MY SLIDE DECK AS EXHIBIT 8.
5 I GUESS I'D MOVE THAT INTO EVIDENCE, AS WELL, FOR THE HEARING.

6 MR. HUDDLESTON: I WON'T OBJECT, YOUR HONOR.

7 THE COURT: ALL RIGHT. EIGHT IS ADMITTED.

8 MR. MONNIN: THANK YOU. AND I APOLOGIZE FOR GOING
9 LONG. AND I TENDER THE WITNESS.

10 THE COURT: NO. THAT'S QUITE ALL RIGHT. BUT I THINK
11 WE SHOULD TAKE A TEN-MINUTE BREAK, ONLY BECAUSE OF THE NUMBER
12 BASIS. FOR THAT I'D LIKE TO BE SURE I ABSORB WHATEVER YOU'RE
13 GOING TO START. SO IT'S -- WE'LL JUST START BACK AT 25 OF.
14 ALL RIGHT?

15 THE COURTROOM SECURITY OFFICER: ALL RISE. COURT IS
16 IN RECESS FOR TEN MINUTES.

17 (WHEREUPON, A BRIEF RECESS WAS HAD FROM 3:25 P.M. TO
18 3:40 P.M.)

19 THE COURT: OKAY. HAVE A SEAT.

20 MR. HUDDLESTON, I DO APPRECIATE THAT YOU HAVE A TRIAL
21 COMING UP, AND I APPRECIATE THAT YOU HAVE GOTTEN YOURSELF
22 FOCUSED FOR THIS.

23 MR. HUDDLESTON: YES, YOUR HONOR, MY PLEASURE.

24 THE COURT: WELL, PROBABLY NOT, BUT NEVERTHELESS.

25 MR. HUDDLESTON: I CERTAINLY DON'T MIND. I'LL BE

1 GLAD TO HAVE THIS BEHIND US. THANK YOU SO MUCH.

2 I AM CERTAINLY HERE TO ELICIT EVIDENCE FOR YOUR HONOR
3 TO CONSIDER.

4 THE COURT: ALL RIGHT.

5 MR. HUDDLESTON: BUT I SHOULD MENTION THAT I'M GOING
6 TO TAKE IT IN REVERSE ORDER, CIVIL PENALTIES, DISGORGEMENT, AND
7 THE INJUNCTIVE RELIEF.

8 THE COURT: THAT'S FINE. AND I WANT TO START OFF BY
9 SIMPLY SAYING, I DID NOTE THE POINT THAT YOU ALL MADE ABOUT THE
10 MULTIPLES. AND I DO RECOGNIZE THAT THE -- THAT FOR PURPOSES OF
11 THE CIVIL PENALTY, I AM AUTHORIZED TO DO MORE THAN JUST SIMPLY
12 BASED ON THE INDIVIDUAL'S PROFITS. I AM NOT MANDATED TO, BUT I
13 DO UNDERSTAND THE POSITION THAT YOU'RE ADVOCATING AND THE BASIS
14 OF THAT.

15 MR. HUDDLESTON: YES. THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 MR. HUDDLESTON: I WOULD SUGGEST THAT SINCE DEFENSE
18 COUNSEL AND THE SEC HAVE SUCH FUNDAMENTAL DISAGREEMENTS OVER
19 WHAT SHOULD BE CONSIDERED FOR CIVIL PENALTY PURPOSES, WE ARE
20 CERTAINLY WILLING AND IT MIGHT BE WISE TO GET SOME ADDITIONAL
21 BRIEFING ON THAT. WE'RE CERTAINLY HAPPY TO DO THAT.

22 FOR EXAMPLE, STARTING AT THE END, I WILL TELL YOU
23 THAT I DON'T BELIEVE THERE'S ANY AUTHORITY FOR THE PROPOSITION
24 THAT MATERIALITY IS RELEVANT, MATERIALITY THAT THE ILLEGAL
25 TRADES WERE ONE OF HUNDREDS, THAT THAT IS PROPER TO CONSIDER

1 FOR CIVIL PENALTY PURPOSES. SO JUST WITH THAT STATED, I WILL
2 JUST OFFER THAT WE'D CERTAINLY LOVE TO PROVIDE MORE AUTHORITY
3 TO SHOW THE COURT, IF NEEDED.

4 THE COURT: ALL RIGHT.

5 CROSS-EXAMINATION

6 BY MR. HUDDLESTON:

7 Q. ALL RIGHT. YOU HAVE THE DEFENDANT'S EXHIBITS IN FRONT OF
8 YOU, SIR. IF YOU WOULDN'T MIND PULLING UP EXHIBIT NUMBER 2.

9 MR. HUDDLESTON: YOUR HONOR, DO YOU HAVE THAT THERE?

10 THE COURT: EXHIBIT 2?

11 MR. HUDDLESTON: YES.

12 THE COURT: THANK YOU VERY MUCH.

13 Q. (BY MR. HUDDLESTON) AND WHAT I WANT TO FOCUS ON, MR.
14 MEGALLI --

15 THE COURT: YOU WANT TO PUT THEM UP?

16 Q. (BY MR. HUDDLESTON) WHAT I'D LIKE TO FOCUS ON, SIR --
17 THANK YOU SO MUCH -- IS THE BOTTOM PART THERE WHERE WE SEE, IT
18 LOOKS LIKE PAYMENT DATE. AND IT'S A PAYMENT THAT'S IN 2011.
19 COULD YOU EXPLAIN TO US WHAT THOSE ARE, PLEASE?

20 A. THOSE ARE THE INCENTIVE PAYMENTS, THE \$1.2 MILLION THAT WE
21 DISCUSSED FOR 2010. AND THEY WERE PAID OUT AT THE BEGINNING OF
22 2011, I BELIEVE, BECAUSE, FOR TAX PURPOSES, BONUSES MAY HAVE
23 BEEN PAID THE BEGINNING PART OF THE FOLLOWING YEAR.

24 Q. THANK YOU. I JUST WANTED TO CLARIFY. SO THOSE SHOULDN'T
25 BE MOVED UP HERE. ALL OF THESE ARE REFLECTED IN THIS COLUMN,

1 IN THE 2010 COLUMN?

2 A. THAT'S MY UNDERSTANDING.

3 Q. MY CONFUSION IS THAT I DON'T SEE ANY NUMBERS THAT MATCH
4 UP, SIR. ARE YOU CERTAIN THAT YOU DID NOT RECEIVE THESE
5 AMOUNTS IN 2011?

6 A. WELL, THE REASON THEY DON'T ADD IS BECAUSE YOU'RE -- IT'S
7 BROKEN INTO 90 PERCENT AND TEN PERCENT. BUT IF YOU ADD THE 90
8 AND THE TEN TOGETHER TO GET TO 100 PERCENT, THEN IT WOULD ADD
9 TO THE SAME NUMBERS. THEY PAID OUT 90 PERCENT IN FEBRUARY, BUT
10 THE LAST TEN PERCENT WAS PAID OUT IN MARCH. DOES THAT MAKE
11 SENSE?

12 Q. I THINK I UNDERSTAND, YES, SIR.

13 A. SO, IN OTHER WORDS, IF YOU LOOK AT THE 785 AND ADD IT TO
14 THE 87, I'M GUESSING IT ADDS TO APPROXIMATELY 873,000.

15 Q. I UNDERSTAND. THANK YOU VERY MUCH. YEAH. THAT CLEARS
16 THAT UP. THANK YOU.

17 A. SURE.

18 Q. LET'S TURN OVER TO EXHIBIT NUMBER 1 NOW, PLEASE. AND THAT
19 IS YOUR EMPLOYMENT AGREEMENT, I BELIEVE? COULD WE PLEASE TURN
20 OVER TO PAGE FIVE OF THAT AGREEMENT, PLEASE. AND I WANT TO
21 LOOK AT THE -- TOWARDS THE BOTTOM, PARAGRAPH NUMBER SIX, WHERE
22 IT SPEAKS OF TERMINATION OF EMPLOYMENT. DO YOU SEE THAT THERE?

23 A. YES, SIR.

24 Q. AND YOU WOULD AGREE WITH ME THAT THE AGREEMENT THAT YOU
25 HAD WITH LEVEL GLOBAL DISTINGUISHES BETWEEN TERMINATIONS FOR

1 CAUSE AND TERMINATIONS WITHOUT CAUSE? YES?

2 A. RIGHT.

3 Q. IF WE CAN READ ALONG AS WE LOOK AT SUB- -- SUBPART A THERE
4 AT THE BOTTOM OF PAGE FIVE. PLEASE MAKE SURE I GET THIS RIGHT.
5 IN THE EVENT THAT YOUR EMPLOYMENT RELATIONSHIP WITH THE
6 INVESTMENT MANAGER ENDS AT ANY TIME AS A RESULT OF YOUR
7 TERMINATION FOR CAUSE AS DEFINED BELOW, ALL OBLIGATIONS OF THE
8 INVESTMENT MANAGER AND ITS AFFILIATES TO, INCLUDING ANY VESTING
9 OF ANY DEFERRED AMOUNTS OR OTHER COMPENSATION DESCRIBED IN
10 PARAGRAPH FOUR -- TURNING OVER TO THE NEXT PAGE -- SHALL CEASE,
11 PROVIDED THAT YOU SHOULD BE PAID ANY ACCRUED AND UNPAID BASE
12 SALARY THROUGH YOUR LAST DATE OF EMPLOYMENT.

13 NOW, WHAT I WANT TO ASK, IS YOUR UNDERSTANDING OF THAT,
14 DID THAT MEAN THAT IF YOU WERE TERMINATED FOR CAUSE, SIR, THAT
15 ALL YOU WOULD BE ENTITLED TO FROM NOW ON OUT WAS ANY BASE PAY
16 THAT YOU HAD COMING FOR THAT PAY PERIOD?

17 A. THAT WOULD BE MY UNDERSTANDING.

18 Q. OKAY. NOW, LET'S LOOK -- STAY ON PAGE NUMBER SIX, PLEASE.
19 AND LET'S LOOK AT WHAT'S LAID OUT AS THE DEFINITION OF CAUSE
20 FOR PURPOSES OF TERMINATION. AND, REALLY, WHAT I WANT TO GET
21 TO, SIR, IS TO IDENTIFY HOW MANY OF THESE APPLIED. LET'S
22 ASSUME -- LET'S TAKE YOUR GUILTY PLEA AND THE JUDGE'S FINDINGS
23 REGARDING YOUR OCTOBER 2009 CONDUCT AS A GIVEN. I WANT TO FIND
24 OUT, IF WE TAKE THOSE AS A GIVEN, HOW MANY OF THESE APPLY TO
25 THAT CONDUCT AND WOULD HAVE BEEN CAUSE FOR, FOR TERMINATION.

1 SO, REFERRING TO YOUR OCTOBER 2009 TRADING -- WELL, FIRST
2 OF ALL, LET ME ESTABLISH, DID LEVEL GLOBAL HAVE AN INSIDER
3 TRADING POLICY?

4 A. I BELIEVE ALL HEDGE FUNDS ADDRESSED INSIDER TRADING
5 COMPLIANCE GUIDELINES. I DON'T KNOW IF WE HAD A SPECIFIC
6 POLICY THAT WAS SPECIFIC TO LEVEL GLOBAL.

7 Q. I SEE. BUT YOU WERE -- YOU UNDERSTOOD AT THE TIME THAT
8 THE COMPANY PROHIBITED TRADING ON MATERIAL NONPUBLIC
9 INFORMATION?

10 A. CORRECT.

11 Q. OKAY. SO LET'S TAKE A LOOK AT SUBPART ONE THERE. CAUSE
12 INCLUDES YOUR VIOLATION OF THE INVESTMENT MANAGER'S CODE OF
13 ETHICS OR REQUIREMENTS SET FORTH IN THE INVESTMENT MANAGER'S
14 COMPLIANCE MANUAL AS MAY BE --

15 THE COURT: GO A LITTLE SLOWER SO THAT THE COURT
16 REPORTER CAN GET THAT. I CAN READ IT, BUT --

17 MR. HUDDLESTON: I'M SORRY, ELIZABETH.

18 THANK YOU.

19 THE COURT: THANK YOU.

20 Q. (BY MR. HUDDLESTON) WE'RE PICKING UP, AS MAY BE AMENDED
21 FROM TIME TO TIME, INCLUDING BUT NOT LIMITED TO THE FIRM'S
22 INSIDER TRADING AND PERSONAL TRADING POLICIES. AND MY QUESTION
23 IS, IF WE CREDIT THE JUDGE'S FINDING IN YOUR GUILTY PLEA AS TO
24 OCTOBER 2009, WHETHER THE CONDUCT ALLEGED REGARDING THAT MONTH
25 WOULD HAVE VIOLATED SUBPART ONE THERE?

1 A. I MEAN, YOU'RE ASKING ME TO SPECULATE. BUT I ASSUME IT
2 WOULD.

3 Q. SO THAT UNDER THAT SUBPART, THAT WOULD HAVE BEEN REASON
4 ENOUGH TO TERMINATE YOU FOR CAUSE IN OCTOBER 2009. RIGHT?

5 A. ASSUMING THAT I WERE CONVICTED OF AN
6 INSIDER-TRADING-RELATED CRIME, I WOULD AGREE WITH YOU.

7 Q. I DON'T WANT TO QUIBBLE WITH YOU, SIR. BUT NUMBER ONE
8 DOESN'T SPEAK OF CONVICTION.

9 A. RIGHT. I'M SORRY. YOU'RE CORRECT.

10 Q. MOVING DOWN TO NUMBER TWO, MATERIAL BREACH OF THIS
11 AGREEMENT, I'LL SKIP OVER THAT ONE.

12 NUMBER THREE, RATHER THAN ME READ IT INTO THE RECORD,
13 EVERYBODY'S GOT IT UP HERE, WHY DON'T YOU READ NUMBER THREE AND
14 TELL ME WHEN YOU'RE FINISHED.

15 A. YOUR DISHONESTY, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT
16 WITH RESPECT TO THE PERFORMANCE OF YOUR DUTIES FOR THE
17 INVESTMENT MANAGER OR ITS AFFILIATES.

18 Q. AND MY QUESTION WOULD BE, WOULD YOUR OCTOBER 2009 CONDUCT,
19 AS FOUND BY THE COURT AND PURSUANT TO YOUR GUILTY PLEA, HAVE
20 BEEN CAUSE UNDER THAT SUBPARAGRAPH?

21 A. I DON'T KNOW HOW TO ANSWER THAT, SIR. I'M NOT TRYING TO
22 OBFUSCATE YOU. I JUST DON'T KNOW. I CAN ASSUME THAT IT WOULD,
23 BUT YOU'RE ASKING ME TO SPEAK ON BEHALF OF THE EXECUTIVES AT
24 LEVEL GLOBAL WHO WOULD MAKE THAT DETERMINATION.

25 Q. WELL, NO. THIS IS -- YOU'RE ONE PARTY TO THIS AGREEMENT.

1 I'M ASKING FOR YOUR UNDERSTANDING.

2 LET'S DO IT THIS WAY. YOU PLED GUILTY TO WILLFUL
3 MISCONDUCT. YES?

4 A. OKAY.

5 Q. YES?

6 A. I THINK I PLED GUILTY TO CONSPIRACY TO COMMIT SECURITIES
7 FRAUD. I DON'T KNOW IF WILLFUL MISCONDUCT --

8 Q. WELL, YOU'RE AN ATTORNEY. WAS THERE A MENTAL ELEMENT TO
9 THAT? WAS A MENS REA REQUIRED TO CONVICT YOU?

10 A. THERE WAS A MENS REA.

11 Q. AND IT REQUIRED AT THE MINIMUM THAT YOU ACT WILLFULLY.
12 YES?

13 A. I ASSUME SO, YES.

14 Q. ALL RIGHT. READ NUMBER FOUR, IF YOU WOULD, PLEASE, SIR.

15 A. YOUR CONDUCT TENDING TO BRING THE INVESTMENT MANAGER, ITS
16 AFFILIATES INTO SUBSTANTIAL PUBLIC DISGRACE OR DISREPUTE.

17 Q. THANK YOU. NOW, I'M CREDITING THE JUDGE'S FINDING AND
18 YOUR GUILTY PLEA, COULD YOU HAVE BEEN TERMINATED FOR CAUSE AS
19 YOU UNDERSTAND IT UNDER THAT SUBPARAGRAPH?

20 A. AS I UNDERSTAND IT, PROBABLY. BUT, AGAIN, I CAN'T SPEAK
21 FOR THEIR FINAL DECISION.

22 Q. POINT TAKEN.

23 AND THEN THE NEXT ONE, NUMBER FIVE? WOULD YOU READ THAT,
24 PLEASE?

25 A. UH-HUH. COMMISSION OF ANY FELONY, CRIME, OR FRAUD. I

1 WOULD AGREE WITH THAT.

2 Q. AND THAT WOULD -- AS YOU UNDERSTAND IT, YOUR OCTOBER 2009
3 CONDUCT WOULD BE INCLUDED IN THAT. YES?

4 A. THAT WOULD BE MY UNDERSTANDING.

5 Q. ALL RIGHT. AND SO WHAT I WANT TO GET TO IS, YOU COULD
6 HAVE, HAD YOU CHOSEN TO, HAD YOU BEEN REMORSEFUL ABOUT 2009,
7 YOU COULD HAVE GONE TO YOUR EMPLOYER AND SAID, GUYS, I'M VERY
8 SORRY, BUT I HAVE VIOLATED THREE OR FOUR OF THESE. AND THEY
9 COULD HAVE TERMINATED YOU FOR CAUSE. IS THAT RIGHT?

10 A. I'M GOING TO SAY YES. I'M NOT SURE. BUT, OKAY, I'LL GO
11 WITH THAT.

12 Q. AND IF YOU HAD BEEN TERMINATED FOR CAUSE, YOU WOULD HAVE
13 RECEIVED NONE OF THE COMPENSATION THAT WE'VE SEEN IN YOUR
14 SLIDES FOR 2010. CORRECT?

15 A. HAD I BEEN TERMINATED FOR CAUSE, YEAH, I BELIEVE THAT'S
16 CORRECT.

17 Q. FAIR ENOUGH.

18 THE WAY YOU DESCRIBE WHAT YOU DID AT LEVEL GLOBAL, DID I
19 HEAR IT CORRECTLY THAT YOU SORT OF CREATED THIS CONSUMER
20 DISCRETIONARY BUSINESS THERE?

21 A. I WOULDN'T CALL IT A SEPARATE BUSINESS, BUT I WAS
22 RESPONSIBLE FOR THE CONSUMER DISCRETIONARY-RELATED TRADING AND
23 INVESTMENTS THAT WENT ON AT LEVEL GLOBAL. IT WASN'T A SEPARATE
24 BUSINESS.

25 Q. DID I HEAR YOU SAY THAT YOU HIRED THE ANALYSTS?

1 A. I RECOMMENDED ANALYSTS TO BE HIRED. IT WASN'T REALLY UP
2 TO ME TO PULL THE TRIGGER FINALLY ON WHO WE HIRED. BUT I WOULD
3 RECOMMEND TO DAVID GANEK, THE HEAD OF THE FIRM, LET'S HIRE THIS
4 GUY, LET'S HIRE THAT GUY.

5 Q. AND DID HE TAKE THOSE RECOMMENDATIONS?

6 A. ULTIMATELY WHAT ENDED UP HAPPENING WAS, I USED AN INTERNAL
7 ANALYST TO BE THE MAIN ANALYST WITHIN THE CONSUMER SECTOR. I
8 THEN RECOMMENDED ONE OTHER GUY WHO WE DID END UP HIRING. BUT
9 THOSE WERE THE ONLY TWO PEOPLE THAT WERE DIRECTLY ON MY TEAM.

10 Q. YOU ANTICIPATED MY NEXT QUESTION. SO HOW MANY ANALYSTS
11 DID YOU HAVE REPORTING TO YOU? TWO?

12 A. TWO.

13 Q. AND TRADERS AS WELL, DID YOU -- WERE YOU RESPONSIBLE --

14 A. THERE WAS A SHARED TRADING DESK. I'M SORRY. I DIDN'T
15 MEAN TO STOP YOU.

16 Q. THAT'S OKAY.

17 A. I BELIEVE THERE WERE FOUR TRADERS ON A SHARED TRADING
18 DESK. AND THEY WOULD MAKE TRADES ON BEHALF OF WHOEVER WAS AN
19 INVESTMENT PROFESSIONAL DIRECTING TRADES AT THE COMPANY.

20 Q. SO WERE YOU INVOLVED IN HIRING ANY OF THOSE PEOPLE?

21 A. NO, I WAS NOT.

22 Q. YOU ALSO MENTIONED ANOTHER CATEGORY, I BELIEVE,
23 CONSULTANTS. CAN YOU TELL US ABOUT HOW MANY CONSULTANTS YOU
24 WERE RESPONSIBLE FOR BRINGING IN.

25 A. I DON'T KNOW THE EXACT NUMBER OF CONSULTANTS. SO I DON'T

1 KNOW HOW TO ANSWER THAT QUESTION. THERE WERE MULTIPLE PEOPLE
2 THAT WE WOULD USE FOR RESEARCH AND ANALYSIS THAT WERE THIRD
3 PARTIES TO LEVEL GLOBAL WHO WERE EITHER SELL-SIDE STOCK
4 RESEARCHERS OR THEY HAD CONSULTING COMPANIES AND SO FORTH. BUT
5 YOU ASKED ME HOW MANY. AND I DON'T KNOW.

6 THE COURT: PEOPLE WHO WERE NOT EMPLOYEES.

7 THE WITNESS: CORRECT, UH-HUH.

8 Q. (BY MR. HUDDLESTON) WOULD YOU INCLUDE IN THAT CATEGORY
9 ERIC MARTIN? WAS HE A CONSULTANT?

10 A. YEAH. HIS COMPANY WAS CALLED MELLON ADVISORS, SO IT WOULD
11 INCLUDE MELLON AS A THIRD-PARTY EXTERNAL CONSULTANT.

12 Q. AND HE BROUGHT YOU -- YOU BROUGHT HIM IN AS A CONSULTANT
13 FOR LEVEL GLOBAL. YES? HIS COMPANY, RATHER?

14 A. THAT'S CORRECT, YEAH. SUSAN REUBEN WAS OUR HEAD OF
15 COMPLIANCE. AND WE HAD TO VET ANY RECOMMENDATIONS THROUGH THE
16 COMPLIANCE DEPARTMENT. SO THEY WOULD CHECK TO MAKE SURE THAT A
17 CONSULTANT WAS APPROPRIATE FOR OUR INVESTMENT PROCESS. ONCE
18 THEY APPROVED IT IN COMPLIANCE, WE WOULD GO AHEAD AND SIGN A
19 CONTRACT WITH WHOEVER THE PERSON WAS.

20 Q. VERY GOOD.

21 THE COURT: ON THE INTERNAL ANALYST, YOU USED ONE WHO
22 WAS ALREADY EMPLOYED, AND THEN YOU HIRED ONE?

23 THE WITNESS: CORRECT.

24 Q. (BY MR. HUDDLESTON) CAN YOU BALL-PARK IT FOR US HOW MANY
25 PEOPLE LIKE MR. MARTIN'S COMPANY YOU WERE RESPONSIBLE FOR

1 RECOMMENDING AND SUCCESSFULLY BRINGING IN AS CONSULTANTS FOR
2 LEVEL GLOBAL?

3 A. YOU KNOW, I -- THERE WERE -- I'D HAVE TO GUESS BECAUSE I
4 DON'T REMEMBER THE EXACT NUMBER. THERE WERE A FEW. THERE WERE
5 A HANDFUL. THERE WAS ONE CALLED RETAIL EYE PARTNERS. THERE
6 WAS ONE CALLED JANET J. KLOPPENBURG ADVISORS. THERE WAS ONE
7 CALLED J AND K RESEARCH. SO THERE WERE MAYBE, I'M GOING TO
8 GUESS, HALF A DOZEN OR SO LIKE THAT. BUT I DON'T KNOW THE
9 EXACT NUMBER.

10 Q. I THINK EXHIBIT 6 AND 7, YOU DON'T NEED TO TURN THERE NOW,
11 BUT I BELIEVE THAT THEY ARE LISTS OF SOME OF THE TRADES THAT
12 WERE MADE INSIDE YOUR PART OF LEVEL GLOBAL. CORRECT?

13 A. CORRECT.

14 Q. NOW, I'D LIKE TO HAVE YOU JUST TAKE US INSIDE THE TYPICAL
15 TRADE, IF YOU COULD. MY QUESTION TO YOU IS, IF THE IDEA COMES
16 TO SOMEBODY, DID IT ALWAYS GENERATE WITH YOU, OR WAS IT ONE OF
17 THE ANALYSTS COMING TO YOU?

18 A. ALL OF THE ABOVE. SOMETIMES IT CAME FROM ME AND SOMETIMES
19 IT CAME FROM ONE OF MY ANALYSTS. AND SOMETIMES IT CAME FROM A
20 THIRD-PARTY SALES-SIDE ANALYST, SOMEONE WHO MIGHT WORK AT A
21 GOLDMAN SACHS OR A MORGAN STANLEY WHO WAS MAKING STOCK
22 RECOMMENDATIONS TO WALL STREET. IT COULD HAVE BEEN ANY OF
23 THOSE CATEGORIES, OR A CONSULTANT.

24 Q. THANK YOU.

25 OKAY. NOW, WERE THE ANALYSTS AUTHORIZED TO ORDER TRADES

1 ON THEIR OWN?

2 A. NO. NO.

3 Q. WHO DID THEY GO TO FOR PERMISSION?

4 A. THEY WOULD EITHER GO TO ME OR THEY WOULD GO TO DAVID GANEK
5 OR THEY WOULD GO TO ONE OF THE OTHER INVESTMENT MANAGERS.

6 Q. ALL RIGHT. AND CAN YOU GIVE US WHAT THE TYPICAL SCENARIO
7 WAS? WERE YOU THE PERSON WHO USUALLY CLEARED TRADES IN THE
8 CONSUMER DISCRETIONARY SPACE?

9 A. IT DEPENDED. I MEAN, YES, GENERALLY. I WOULD SAY THAT'S
10 FAIR. BUT SOMETIMES THE ANALYSTS WOULD GO DIRECTLY TO DAVID
11 WITH AN IDEA THAT WAS WITHIN THE CONSUMER SPACE. AND DAVID
12 MIGHT DO IT FOR HIS BOOK, AND THEN I MIGHT DO IT LATER WITHIN
13 OUR FUNDS. SO IT REALLY VARIED. BUT --

14 Q. UNDERSTOOD.

15 OKAY. AND IF YOU HAD AN IDEA THAT DIDN'T GENERATE FROM
16 THE ANALYST, DID YOU HAVE TO GO TO DAVID AND GET HIS PERMISSION
17 BEFORE YOU ENTERED THAT TRADE?

18 A. YOU DIDN'T HAVE TO GO TO HIM TO GET PERMISSION. BUT HE
19 WOULD ALMOST ALWAYS WANT TO DISCUSS WHAT YOUR THINKING WAS ON
20 AN IDEA, FOR A COUPLE OF REASONS, SO HE COULD UNDERSTAND YOUR
21 THOUGHT PROCESS AND SO HE COULD MAKE A DECISION WHETHER IT WAS
22 SOMETHING HE WANTED TO TRADE FOR HIMSELF IN THE CENTER BOOK
23 THAT I DESCRIBED.

24 Q. THE REASON I ASKED THOSE QUESTIONS, I'M TRYING TO GET TO
25 THIS ISSUE OF CONTROL. MY QUESTION TO YOU WOULD BE, IS IT FAIR

1 TO SAY THAT YOU CONTROLLED THE TRADING FOR LEVEL GLOBAL UNDER
2 THE CONSUMER DISCRETIONARY SPACE?

3 A. I THINK IT'S FAIR TO SAY I CONTROLLED IT. I DIDN'T HAVE
4 ULTIMATE CONTROL IN THE SENSE OF, IF WE HAD A VIOLENT
5 DISAGREEMENT, IT WAS REALLY UP TO HIM TO TAKE OFF A POSITION
6 THAT HE JUST PLAIN DIDN'T AGREE WITH.

7 Q. UNDERSTOOD.

8 NOW, I WANT TO GET TO SOMETHING YOU DESCRIBED FOR US WITH
9 REGARD TO YOUR EQUITY POINTS OR YOUR EQUITY PARTICIPATION. I
10 BELIEVE IT WAS THREE PERCENT, CORRECT, IN 2010?

11 A. IT WAS THREE PERCENT FOR THE ONE YEAR OF 2010. AND THEN
12 IT WAS NOTHING AFTER THAT.

13 Q. UNDERSTOOD. BUT I THINK I HEARD YOU SAY IT WAS THREE
14 PERCENT ON THE WHOLE COMPANY'S BUSINESS, INCLUDING THE LEVEL
15 RADAR. IS THAT RIGHT?

16 A. IT WAS THREE PERCENT OF THE COMPANY'S INCENTIVE FEES FOR
17 LEVEL GLOBAL AND LEVEL RADAR, YEAH.

18 Q. AND I THINK I REMEMBER YOU SAYING YOU DIDN'T HAVE ANYTHING
19 TO DO WITH LEVEL RADAR.

20 A. HARDLY ANYTHING TO DO WITH IT. I MEAN, MAY I EXPLAIN --

21 Q. YEAH, SURE.

22 A. -- FOR A SECOND? SO ANTHONY CHIASSON, IN ADDITION TO
23 BEING THE COFOUNDER OF THE FIRM, WAS ALSO THE DIRECTOR OF
24 RESEARCH. WE USED TO HAVE OCCASIONAL MEETINGS WHERE THE TOP
25 TEN PEOPLE WOULD GET IN A ROOM OF THOSE 60 OR 70 PEOPLE, AND WE

1 WOULD TALK ABOUT THE MARKET, AND WE WOULD TALK ABOUT IDEAS AND
2 SO FORTH.

3 WITHIN THE CONTEXT OF THOSE MEETINGS, ANTHONY MIGHT SAY,
4 WE'RE BUYING SUCH-AND-SUCH A STOCK WITHIN RADAR. AND I WOULD
5 BE PRIVY AND LISTEN TO MAYBE A DEBATE HE WOULD HAVE WITH ONE OF
6 HIS TECH ANALYSTS. SO IN THAT SENSE, I MIGHT BE IN THE ROOM.
7 BUT IN THE SENSE THAT I WOULD NEVER GO AND PITCH A CONSUMER
8 STOCK TO BE BOUGHT OR SOLD WITHIN THAT RADAR FUND. IT WAS JUST
9 SEPARATE FROM WHAT I WAS DOING. SO I'M NOT GOING TO SAY I WAS
10 NEVER IN A MEETING WITH ANTHONY CHIASSON WHERE RADAR DIDN'T
11 COME UP. BUT IT WASN'T REALLY MY ROLE TO INFLUENCE RADAR OR TO
12 PITCH IDEAS TO RADAR.

13 Q. SO YOU WEREN'T RESPONSIBLE FOR THE SUCCESS OR FAILURE OF
14 HOW RADAR DID. RIGHT?

15 A. NO.

16 Q. AND, YET, YOU GOT PAID. YOUR INCENTIVE COMPENSATION WAS
17 INCLUDED IN THE INCENTIVE FEES THAT HAD BEEN EARNED ON THAT.

18 A. THAT'S CORRECT, BECAUSE THEY WANTED TO VIEW IT AS
19 WHOLISTICALLY, THE PARENT, HOW IS THE PARENT COMPANY DOING, SO
20 THAT INCLUDED BOTH OF THE FUNDS.

21 Q. AND WHAT I WANT TO GET TO IS, EVEN THOUGH YOU MAY NOT HAVE
22 BEEN AN OWNER OF LEVEL GLOBAL, YOU WERE PAID AS IF YOU OWNED
23 THREE PERCENT OF THE COMPANY IN 2010. YES?

24 A. I WAS PAID AS IF I HAD A THREE PERCENT POINT SHARING FOR
25 THE ONE YEAR, YEAH, THAT'S RIGHT.

1 CAN I MAKE ONE OTHER CLARIFYING POINT?

2 Q. I THINK YOUR ATTORNEY IS GOING TO TALK TO YOU AFTER I'M
3 FINISHED.

4 MR. HUDDLESTON: YOUR HONOR, WOULD YOU LIKE TO HEAR
5 WHAT HE HAS TO SAY NOW?

6 THE COURT: IS IT ABOUT THIS TOPIC?

7 THE WITNESS: IT'S ON THE TOPIC OF OWNERSHIP. YEAH.

8 THE COURT: PROCEED.

9 THE WITNESS: I WAS JUST GOING TO SAY -- I'LL BE
10 BRIEF -- AT SOME POINT IN 2010, LEVEL GLOBAL SOLD A PORTION OF
11 THE COMPANY TO AN AFFILIATE OF GOLDMAN SACHS CALLED PETERSHILL.
12 THEY SOLD ABOUT TEN TO 15 PERCENT OF THE COMPANY FOR, MY
13 UNDERSTANDING WAS IT WAS ROUGHLY \$50 MILLION. THAT MONEY WAS
14 USED TO PAY OUT EQUITY OWNERS AND SENIOR PEOPLE AT LEVEL
15 GLOBAL. I NEVER RECEIVED A DIME OF THAT BECAUSE I WAS NOT, IN
16 FACT, AN EQUITY OWNER, NOR WAS I A SHAREHOLDER. I WAS A, YOU
17 KNOW, BASICALLY A NEW -- IN MY TECHNICAL ROLE IN MY CONTRACT IS
18 ANALYST. SO I'LL JUST USE THAT TERM. EVEN THOUGH I WAS AN
19 INVESTMENT MANAGER, I WAS NOT A TRADITIONAL, WHAT YOU WOULD
20 THINK OF AS AN EQUITY OWNER IN A BUSINESS OR A SHAREHOLDER
21 WHERE, WHEN THE COMPANY GETS SOLD, YOU ARE ENTITLED TO RECEIVE
22 A SHARE OF THOSE PROCEEDS.

23 Q. UNDERSTOOD. UNDERSTOOD.

24 NOW, LET'S GO BACK TO 2009, BECAUSE IF I UNDERSTOOD IT
25 CORRECTLY, THERE WAS SOME -- YOU HAD A RIGHT TO ASK FOR SOME

1 DISCRETIONARY BONUS IN 2009, BUT YOU DID NOT ASK FOR IT. AM I
2 GETTING THAT RIGHT?

3 A. YOU KNOW, IT SAID IN THE CONTRACT THAT -- I'M SORRY, THAT
4 AT THE SOLE DISCRETION OF THE INVESTMENT MANAGER, HE COULD PAY
5 OUT A 2009 DISCRETIONARY BONUS. IT WAS FRANKLY ASSUMED, AND
6 THIS IS VERY FREQUENT ON WALL STREET BECAUSE PEOPLE MOVE AROUND
7 FROM ONE FUND TO THE NEXT FUND PRETTY FREQUENTLY, WHEN YOU ARE
8 IN A STUB YEAR, WHEN YOU ARE IN A HALF-YEAR, YOU'RE NOT GOING
9 TO BE BONUSED ON THAT YEAR BECAUSE OF THE REASONS I SAID
10 EARLIER. PEOPLE VIEW IT AS A LITTLE BIT, YOU'RE NEW. YOU ARE
11 IN A STUB YEAR. YOU ARE NOT MEANT TO BE COMPENSATED ON THIS
12 LITTLE PERIOD OF TIME. WE'LL FOCUS ON YOUR FIRST FULL YEAR.

13 AND THAT WAS MY UNDERSTANDING. AND THAT'S WHY I DIDN'T
14 THREATEN, YOU KNOW, TO LEAVE OR MAKE A BIG ISSUE OUT OF THE
15 FACT THAT, YOU KNOW, WHY WAS THIS PART OF MY CONTRACT NOT BEING
16 EXERCISED. I HAD SORT OF ASSUMED THAT IT WOULD NOT BE, TO BE
17 CLEAR.

18 Q. SO I JUST WANT TO GET CLEAR ON THAT. YOU ASKED FOR IT AND
19 WERE TOLD YOU WOULDN'T BE PAID IT, OR DID THE TOPIC JUST NEVER
20 COME UP?

21 A. I NEVER EVEN HAD A MEETING ABOUT IT. I SORT OF WAS
22 WONDERING. AT SOME POINT YOU HAVE A MEETING TO GO OVER A
23 REVIEW, LIKE A YEAR-END REVIEW, BECAUSE MOST OF THE COMPANIES
24 I'VE WORKED FOR, IN DECEMBER, YOU GO AND MEET WITH THE HEAD OF
25 THE COMPANY, AND THEY SAY, THIS IS WHAT YOU'RE DOING WELL, THIS

1 IS WHAT YOU'RE DOING POORLY. I NEVER REALLY HAD THAT MEETING.
2 AND THAT WOULD BE THE TYPE OF MEETING WHERE THEY WOULD SAY,
3 HERE'S WHAT YOUR SHARE OF THE PROFITS IS GOING TO BE FOR THE
4 YEAR.

5 SO THAT MEETING NEVER EVEN REALLY OCCURRED. AND I NEVER
6 WENT BACK AND, YOU KNOW, DEMANDED TO BE PAID OR REQUESTED TO BE
7 PAID.

8 Q. AND IS IT THE FACT THAT YOU DID NOT MAKE THAT DEMAND THAT
9 LEADS YOU TO SAY THAT YOU SHOULD NOT HAVE TO PAY ANY
10 DISGORGEMENT ON THE TWO-MILLION-PLUS LOSS AVOIDED THAT OCCURRED
11 IN 2009?

12 A. WELL, TO BE CLEAR, I MEAN, I THINK THE ARGUMENT IS TO SAY
13 THAT NONE OF THE TWO MILLION FLOWED DIRECTLY INTO MY
14 COMPENSATION OR INTO MY POCKET, I GUESS YOU COULD SAY.

15 Q. LET ME SEE IF I CAN SAY SOMETHING THAT I THINK IS FAIR.
16 IS IT FAIR TO SAY THAT THE \$2,034,000.00 IN LOSS AVOIDED, THAT
17 THERE WERE PEOPLE ON THE OTHER SIDE OF THOSE TRADES, ON THE
18 LOSING SIDE OF THOSE TRADES?

19 A. YOU MEAN LIKE OTHER TRADERS?

20 Q. WELL, THERE WAS A COUNTERPARTY FOR EACH --

21 A. COUNTERPARTY, YEAH, SURE.

22 Q. FOR EACH OF THE TWO HUNDRED -- I MEAN, \$2,034,000.00,
23 THERE WAS SOMEBODY WHO LOST THAT \$2,034,000.00. RIGHT?

24 A. THEORETICALLY, YEAH.

25 Q. ALL RIGHT. AND THE SAME IS TRUE FOR THE, FOR THE PROFITS

1 MADE IN 2010. YOU MADE A SIX-HUNDRED-THOUSAND-DOLLAR-PLUS GAIN
2 ON BY COVERING A SHORT POSITION. THERE WAS SOMEBODY WHO IS ON
3 THE LOSING END OF THAT TRADE, RIGHT, OR THOSE TRADES?

4 A. YEAH. I'M NOT SURE I WOULD CHARACTERIZE IT AS SOMEONE.
5 IT WAS PROBABLY, YOU KNOW, SPREAD ACROSS SORT OF THOUSANDS OF
6 DIFFERENT TRADING.

7 Q. YES. NOT A SINGLE PERSON.

8 A. RIGHT.

9 Q. ON THAT POINT, IF YOU COULD TURN TO EXHIBIT NUMBER 7,
10 PLEASE. I BELIEVE THAT IS THE -- A LIST THAT HAS THE
11 HIGHLIGHTING. AM I RIGHT?

12 A. UH-HUH.

13 Q. WHAT I'M TRYING TO GET CLEAR ON IS JUST HOW MANY SEPARATE
14 TRADES MAKE UP THE, THE TRADING ALLEGED IN OUR COMPLAINT AND
15 THAT THE JUDGE HAS FOUND YOU LIABLE FOR? I BELIEVE IN OCTOBER
16 2009, WERE THERE TWO TRADES?

17 A. WELL, I WOULD CHARACTERIZE THE ORDER TO SELL THE 300,000
18 SHARES AS ONE TRADING ORDER.

19 Q. OKAY.

20 A. I THINK THAT WHEN I LOOK AT THE DATA, IT WAS -- IT TOOK
21 TWO SEPARATE TRADES TO ACTUALLY SELL THE 300,000. AND THE
22 REASON I SAY THAT IS BECAUSE IT SHOWS THAT 200,000 SHARES WERE
23 SOLD ON OCTOBER 23RD, AND THE LAST HUNDRED THOUSAND SHARES WERE
24 SOLD ON OCTOBER 26TH. IT WAS A -- FRIDAY WAS THE 23RD, AND
25 MONDAY WAS THE 26TH. WHEN YOU GO BACK AND LOOK AT THE RECORD,

1 THAT WAS ACTUALLY ONE TRADING ORDER THAT WENT INTO THE TRADERS
2 TO SAY, SELL THE 300. SOMETIMES IT TAKES A COUPLE DAYS. SO IT
3 SHOWS UP AS TWO TRADES.

4 Q. OKAY. BUT IN TERMS OF THE NUMBER OF DECISIONS YOU MAKE --

5 A. ONE DECISION.

6 Q. IT AFFECTED THERE, IT WAS A SINGLE DECISION THAT GOT IT
7 ROLLED OUT OF THE TWO DAYS.

8 A. YES AND NO. THE ONLY OTHER POINT I WOULD MAKE IS, IF YOU
9 GO RIGHT ABOVE THAT, IT SHOWS THAT WE HAD 350,000 SHARES
10 BEFORE, BEFORE I HAD EVEN SPOKEN TO ERIC MARTIN. AND --

11 THE COURT: I'M SORRY. IT'S GOING TO BE HELPFUL TO
12 ME IF WE COULD PRETEND WE ARE DEALING WITH LINE NUMBERS, WHICH
13 WE DON'T HAVE. WE'RE TALKING ABOUT THE LAST GROUP? I'M SORRY.
14 I WANT TO KNOW WHERE WE ARE ON THIS PAGE.

15 MR. HUDDLESTON: 322 AND 323, I BELIEVE, YOUR HONOR.
16 FAR LEFT COLUMN. UP HERE ON THE SCREEN.

17 THE COURT: I SEE. ALL RIGHT.

18 Q. (BY MR. HUDDLESTON) LET'S ACTUALLY MOVE DOWN TO THE
19 BOTTOM OF THE PAGE NOW TO THE JULY SHORT --

20 A. WELL, CAN I JUST FINISH MY LAST POINT ON THAT?

21 Q. OF COURSE. GO AHEAD.

22 A. SO WE HAD -- YOU'RE ASKING ME ABOUT HOW MANY TRADING
23 DECISIONS WAS IT. WE HAD 350,000 SHARES AT THE PEAK. AND
24 THAT'S UNDER THE COLUMN CUMULATIVE SHARES. AND IT SHOWS AS
25 350,000 SHARES. I HAD STARTED LIQUIDATING THE POSITION AND HAD

1 ACTUALLY SOLD 50,000 SHARES BEFORE I HAD GOTTEN THE PHONE CALL
2 FROM ERIC MARTIN.

3 Q. I WANT TO ASK YOU TO LIMIT THE ANSWER TO THE PHONE CALLS
4 THAT ARE AFTER YOU SPEAK TO MR. MARTIN.

5 A. OKAY.

6 Q. WHAT I'M TRYING TO GET TO ARE THE THINGS THAT ARE
7 DESCRIBED IN THE JUDGE'S ORDER.

8 SO THAT WOULD HAVE BEEN ONE TRADING DECISION.

9 A. CORRECT.

10 Q. AND IN JULY 2010, HOW MANY TRADING DECISIONS? BECAUSE AS
11 I COUNT THEM, ONE, TWO, THREE, FOUR, AM I CORRECT THAT THERE
12 ARE FOUR SHORT SALES AND ONE COVER?

13 A. FOUR SHORT SALES AND A COVER. IT'S NOT CLEAR TO ME.
14 LIKE, FOR EXAMPLE, WHEN IT SAYS JULY 8TH AND JULY 12TH, I DON'T
15 REMEMBER IF THAT WOULD HAVE BEEN ONE TRADING ORDER TO SHORT 200
16 THAT WAS BROKEN INTO 150 AND 50 OR IF THAT WAS TWO TRADING
17 ORDERS. SO I DON'T KNOW.

18 Q. I BELIEVE THE WAY IT'S DESCRIBED IN THE PLEADINGS, WE'VE
19 GOT AN INITIAL 150 THAT WERE SHORTED, FOLLOWED BY A DECISION TO
20 ACCUMULATE A FURTHER SHORT POSITION UP TO 300. DOES THAT RING
21 A BELL?

22 A. I BELIEVE THAT IS CORRECT. I'M NOT SURE. AND THE
23 DECISION TO LIQUIDATE WOULD HAVE BEEN ONE DECISION TO COVER THE
24 300,000 SHARES.

25 Q. VERY GOOD. THANK YOU.

1 MR. HUDDLESTON: YOUR HONOR, WE MOVE NOW, IF I MAY,
2 TO THE FACTORS RELEVANT TO DISGORGEMENT. AND I SHOULD SAY THAT
3 THESE ARE ALSO FACTORS THAT ARE RELEVANT TO CIVIL PENALTIES,
4 THE STEADMAN FACTORS.

5 Q. (BY MR. HUDDLESTON) WE'LL GO THROUGH THEM IN ORDER, IF WE
6 COULD, MR. MEGALLI. THE FIRST FACTOR IS THE SERIOUSNESS OF THE
7 VIOLATION. CAN WE AGREE THAT THE VIOLATIONS THAT THE JUDGE HAS
8 FOUND YOU LIABLE FOR ARE SERIOUS VIOLATIONS?

9 A. OF COURSE. LOOK AT THE RESULT ON MY LIFE. SURE, IT FEELS
10 VERY SERIOUS.

11 Q. AND THEN WE TALKED ABOUT THE REPEATED OR THE ISOLATED
12 NATURE OF IT. AND THAT'S WHY I HAD YOU GO THROUGH THE NUMBER
13 OF DIFFERENT DECISIONS. THIS ISN'T SOMETHING YOU DID ONLY
14 ONCE, CORRECT?

15 A. WELL, I MEAN, I WOULD CONSIDER THERE TO BE TWO SEPARATE
16 TRADING DECISIONS ULTIMATELY. ONE WAS TO SELL STOCK IN OCTOBER
17 OF '09.

18 Q. RIGHT.

19 A. AND THE OTHER ONE WAS TO SHORT STOCK IN JULY OF 2010. BUT
20 I WOULDN'T CONSIDER THE FACT THAT IT WAS BROKEN INTO THREE OR
21 FOUR TRADES AS THREE OR FOUR SEPARATE SHORTING INCIDENTS.

22 Q. UNDERSTOOD.

23 A. BECAUSE THEY WERE WITHIN A COUPLE OF DAYS OF EACH OTHER,
24 AND IT WAS MORE OR LESS IN MY MIND THE SAME DECISION TO SHORT
25 THE STOCK.

1 Q. I SEE.

2 WHAT I AM TRYING TO GET TO IS THAT YOU UNDERSTOOD, AT
3 LEAST, I BELIEVE YOUR TESTIMONY FROM YOUR SENTENCING HEARING IS
4 THAT YOU UNDERSTOOD IN OCTOBER 2009 THAT THE INFORMATION YOU
5 WERE GETTING WAS OVER THE LINE, AND YOU SHOULD NOT HAVE ACTED
6 ON IT. YOU UNDERSTOOD THAT IN OCTOBER. YES?

7 A. WHAT I HAVE DESCRIBED, WHAT I DESCRIBED AT MY PLEA
8 HEARING, I'M GOING TO NECESSARILY REPEAT THE FRAMEWORK OF THAT,
9 WHICH IS THAT ERIC MARTIN ALLEGED THAT HE TOLD ME THERE WAS
10 GOING TO BE AN ACCOUNTING ISSUE AT CARTER'S. THAT'S A LIE. HE
11 DID NOT EVER TELL ME THERE WAS GOING TO BE AN ACCOUNTING
12 PROBLEM THAT WAS ABOUT TO BE ANNOUNCED. HE DID HAVE A CHANGE
13 IN OPINION ON HIS STOCK. AND WHEN HE CALLED TO SAY THAT HE NO
14 LONGER LIKED THE STOCK, I HAD ALREADY BEEN IN THE PROCESS OF
15 SELLING IT. AND HIS PHONE CALL ACTED AS A CATALYST FOR ME TO
16 CONTINUE SELLING THE STOCK.

17 HE -- WHEN I PLED, WHEN I SAID I PLEAD GUILTY TO CONSCIOUS
18 AVOIDANCE, WHAT THAT MEANT TO ME WAS, I WISH I HAD PROBED
19 FURTHER TO ASK HIM, WHY ARE YOU CHANGING YOUR OPINION ON THE
20 STOCK. I DIDN'T PROBE HIM ENOUGH. AND HAD I PROBED HIM,
21 PERHAPS HE COULD HAVE SAID, I HAVE AN INSIDE SOURCE AT THE
22 COMPANY WHO'S TELLING ME THERE'S GOING TO BE AN ACCOUNTING
23 FRAUD. AND THAT WOULD HAVE HELPED ME AVOID THIS TRADE.

24 BY CONSCIOUSLY AVOIDING THE FACT THAT HE CHANGED HIS
25 OPINION AND NOT PROBING HIM FURTHER, THAT ULTIMATELY LED TO

1 WHAT I PLED TO IN THE PARALLEL CRIMINAL PROCEEDING.

2 Q. ARE YOU SAYING NOW THAT YOU DO NOT BELIEVE YOU VIOLATED
3 THE LAW IN OCTOBER OF 2010?

4 A. I AM NOT SAYING I DID NOT VIOLATE THE LAW. WHAT I AM
5 SAYING IS, I JUST WANT TO BE CLEAR ABOUT WHAT I PLED TO BECAUSE
6 WHEN YOU SAID IN THE OCTOBER '09 INSTANCE, WHEN HE GAVE ME
7 INSIDE INFORMATION, I JUST WANT TO MAKE SURE THAT'S
8 CHARACTERIZED PROPERLY.

9 Q. WHAT I WANT TO --

10 MR. MONNIN: YOUR HONOR, CAN I JUST -- I GUESS WHAT
11 I'D LIKE TO SAY IS THAT I UNDERSTAND THAT THE SEC HAS AN
12 INTEREST IN GETTING INTO THE UNDERLYING TRADING ACTIVITY FOR
13 PURPOSES OF ADDRESSING ISSUES POTENTIALLY IN AGGRAVATION, FOR
14 PURPOSES OF THE COURT'S CIVIL PENALTY ANALYSIS. MR. MEGALLI
15 KNEW THIS GOING INTO THIS PROCEEDING THAT THESE ISSUES WOULD BE
16 POTENTIALLY PUT TO HIM. THERE IS A PARALLEL 2255 PETITION THAT
17 IS PENDING.

18 THE COURT: ALL RIGHT.

19 MR. MONNIN: THAT PETITION, WE HAVE STATED, AND MR.
20 CHAIKEN, THE ASSISTANT UNITED STATES ATTORNEY WHO PROSECUTED
21 MR. MEGALLI, IS HERE IN COURT. WE HAVE STATED IN THAT 2255
22 PETITION THAT -- LET ME STEP UP TO THE MICROPHONE.

23 THE COURT: THANK YOU.

24 MR. MONNIN: THAT WE ARE NOT AT ALL INTENDING TO
25 REVISIT THE ISSUE OF MR. MEGALLI'S LIABILITY AS A MATTER OF

1 EXISTING 11TH CIRCUIT LAW OR AS A MATTER OF EXISTING LAW AT THE
2 TIME OF HIS GUILTY PLEA. I DO, HOWEVER, BELIEVE THAT HE SHOULD
3 NOT BE ASKED QUESTIONS THAT GET INTO HIS FAMILIARITY WITH THE
4 RELATIONSHIP BETWEEN MR. POSEY, THE INSIDER, AND MR. MARTIN,
5 THE INTERMEDIATE TIPPEE, WHO THEN BECAME MR. MEGALLI'S TIPPER.
6 AND I DON'T BELIEVE THAT THE SEC IS INTENDING TO GET INTO THOSE
7 INCREMENTAL ISSUES OF MR. MEGALLI'S KNOWLEDGE OF A POTENTIAL
8 BENEFIT BETWEEN THOSE TWO INDIVIDUALS. AND IF --

9 MR. HUDDLESTON: THAT IS CORRECT.

10 MR. MONNIN: IF THAT'S TRUE, I DON'T NEED TO OBJECT
11 ON FIFTH AMENDMENT GROUNDS OR INSTRUCT MY CLIENT NOT TO ANSWER.

12 I DO, HOWEVER, BELIEVE THAT MR. MEGALLI'S GUILTY PLEA
13 PROCEEDING, THE POSITION THAT HE'S TAKEN IN HIS ANSWER, ALL THE
14 OTHER BASES THAT THE COURT HAD TO FIND HIM LIABLE WHERE HE HAS
15 ADMITTED TO THIS MISCONDUCT, ARE ALREADY A PART OF THE RECORD.
16 AND I GUESS I'M NOT REALLY SURE WHY WE NEED TO GO MUCH FURTHER
17 THAN THAT IN CONNECTION WITH THIS HEARING.

18 MR. HUDDLESTON: IF I MAY?

19 THE COURT: YES.

20 MR. HUDDLESTON: WE DON'T NEED TO GO MUCH FURTHER.
21 WE ARE ADDRESSING THE SECOND FACTOR, WHICH IS WHETHER THE
22 CONDUCT WAS ISOLATED OR REPEATED. HAD MR. MEGALLI NOT GIVEN
23 SUCH A LONG ANSWER ABOUT THE OCTOBER TRADES, WE'D BE BEYOND IT
24 NOW.

25 Q. (BY MR. HUDDLESTON) WHAT I AM TRYING TO ESTABLISH IS,

1 THIS IS NOT SOMETHING YOU DID ONCE, SIR. YOU DID IT TWICE.
2 RIGHT?

3 A. I THINK THAT'S FAIR.

4 THE COURT: ALL RIGHT.

5 Q. (BY MR. HUDDLESTON) I BELIEVE AT YOUR SENTENCING HEARING
6 YOU SAID THAT YOU KNEW IT WAS WRONG, YOU SHOULDN'T HAVE DONE
7 IT. IS THAT TRUE THEN? IS THAT TRUE AT THE TIME?

8 A. YEAH. I SAID THAT, AND THAT IS TRUE.

9 Q. I WANT TO GET INTO WHETHER YOU THOUGHT ABOUT THE PEOPLE ON
10 THE OTHER SIDE OF THE TRADE, EITHER IN OCTOBER 2009 OR JULY OF
11 2010.

12 A. I DIDN'T -- I DON'T THINK OF THEM NECESSARILY AS PEOPLE ON
13 ANOTHER SIDE OF THE TRADE. YOU THINK OF IT AS A MARKETPLACE.
14 SO I'M NOT QUITE SURE HOW TO ANSWER THAT QUESTION. IF YOU WERE
15 SELLING A CAR TO YOUR COUSIN FRED, YOU MAYBE THINK ABOUT THAT
16 PERSON AS A VICTIM OF A FRAUDULENT CAR SALE. I'M NOT SURE HOW
17 YOU WOULD THINK ABOUT A MARKETPLACE THAT'S HUNDREDS OF
18 THOUSANDS OF TRADERS.

19 Q. WELL, THAT'S WHAT I'M GETTING TO. WHAT I AM TRYING TO
20 UNDERSTAND IS, IN YOUR MIND, WAS YOUR CONDUCT VICTIMLESS? DID
21 YOU BELIEVE THAT AT THE TIME?

22 A. I MEAN, I GUESS. I THINK THAT WOULD PROBABLY BE A FAIR
23 CHARACTERIZATION.

24 Q. DO YOU THINK OTHERWISE NOW?

25 A. WELL, I'VE LEARNED MORE ABOUT IT NOW. YOU KNOW, I CAN

1 DEFINITELY UNDERSTAND YOUR POSITION, WHICH IS THE OTHER SIDE,
2 WHICH IS THAT THERE ARE PEOPLE WHO, WHEN YOU SELL STOCK AND
3 THEY ARE BUYING THAT STOCK, THAT EVEN IF THEY END UP NOT BEING
4 DIRECTLY HURT BECAUSE THEY SELL IT LATER TO SOMEONE ELSE,
5 YOU'RE SETTING OFF SORT OF A CHAIN OF EVENTS THAT COULD RESULT
6 IN SOMETHING BAD HAPPENING TO THAT COUNTERPARTY.

7 MR. HUDDLESTON: YOUR HONOR, THAT'S A MATTER --

8 Q. (BY MR. HUDDLESTON) AM I HEARING YOU SAY THAT YOU'RE
9 GIVING JUDGE TOTENBERG ASSURANCES THAT YOU WON'T RE-OFFEND IN
10 THIS MANNER?

11 A. THERE IS ZERO CHANCE OF ME RE-OFFENDING. IF YOU KNEW WHAT
12 MY WIFE -- WHO'S BACK THERE -- AND I'VE BEEN THROUGH THE LAST
13 THREE YEARS, YOU WOULD KNOW THAT IT'S BEEN SO DEVASTATING TO
14 OUR FAMILY THAT THE IDEA THAT SOMETHING LIKE THIS WOULD EVEN
15 HAVE A TENTH OF A PERCENT CHANCE OF HAPPENING AGAIN IS JUST
16 IMPOSSIBLE.

17 Q. WHAT I WANT TO GET TO, THEN, IS YOU MADE CERTAIN
18 ASSURANCES TO THE SENTENCING COURT ON THE DAY YOU WERE
19 SENTENCED. RIGHT?

20 A. CORRECT.

21 Q. YOU REPRESENTED THAT YOU WOULD BE SETTLING WITH THE SEC.
22 RIGHT? YOU HEARD YOUR ATTORNEY SAY THAT AT THE TIME?

23 A. I HEARD PAUL SAY THAT.

24 Q. WAS HE AUTHORIZED TO SPEAK FOR YOU AT THE TIME?

25 MR. MONNIN: YOUR HONOR, LET ME OBJECT TO THIS LINE

1 OF QUESTIONING. FIRST OF ALL, I SHOULDN'T BE MADE A WITNESS IN
2 CONNECTION WITH THE PROCEEDING. WHAT WAS SAID PRIOR TO A
3 FUNDAMENTAL CHANGE IN THE LAW WITH REGARD TO OUR SETTLEMENT
4 POSTURE IS LEGAL ADVOCACY. IT'S NOT ANYTHING THAT SHOULD
5 NEGATIVELY IMPACT MY CLIENT.

6 IT IS ABSOLUTELY TRUE THAT, AT THE TIME OF MY
7 CLIENT'S SENTENCING, THE CASE LAW UNDER WHICH WE ARE RELYING
8 FOR PURPOSES OF THE 2255 PETITION, AS WELL AS OUR SUMMARY
9 JUDGMENT ARGUMENT WITH RESPECT TO THIS COURT, DID NOT EXIST.
10 AND BY VIRTUE OF IT NOT EXISTING, THERE WERE CERTAIN
11 REPRESENTATIONS MADE ABOUT THE FACT THAT MY CLIENT WOULD LIKELY
12 BE SETTLING WITH THE SEC, WHICH IS CONSISTENT WITH HIS ANSWER,
13 WHICH IS CONSISTENT WITH THE WAY THE PLEADINGS WERE FORMED IN
14 THIS CASE, AS WELL AS HIS -- THE POSITION THAT I ADVOCATED ON
15 HIS BEHALF IN CONNECTION WITH THE SENTENCING PROCEEDING.

16 JUDGE, THE LAW CHANGED, AND WE DIDN'T SETTLE AS A
17 RESULT. AND NOW WE'RE HERE FOR PURPOSES OF ESTABLISHING WHAT
18 DISGORGEMENT IN A CIVIL PENALTY MAY BE IN RELATION TO MY
19 CLIENT'S MISCONDUCT, WHICH WAS NEVER A PART OF ANY SETTLEMENT
20 DISCUSSION. AND I KNOW I'M NOT SWORN HERE, AND I'M NOT
21 INTENDING TO MAKE MYSELF A WITNESS. BUT SETTLING MY CLIENT'S
22 LIABILITY VERSUS SETTLING DISGORGEMENT IN A CIVIL PENALTY ARE
23 TWO SEPARATE THINGS.

24 AND IF SETTLEMENT OF LIABILITY WAS DISCUSSED WITH
25 JUDGE STORY, THAT'S ABSOLUTELY TRUE. THE LAW CHANGED. WE

1 BELIEVE THAT MY CLIENT IS NOT LIABLE FOR THAT, AND IT WAS NEVER
2 A PART OF THE DISCUSSION WITH THE SEC THAT WE WOULD BE SETTling
3 ECONOMICALLY WITH THE SEC. WE WERE ALWAYS GOING TO LITIGATE
4 THOSE ISSUES.

5 THE COURT: ALL RIGHT. WELL, MR. HUDDLESTON, LET ME
6 JUST GIVE YOU NARROW RANGE HERE. YOU CAN ASK TWO OR THREE
7 QUESTIONS, BUT LET'S NOT GET STUCK HERE.

8 MR. HUDDLESTON: UNDERSTOOD, YOUR HONOR. AND
9 ASSISTANT U.S. ATTORNEY CHAIKEN IS HERE. AND IF THE JUDGE IS
10 INTERESTED, HE CAN TELL YOU WHAT THE STATUS OF THE DISCUSSIONS
11 WAS, WHICH WAS NOT UNKNOWN AT THE TIME.

12 THE COURT: I'VE READ THE TRANSCRIPT. I REMEMBER
13 READING THE TRANSCRIPT. AND I UNDERSTAND YOU SPOKE FOR THE
14 FACT I BELIEVE THAT IT HAD BEEN DISCUSSED AS WELL BUT HADN'T
15 BEEN DECIDED AT THAT POINT BY THE SECOND CIRCUIT. IT WAS
16 DECIDED A FEW DAYS LATER.

17 Q. (BY MR. HUDDLESTON) YOU WORKED ON WALL STREET FOR HOW
18 MANY YEARS, SIR?

19 A. APPROXIMATELY TEN YEARS.

20 Q. YOU MET OTHER HEDGE FUND MANAGERS DURING THAT TIME?

21 A. I'M SORRY?

22 Q. YOU MET OTHER HEDGE FUND MANAGERS DURING THAT TIME?

23 A. OF COURSE, YEAH.

24 Q. OTHER ANALYSTS?

25 A. YES.

1 Q. YOU KNOW A LOT OF PEOPLE WHO ARE STILL IN THE BUSINESS.

2 A. NOT MANY THAT STILL TALK TO ME, BUT, YES, I DO KNOW
3 PEOPLE.

4 Q. YOU DIDN'T FAIL TO KNOW THOSE PEOPLE AFTER THE JUDGE
5 ENTERED AN ORDER OF LIABILITY. RIGHT?

6 A. I STILL KNOW THOSE PEOPLE AND THEY STILL KNOW ME, UH-HUH.

7 Q. AND YOU ARE AWARE THAT THE COURT IS NOT ALLOWED TO
8 PROHIBIT YOU FROM EVER TRADING ON THE STOCK MARKET AGAIN.
9 RIGHT?

10 A. THAT'S MY UNDERSTANDING.

11 Q. WHETHER OR NOT YOU DECIDE TO ENGAGE IN INSIDER TRADING
12 LIABILITY IN THE FUTURE IS PURELY A MATTER THAT YOU WILL DECIDE
13 IN YOUR JUDGMENT. YES?

14 A. LIKE I SAID, THE ODDS OF IT HAPPENING ARE ZERO. BUT
15 THEORETICALLY YOU ARE CORRECT. IT WOULD BE WITHIN MY POWER TO
16 DECIDE THAT.

17 Q. AND IS IT TRUE THAT MORE THAN THE AVERAGE PERSON, YOU KNOW
18 PEOPLE WHO MIGHT BE IN POSSESSION OF MATERIAL NONPUBLIC
19 INFORMATION?

20 A. I DON'T BELIEVE THAT'S TRUE BECAUSE I HAVEN'T SPOKEN TO
21 PEOPLE WHO WORK ON WALL STREET SINCE THIS WHOLE THING HAPPENED.
22 MAYBE A COUPLE. BUT I'M JUST SAYING OF YOUR NETWORK OF MAYBE
23 THE DOZENS OF PEOPLE YOU ARE ENVISIONING, THOSE ARE NOT
24 RELATIONSHIPS THAT CONTINUE TO THIS DAY. PEOPLE DON'T TALK TO
25 SOMEONE WHO HAS GONE THROUGH A CRIMINAL PROCEEDING AND A CIVIL

1 PROCEEDING LIKE THIS.

2 Q. I'M JUST TALKING ABOUT, YOU KNOW THOSE FOLKS.

3 A. IN THE SENSE, YEAH, SURE, I KNOW WHO THEY ARE, THEY KNOW
4 ME, SURE. BUT THESE ARE NOT ONGOING RELATIONSHIPS, I GUESS I
5 WOULD SAY.

6 MR. HUDDLESTON: THAT'S ALL THE EVIDENCE WE'LL ELICIT
7 ON THE APPROPRIATENESS OF INJUNCTIVE RELIEF, YOUR HONOR. IS
8 THERE ANYTHING ELSE?

9 IF YOU GIVE ME JUST ONE MOMENT, PLEASE.

10 THE COURT: ALL RIGHT.

11 MR. HUDDLESTON: YOUR HONOR, THAT'S ALL WE HAVE,
12 EXCEPT TO REITERATE OUR WILLINGNESS TO FURTHER BRIEF THE ISSUE
13 OF CIVIL PENALTIES AND RELEVANT EVIDENCE.

14 THE COURT: SO WHAT WOULD YOU LIKE FROM ME IN TERMS
15 OF CIVIL PENALTIES. I WOULD LIKE SOME CLARITY ABOUT THAT.

16 MR. HUDDLESTON: SPECIFICALLY I WANT TO ESTABLISH FOR
17 YOU THAT THE MATERIALITY SLIDES THAT THE DEFENDANT PUT UP HAVE
18 ABSOLUTELY NOTHING TO DO, THAT YOU DON'T CONSIDER THAT FOR
19 PURPOSES OF THE CIVIL PENALTY. AND I THINK IT'S, IT'S A
20 MISSTATEMENT OF THE LAW. AND I WANT TO MAKE SURE THAT THE
21 JUDGE HAS THE CORRECT LAW IN FRONT OF HER WHEN SHE DECIDES.

22 THE COURT: AND IS THERE ANYTHING ELSE THAT YOU
23 PARTICULARLY WANTED TO DISCUSS?

24 MR. HUDDLESTON: NOTHING OTHER THAN WHAT YOU'VE
25 ALREADY ACKNOWLEDGED THAT YOU KNOW FULL WELL.

1 THE COURT: SO LET'S JUST -- LET ME ASK A FEW
2 QUESTIONS TO YOU.

3 ARE WE THROUGH, OR DO YOU WANT TO ASK SOME OTHER
4 QUESTIONS?

5 MR. MONNIN: JUST A COUPLE OF THINGS.

6 THE COURT: ALL RIGHT. WHY DON'T YOU SIT DOWN, AND
7 HE'LL ASK YOU A FEW QUESTIONS. THANK YOU SO MUCH.

8 REDIRECT EXAMINATION

9 BY MR. MONNIN:

10 Q. MR. MEGALLI, WE HAVE UP ON THE SCREEN ESSENTIALLY THE
11 TERMINATION FOR CAUSE PROVISIONS OF YOUR EMPLOYMENT AGREEMENT.
12 YOU'VE SIGNED OTHER HEDGE-FUND-RELATED EMPLOYMENT AGREEMENTS,
13 CORRECT?

14 A. I'VE SIGNED -- THE ONLY OTHER ONE I HAD SIGNED WAS A TERM
15 SHEET AT BUCKINGHAM. IT WASN'T A FULL CONTRACT IN THE SENSE
16 THAT IT HAD ALL THESE SORTS OF PROVISIONS. BUT, YES, I HAVE
17 SIGNED THOSE TYPE.

18 Q. DID YOU HAVE AN UNDERSTANDING AT BUCKINGHAM THAT, IF YOU
19 ENGAGED IN INSIDER TRADING OR OTHER ILLEGAL TRADING ACTIVITY,
20 THAT YOU COULD BE TERMINATED?

21 A. YES.

22 Q. DID YOU UNDERSTAND THAT IN RELATION TO YOUR EMPLOYMENT AT
23 LEVEL GLOBAL AS WELL?

24 A. YES.

25 Q. ARE THESE PROVISIONS THAT MR. HUDDLESTON TOOK YOU THROUGH,

1 ARE THOSE FAIRLY STANDARD IN THE INDUSTRY?

2 A. I WOULD CONSIDER THOSE TO BE STANDARD.

3 Q. NOW, TELL THE COURT, WHAT HAPPENED TO LEVEL GLOBAL IN
4 2011?

5 A. WELL, IN NOVEMBER OF 2010, THE FIRM WAS CHARGED -- IT WAS
6 ACTUALLY RAIDED BY THE FBI. AND IT WAS CHARGED WITH VIOLATING
7 INSIDER TRADING LAWS -- NOT THE FIRM, BUT ANTHONY CHIASSON, WHO
8 I MENTIONED EARLIER, WHO WAS THE COFOUNDER AND THE DIRECTOR OF
9 RESEARCH, WAS CHARGED WITH ILLEGAL TRADING IN SOME
10 TECHNOLOGY-RELATED NAMES. AND AS A RESULT OF THAT, THE FIRM
11 CLOSED DOWN AT THE BEGINNING OF 2011.

12 Q. WAS THERE A PARALLEL SEC INVESTIGATION AS WELL?

13 A. AGAINST ANTHONY CHIASSON?

14 Q. AGAINST LEVEL GLOBAL.

15 A. AGAINST LEVEL GLOBAL, YEAH, I BELIEVE THERE WAS, YEAH.

16 Q. DID YOU PARTICIPATE IN ANY WAY FACTUALLY IN THE SEC'S
17 INVESTIGATION OF LEVEL GLOBAL?

18 A. NO, I DID NOT.

19 THE COURT: THERE WAS BOTH A CRIMINAL AND A CIVIL
20 PROCEEDING?

21 THE WITNESS: I'M SORRY?

22 THE COURT: THERE WAS BOTH A CRIMINAL AND A CIVIL
23 PROCEEDING?

24 THE WITNESS: THAT'S CORRECT.

25 THE COURT: AND THE CIVIL ONE WAS AGAINST THE FIRM OR

1 AGAINST MR. CHIASSON OR BOTH?

2 THE WITNESS: IT WAS AGAINST THE FIRM, WHICH SETTLED.
3 AND IT WAS ALSO AGAINST MR. CHIASSON, WHICH IS STILL IN
4 LITIGATION, I BELIEVE, BECAUSE OF THE OVERTURNING OF HIS
5 CONVICTION IN NEWNAN.

6 Q. (BY MR. MONNIN) TO YOUR KNOWLEDGE, WAS LEVEL GLOBAL
7 REPRESENTED IN THE SEC'S INVESTIGATION?

8 A. WAS LEVEL, WAS IT REPRESENTED --

9 Q. REPRESENTED BY COUNSEL?

10 A. BY COUNSEL, YES.

11 Q. HAS ANYONE, EITHER DIRECTLY FROM LEVEL GLOBAL OR AS AN
12 AGENT OF LEVEL GLOBAL, EVER COME TO YOU SEEKING TO EXERCISE ANY
13 TERMINATION RIGHTS?

14 A. NO.

15 Q. HAS ANYONE FROM LEVEL GLOBAL, EITHER DIRECTLY OR IN AN
16 AGENCY CAPACITY, SOUGHT TO CALL BACK YOUR COMPENSATION?

17 A. NO.

18 Q. DO YOU HAVE ANY KNOWLEDGE AS YOU SIT HERE WHEN LEVEL
19 GLOBAL SETTLED WITH THE SEC?

20 A. I BELIEVE -- I DON'T KNOW THE EXACT DATE. IT WOULD HAVE
21 PROBABLY BEEN IN '11 OR '12, BUT I REALLY DON'T KNOW.

22 Q. DID ANYONE FROM -- LET ME STRIKE THAT AND ASK, WERE YOU
23 EVER INVOLVED IN ANY WAY IN THE SEC'S INVESTIGATION OF LEVEL
24 GLOBAL?

25 A. NO.

1 Q. WERE YOU EVER SUBPOENAED FOR TESTIMONY?

2 A. NO.

3 Q. WERE YOU EVER CONTACTED BY ANYONE AT A LAW FIRM?

4 A. NO.

5 Q. DO YOU KNOW THE ECONOMIC TERMS OF LEVEL GLOBAL'S
6 SETTLEMENT WITH THE SEC?

7 A. IF I RECALL, I BELIEVE THEY PAID OUT ABOUT A \$10 MILLION
8 FINE PLUS ANOTHER TEN MILLION PENALTY. IT WAS ABOUT A \$20
9 MILLION TOTAL SETTLEMENT. THAT'S MY UNDERSTANDING. BUT I'M
10 NOT 100 PERCENT SURE.

11 Q. DO YOU KNOW IF YOUR TRADING ACTIVITY THAT THE COURT HAS
12 FOUND YOU LIABLE FOR WAS INVOLVED AT ALL --

13 A. NO.

14 Q. -- IN THAT SETTLEMENT?

15 A. NO, IT WAS NOT.

16 Q. WHY DO YOU SAY THAT?

17 A. WELL, I DON'T KNOW. YOU ASKED ME DO I KNOW. I'M NOT -- I
18 GUESS I'M NOT SURE. THE REASON I SAY I DON'T THINK IT WAS IS
19 BECAUSE THAT SETTLEMENT SEEMED TO BE MORE FOCUSED ON THE
20 CHIASSON AND TECHNOLOGY-TYPE TRADING.

21 Q. MR. MEGALLI, LET ME SHOW YOU WHAT'S BEEN MARKED FOR
22 IDENTIFICATION AS EXHIBIT 9. DO YOU RECOGNIZE THAT?

23 A. I'D HAVE TO JUST LOOK AT IT. GIVE ME A MINUTE, PLEASE.

24 OKAY.

25 Q. SO MY QUESTION IS, DO YOU RECOGNIZE IT?

1 A. IT LOOKS LIKE THE SETTLEMENT AGREEMENT WITH LEVEL GLOBAL
2 AND THE SEC.

3 Q. HAVE YOU REVIEWED THAT DOCUMENT BEFORE YOUR APPEARANCE
4 HERE IN COURT TODAY?

5 A. I DON'T KNOW THAT I'VE REVIEWED THIS DOCUMENT, PER SE, BUT
6 I KNOW THAT I SAW THE RESULTS OF THE SETTLEMENT IN THE PRESS
7 AND SO FORTH.

8 Q. WHAT'S THE DATE OF THE SETTLEMENT IN THAT EXHIBIT?

9 A. THE 5/31/13 DATE OR --

10 Q. SO MAY 31ST OF 2013?

11 A. CORRECT.

12 Q. AND FOLLOWING MAY 31ST OF 2013, HAS ANYONE FROM THE SEC
13 EVER SOUGHT TO RECOVER FROM YOU PERSONALLY OR DIRECTLY PURSUANT
14 TO THAT SETTLEMENT AGREEMENT?

15 A. NOT PURSUANT TO THE DOLLARS IN THIS \$21 MILLION REFERENCED
16 IN THIS.

17 Q. SO, TO YOUR KNOWLEDGE, IS THE 20 MILLION, \$21 MILLION
18 THAT'S REFERENCED IN THE SETTLEMENT DOCUMENT, SPECIFICALLY
19 ROMAN THREE AT PAGE THREE, DOES THAT INCLUDE ANY OF YOUR
20 CARTER'S-RELATED TRADING?

21 A. WELL, AGAIN, I MEAN, MY, MY UNDERSTANDING IS THAT THIS
22 SETTLEMENT HAD TO DO MORE WITH THE CHIASSON SORT OF TECHNOLOGY
23 ARENA AND NOT CONSUMER OR CARTER'S. THAT'S MY UNDERSTANDING.

24 Q. OKAY. AND, REALLY, MY QUESTION IS -- AND I UNDERSTAND
25 THAT THERE ARE OTHER INDIVIDUALS WHO ARE INVOLVED IN THE

1 SETTLEMENT WITH LEVEL GLOBAL, THERE WERE OTHER INDIVIDUALS WHO
2 LITIGATED THAT. TO YOUR KNOWLEDGE, AS MARK MEGALLI, ARE YOU A
3 PART OF THIS SETTLEMENT AGREEMENT AT ALL? IS YOUR CONDUCT FOR
4 WHICH THE COURT HAS FOUND YOU LIABLE, IS IT A PART OF THE
5 SETTLEMENT AGREEMENT?

6 A. I DON'T KNOW, BUT I DON'T THINK SO.

7 Q. WHEN DID THE INVESTIGATION IN RELATION TO YOU BEGIN
8 SPECIFICALLY HERE IN ATLANTA?

9 A. THE INVESTIGATION WOULD HAVE BEGUN, I BELIEVE THE LAWSUIT
10 WAS FILED THE SAME DAY AS MY PLEA HEARING, WHICH WOULD HAVE
11 BEEN IN NOVEMBER OF 2013.

12 Q. ARE YOU AWARE, BASED ON YOUR REVIEW OF DOCUMENTATION THAT
13 YOU RECEIVED IN DISCOVERY, CRIMINAL DISCOVERY, THAT THE
14 INVESTIGATION BEGAN PRIOR TO YOUR CRIMINAL PLEA, IN THE FALL OF
15 2013?

16 A. YEAH. IT WOULD HAVE BEGUN PRIOR, SURE.

17 Q. DO YOU KNOW IF THE INVESTIGATION RELATED TO YOU BEGAN
18 PRIOR TO MAY 2013?

19 A. WITH RESPECT TO THE SEC?

20 Q. YES.

21 A. I BELIEVE THAT IT DID, BECAUSE THE REASON I KNOW THAT
22 ACTUALLY IS BECAUSE THE CRIMINAL INVESTIGATION, THE FIRST I HAD
23 LEARNED OF IT WAS IN FEBRUARY OF 2012. AND I BELIEVE THAT I
24 LEARNED OF THE SEC INVESTIGATION, YOU KNOW, SOMEWHAT SHORTLY
25 AFTER THAT. IT WASN'T I DON'T THINK MORE THAN A YEAR AFTER

1 THAT.

2 MR. MONNIN: JUDGE, I DON'T HAVE A CERTIFIED COPY OF
3 THE SETTLEMENT AGREEMENT. I CAN CERTAINLY OBTAIN ONE. I'D
4 LIKE TO MOVE THE SETTLEMENT AGREEMENT INTO EVIDENCE. I
5 UNDERSTAND --

6 THE COURT: FILED JUDGMENT, ARE YOU REFERRING TO THE
7 SETTLEMENT?

8 MR. MONNIN: I'M SORRY, THE FINAL JUDGMENT.

9 THE COURT: THAT'S FINE.

10 ARE THERE ANY OBJECTIONS?

11 MR. HUDDLESTON: NO OBJECTION.

12 Q. (BY MR. MONNIN) NOW, LET'S, LET'S MOVE OVER TO YOUR --
13 THE 2009 DISCRETIONARY BONUS PROVISION OF YOUR EMPLOYMENT
14 AGREEMENT, PARAGRAPH 4(C). I KNOW WE'VE BEEN OVER IT, AND I
15 DON'T WANT TO BELABOR IT. DID YOU MAKE A CONSCIOUS CHOICE NOT
16 TO SEEK A DISCRETIONARY BONUS PURSUANT TO THAT PROVISION?

17 A. I GUESS I WOULD SAY WHAT I SAID EARLIER. IT WAS ASSUMED
18 THAT WHEN YOU'RE THERE FOR A STUB YEAR THAT YOU'RE NOT GOING TO
19 BE GETTING BONUSED OUT ON THAT YEAR, AND BECAUSE MY CONTRACT
20 REALLY OFFERED THESE PARTICIPATION POINTS FOR THE YEAR 2010, IT
21 WAS UNDERSTOOD THAT THAT'S WHEN MY INCENTIVE PARTICIPATION
22 WOULD REALLY BE KICKING IN, I GUESS.

23 Q. DID ANYONE TELL YOU ON THE FRONT END THAT YOU WERE
24 INELIGIBLE FOR A DISCRETIONARY BONUS IN 2010?

25 A. I WOULDN'T SAY SOMEBODY -- I DON'T THINK THAT THAT

1 CONVERSATION OCCURRED AT ALL, WHETHER YOU'RE ELIGIBLE OR
2 INELIGIBLE. I JUST STARTED WORKING, AND THEN THE YEAR
3 FINISHED, AND WE STARTED 2010, AND WE MOVED ON TO THE NEXT
4 YEAR.

5 Q. LAST FEW QUESTIONS. MR. HUDDLESTON WALKED YOU THROUGH THE
6 SERIOUSNESS OF THE OFFENSE CONDUCT HERE AND WHAT YOU PLED
7 GUILTY TO. CAN YOU JUST SUMMARIZE FOR THE COURT, FIRST OF ALL,
8 HOW MUCH TIME DID YOU SERVE IN PRISON?

9 A. I WAS SENTENCED TO ONE YEAR AND ONE DAY AND ENDED UP
10 SERVING EIGHT MONTHS AND ONE WEEK IN A PRISON AND ABOUT AN
11 ADDITIONAL COUPLE OF MONTHS IN A HALFWAY HOUSE WHERE YOU'RE
12 BASICALLY STILL INCARCERATED, SO TOTAL ABOUT TEN AND A HALF
13 MONTHS.

14 Q. WHERE WAS YOUR FAMILY -- WHERE WERE YOU LOCATED DURING
15 THIS TIME AND WHERE WAS YOUR FAMILY LOCATED?

16 A. I WAS IN PENSACOLA, FLORIDA, FOR THE PRISON PART OF IT AND
17 A NEW ORLEANS HALFWAY HOUSE FOR THE HALFWAY HOUSE PART OF IT
18 THE LAST COUPLE OF MONTHS.

19 Q. THE -- HOW ABOUT THE FINANCIAL --

20 THE COURT: YOU LIVE IN NEW YORK?

21 THE WITNESS: WELL, WE'RE ACTUALLY --

22 THE COURT: LIVING HERE, BECAUSE I KNOW YOU CAUGHT A
23 PLANE.

24 THE WITNESS: WE'RE TEMPORARILY LIVING IN NEW ORLEANS
25 SO MY WIFE CAN GET -- SHE'S A STUDENT AT TULANE. SHE'S TRYING

1 TO GET A MASTER'S IN ARCHITECTURE SO SHE CAN BECOME AN
2 ARCHITECT. SO WE'RE TEMPORARILY IN NEW ORLEANS WHILE SHE DOES
3 HER DEGREE.

4 Q. (BY MR. MONNIN) HOW ABOUT THE FINANCIAL SIDE OF THE CASE,
5 WHAT DID YOU PAY IN RESTITUTION?

6 A. FIFTY THOUSAND DOLLARS IN RESTITUTION.

7 Q. AND SUFFICE IT TO SAY YOU'VE BEEN DEFENDED BY COUNSEL
8 THROUGHOUT AND YOU'VE PAID SUBSTANTIAL LEGAL FEES?

9 A. THE LEGAL BILLS HAVE BEEN EASILY IN EXCESS OF A MILLION
10 AND A HALF AND PROBABLY IN EXCESS OF \$2 MILLION AT THIS POINT.
11 MY COMPENSATION FOR THE LAST TWO YEARS SINCE I HAVEN'T BEEN
12 EMPLOYED HAS BEEN ZERO. AND MY WIFE'S NOT EARNING MONEY. SO
13 FROM A FINANCIAL POINT OF VIEW, IT'S BEEN OBVIOUSLY
14 DEVASTATING.

15 Q. HAVE YOU FUNDED YOUR REPRESENTATION YOURSELF?

16 A. I HAVE, YEAH. WE DIDN'T HAVE INSURANCE.

17 Q. THE -- I KNOW THERE WAS A BACK-AND-FORTH IN TERMS OF SOME
18 OBJECTIONS BEING INTERPOSED, BUT WAS SETTLING FINANCIALLY WITH
19 THE SEC EVER A PART OF YOUR DEFENSE STRATEGY?

20 A. I WOULD HAVE LOVED TO HAVE SETTLED WITH THE SEC IF THEY
21 WOULD HAVE BEEN AMENABLE TO SETTLE FOR AN AMOUNT I COULD PAY.
22 BUT IF SOMEONE IS SUING YOU FOR MILLIONS OF DOLLARS, AND I
23 DON'T HAVE THAT, I DON'T KNOW HOW -- IF THAT'S THE ONLY ANSWER
24 THEY WILL ACCEPT, I DON'T SEE HOW I CAN DO THAT. IT'S --
25 SETTLEMENT HAS TO BE SOMETHING MANAGEABLE THAT YOU ACTUALLY

1 HAVE THE FUNDS TO SETTLE. SO I WOULD HAVE LOVED TO. SURE, I
2 WOULD HAVE LOVED TO HAVE SETTLED. AND I THINK, AS I AM SURE
3 YOU REMEMBER, WE DID TRY.

4 MR. MONNIN: YOUR HONOR, I THINK THAT'S ALL I HAVE.
5 I APPRECIATE IT.

6 THE COURT: ANYTHING FURTHER FROM THIS WITNESS?

7 MR. HUDDLESTON: YES.

8 RE-CROSS-EXAMINATION

9 BY MR. HUDDLESTON:

10 Q. SINCE IT'S BEEN BROUGHT UP THAT YOU BELIEVED YOU TRIED TO
11 SETTLE AND IT BROKE DOWN OVER MONEY, SIR, I'LL ASK YOU THE
12 DATES OF THOSE CONVERSATIONS.

13 A. I DON'T KNOW THE EXACT DATES. BUT I BELIEVE THAT TOWARDS
14 THE BEGINNING OF THE PROCESS -- AND I WAS NOT IN THESE CALLS,
15 BUT, PAUL, MAYBE YOU CAN ADDRESS THIS BETTER THAN ME --
16 ATTEMPTS WERE MADE TO SETTLE. I DON'T KNOW THE EXACT DATES.

17 Q. BEFORE YOUR CRIMINAL CASE WAS RESOLVED, YOU MEAN?

18 A. BY THE CRIMINAL CASE BEING RESOLVED, YOU MEAN BEFORE MY
19 SENTENCING HEARING?

20 Q. YES.

21 A. BEFORE THE SENTENCING HEARING, RIGHT.

22 Q. DO YOU RECALL AT THE SENTENCING HEARING JUDGE STORY
23 FINDING IT SIGNIFICANT THAT YOU HAD AN UPCOMING SETTLEMENT WITH
24 THE SEC AND THAT YOU WOULD BE EXPECTED TO PAY RESTITUTION AND
25 THAT, AS A RESULT, HE WAS NOT GOING TO ORDER YOU TO PAY A FINE

1 OR COST OF INCARCERATION.

2 A. I DO RECALL THAT. THE OTHER THING, THOUGH, THAT I ALSO
3 RECALL IS THAT HE MADE A POINT TO SAY HE BELIEVES THAT A REMOTE
4 TIPPEE IS IN A VERY DIFFERENT POSITION THAN A TIPPER WHO STEALS
5 COMPANY SECRETS, SUCH AS ERIC MARTIN AND RICHARD POSEY. AND,
6 THEREFORE, HE SENTENCED THEM FIRST; SENTENCED ERIC MARTIN TO 24
7 MONTHS, SENTENCED RICHARD POSEY TO 15 MONTHS, AND THEN
8 ULTIMATELY SENTENCED ME TO A YEAR AND A DAY. AND ALL OF THAT
9 SENTENCING HAD HAPPENED BEFORE THOSE REPRESENTATIONS WERE MADE.

10 SO I AGREE THAT HE DID ELICIT THAT AS A FACTOR, BUT I JUST
11 WANT TO BE CLEAR THAT WAS CERTAINLY NOT THE ONLY FACTOR THAT HE
12 WAS RELYING ON.

13 THE COURT: THANK YOU.

14 Q. (BY MR. HUDDLESTON) SO I AM HANDING WHAT WE WILL MARK AS
15 PLAINTIFF'S EXHIBIT 1. AND WE HAVE MARKED PAGE ON WHICH JUDGE
16 STORY MAKES HIS COMMENTS. AND I'LL SHOW IT TO YOU SO -- HAND
17 YOU EXHIBIT 1 NOW, IF YOU CAN SEE, STARTS, IN LIGHT.

18 A. YEAH. I REMEMBER THIS, UH-HUH.

19 Q. COULD YOU READ THAT INTO THE RECORD, PLEASE?

20 A. IN LIGHT OF THE RESTITUTION AND THE OTHER MATTERS THAT I
21 FULLY EXPECT YOU ARE GOING TO HAVE TO DO WITH THE SEC, I WILL
22 NOT IMPOSE A FINE OR COST OF INCARCERATION.

23 MR. HUDDLESTON: THAT'S ALL. WE'LL MOVE TO ADMIT
24 NUMBER 1.

25 THE COURT: THAT'S FINE. I THINK IT'S REALLY PART OF

1 THE RECORD. IT'S PART OF THE RECORD ANYWAY IN THIS MATTER.
2 BUT I'M HAPPY TO HAVE IT AS PART OF THE RECORD OF THIS HEARING.

3 ARE THERE ANY OBJECTIONS?

4 MR. MONNIN: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. IT'S ADMITTED.

6 MR. HUDDLESTON: THANK YOU, YOUR HONOR.

7 I BELIEVE YOU HAD SOME QUESTIONS FOR ME?

8 THE COURT: I DO. ALL RIGHT. I HAVE SOME QUESTIONS
9 FOR THE DEFENDANT FIRST.

10 NOW, YOU SAID BASICALLY YOU PAID THE LEGAL FEES, PAID
11 THE -- I DON'T KNOW. HAVE YOU PAID THE \$50,000.00 RESTITUTION?

12 THE WITNESS: YES. YES, MA'AM.

13 THE COURT: ALL RIGHT. AND YOUR WIFE'S IN SCHOOL.
14 WHAT HAVE Y'ALL BEEN LIVING ON, AND WHAT ARE THE FINANCIALS?
15 OBVIOUSLY VERY DIFFERENT THAN WHAT THEY ONCE WERE.

16 THE WITNESS: YEAH. WE'VE BEEN LIVING ON OUR
17 SAVINGS. AND SO, BASICALLY, I HAVE REALLY THREE THINGS OF ANY
18 VALUE, I GUESS. ONE IS OUR LIQUID ASSETS, WHICH WOULD BE
19 THINGS IN OUR CHECKING AND SAVINGS ACCOUNTS. AND MY
20 UNDERSTANDING IS THAT IT'S APPROXIMATELY \$800,000.00 BEFORE
21 SOME UPCOMING LEGAL BILLS THAT I'M SURE WE'LL BE GETTING ANY
22 DAY NOW. BUT AS OF TODAY, I BELIEVE THAT'S ABOUT \$800,000.00.

23 AND THEN THE SECOND COMPONENT OF THAT I WOULD SAY IS
24 IRA AND 401(K) KIND OF SAVINGS, RETIREMENT ACCOUNTS. AND THE
25 TOTAL IN PRETAX DOLLARS IN THE TWO -- I BELIEVE I HAVE ACTUALLY

1 THREE ACCOUNTS -- IS APPROXIMATELY \$400,000.00. BUT AS I'M
2 SURE YOU KNOW, WHEN YOU LIQUIDATE AND PAY PENALTIES, IT'S
3 PROBABLY HALF OF THAT IN TERMS OF AN AFTER-TAX LIQUIDATION
4 VALUE.

5 AND THEN THE FINAL ASSET THAT WE HAVE IS OUR PRIMARY
6 RESIDENCE, WHICH IS AN APARTMENT IN NEW YORK THAT I BOUGHT IN
7 2005 WITH MY WIFE, WHICH WE ARE HOPING NOT TO HAVE TO SELL.

8 THE COURT: ALL RIGHT. SO OF THE LIQUID ASSETS, THE
9 \$800,000.00, DO YOU HAVE ANY BALL PARK FIGURE OF WHAT PORTION
10 OF THOSE LIQUID ASSETS THAT YOU POSSESSED AT THE POINT THAT YOU
11 WENT TO WORK FOR LEVEL GLOBAL?

12 THE WITNESS: THAT'S -- LET ME THINK FOR A SECOND
13 ABOUT THAT. SO I STARTED WORKING FOR THEM IN AUGUST OF 2009.
14 AND I BELIEVE IT WAS SOMETHING IN THE
15 MID-HUNDRED-THOUSAND-DOLLAR RANGE, IF I HAD TO GUESS. IT
16 CERTAINLY WASN'T MILLIONS OF DOLLARS AT THE TIME, YOU KNOW,
17 THAT I HAD STARTED --

18 THE COURT: WHEN YOU SAY MID-HUNDRED THOUSAND, DO YOU
19 MEAN 150 OR YOU MEAN 500?

20 THE WITNESS: IN THE FIVE HUNDRED SORT OF
21 THOUSAND-ISH RANGE. IF I RECALL CORRECTLY, I THINK THAT'S
22 ABOUT WHERE WE WERE FINANCIALLY AT THAT TIME.

23 AND JUST TO BE CLEAR, SO THAT THOSE NUMBERS ADD UP,
24 AFTER I LEFT LEVEL GLOBAL WHEN THE FIRM CLOSED DOWN AND I WENT
25 BACK -- ACTUALLY I WENT BACK TO BUCKINGHAM, WHICH WAS MY

1 ORIGINAL EMPLOYER. AND IN 2011 AND 2012, I MADE ENOUGH MONEY
2 AT BUCKINGHAM SO THAT I WAS ABLE TO OFFSET THE LEGAL BILLS THAT
3 I CITED EARLIER. AND THAT'S WHY THAT NUMBER DIDN'T CHANGE THAT
4 MUCH FROM THAT 800,000. IT SORT OF WENT UP AND THEN IT WENT
5 STRAIGHT DOWN.

6 THE COURT: ALL RIGHT. SO WHAT WERE YOUR EARNINGS IN
7 2011 AND 2012?

8 THE WITNESS: IN 2011, I EARNED A TOTAL COMPENSATION
9 OF 2.8 MILLION. AND IN 2012, I EARNED TOTAL COMPENSATION OF
10 2.0 MILLION. THAT'S BONUS PLUS SALARY. BUT ON AN AFTER-TAX
11 BASIS, OF COURSE, AT THAT TAX BRACKET, YOU KEEP ABOUT HALF,
12 ROUGHLY, OF THOSE PROCEEDS. SO THOSE PROCEEDS WERE USED TO PAY
13 LEGAL EXPENSES AS WELL AS LIVING EXPENSES OVER THE LAST, YOU
14 KNOW, TWO YEARS WHEN I HAVEN'T BEEN WORKING, ABLE TO WORK.

15 THE COURT: DO YOU HAVE ANY IDEA HOW MUCH YOUR
16 ADDITIONAL FEES ARE?

17 MR. MONNIN: WELL, I DON'T, YOUR HONOR. I MEAN,
18 CERTAINLY THIS PERIOD RELATED TO THIS HEARING HAS INVOLVED SOME
19 LEGAL EXPENSES.

20 THE COURT: OKAY.

21 MR. MONNIN: AND I BELIEVE WE'LL CONTINUE TO
22 BE BRIEFING THINGS.

23 THE COURT: ALL RIGHT. WELL, OBVIOUSLY, YOU AND YOUR
24 WIFE ARE FUNDING HER EDUCATION. DO YOU HAVE ANY OTHER FAMILY
25 OBLIGATIONS?

1 THE WITNESS: TUITION FOR OUR DAUGHTERS. WE HAVE TWO
2 DAUGHTERS WHO WE PAY TUITION FOR.

3 THE COURT: FOR? ARE THEY IN PRIVATE SCHOOL?

4 THE WITNESS: THEY ARE IN PRIVATE SCHOOL IN NEW
5 ORLEANS, CORRECT. YOU KNOW, OUR MAIN EXPENSES AT THIS POINT
6 ARE THE COST OF KEEPING AN EMPTY APARTMENT IN NEW YORK THAT
7 WE'RE HOPING TO GO BACK TO, THE COST OF RENTING OUR TEMPORARY
8 SPACE IN NEW ORLEANS WHILE MY WIFE FINISHES OUT HER DEGREE.

9 THE COURT: THEN YOU'LL GO BACK TO NEW YORK.

10 THE WITNESS: THAT WILL BE IN ABOUT 18 MONTHS.

11 THE COURT: YOU HAVE NOT RENTED YOUR APARTMENT?

12 THE WITNESS: WE RENTED IT FOR A PERIOD OF TIME WHILE
13 I WAS INCARCERATED. THE APARTMENT IS GETTING VERY WORN DOWN,
14 AND WE WERE HAVING PROBLEMS WITH THE RENTERS, BECAUSE THEY SAID
15 THE AIR CONDITIONING IS NOT WORKING, THINGS ARE BREAKING DOWN,
16 AND SO THEY STOPPED THE LEASE. AND, YOU KNOW, IT'S A DIFFICULT
17 APARTMENT TO RENT BECAUSE IT NEEDS SOME UPKEEP AT THIS POINT.

18 THE COURT: I DON'T WANT TO PUT YOUR ADDRESS ON THE
19 RECORD.

20 THE WITNESS: NO, IT'S IN NEW YORK CITY.

21 THE COURT: IT'S IN NEW YORK CITY, THOUGH. ON THE
22 UPPER WEST SIDE, THE UPPER EAST SIDE, THE LOWER WEST SIDE,
23 SOHO?

24 THE WITNESS: IT'S NEAR GRAMERCY PARK.

25 THE COURT: OKAY. AND WHAT ARE YOUR FUTURE PLANS?

1 THE WITNESS: WELL, THAT'S WHAT I'M TRYING TO FIGURE
2 OUT NOW. SO, FOR NOW, WHAT I'M DOING IS, I'M WORKING WITH MY
3 BROTHER. MY BROTHER WAS AN EXECUTIVE AT MICROSOFT FOR SIX
4 YEARS. HE HAD A BUSINESS IDEA THAT LED HIM TO LEAVE MICROSOFT
5 EARLIER THIS YEAR.

6 AND WITHOUT GOING INTO THE SPECIFICS, IT HAS TO DO
7 WITH AN ONLINE ENTREPRENEURIAL COMMUNITY KIND OF AN IDEA WHERE
8 YOU'RE HELPING SMALL BUSINESS OWNERS WITH THEIR BUSINESSES. SO
9 I'M WORKING WITH HIM. PRIMARILY I'M WORKING WITH HIM ON THIS
10 STARTUP. WE DON'T HAVE REVENUES. WE HAVEN'T RAISED ANY
11 CAPITAL. I THINK IT'S A GOOD IDEA, BUT IT'S SORT OF IN THE
12 VERY EARLY STAGES AND WILL TAKE SOME TIME TO GET TO FRUITION,
13 IF IT EVER DOES.

14 I'VE TRIED TO VOLUNTEER AT A NUMBER OF DIFFERENT
15 COMMUNITY SERVICE ORGANIZATIONS TO FULFILL MY HUNDRED HOURS OF
16 COMMUNITY SERVICE THAT JUDGE STORY REQUIRED. AND WHAT I FOUND
17 IS THAT, EVEN ON A VOLUNTEER BASIS, IT'S VIRTUALLY IMPOSSIBLE
18 TO GET WORK BECAUSE PEOPLE DON'T WANT TO BE ASSOCIATED WITH A
19 CONVICTED FELON. AND THAT'S BEEN VERY PAINFUL. I'VE TRIED TO
20 BE A GUARDIAN AD LITEM FOR A CHILDREN'S ORGANIZATION. I'VE
21 TRIED TO WORK FOR THE INNOCENCE PROJECT AND A NUMBER OF OTHER
22 THINGS. AND IT'S BEEN INTERESTING AND FRUSTRATING TO ME TO BE
23 WILLING TO WORK FOR FREE AND HAVE PEOPLE SAY, WE CAN'T WORK
24 WITH YOU, WE DON'T NEED THE ASSOCIATION. SO --

25 THE COURT: HOW LONG WAS YOUR SUPERVISED RELEASE

1 TERM?

2 THE WITNESS: THREE YEARS.

3 THE COURT: AND THE INNOCENCE PROJECT WOULDN'T LET
4 YOU VOLUNTEER WITH THEM?

5 THE WITNESS: NO, IRONIC. BUT I HAVE FULFILLED THE
6 100 HOURS.

7 THE COURT: YOU HAVE DONE THAT?

8 THE WITNESS: I HAVE DONE THE 100 HOURS.

9 THE COURT: WHAT DID YOU END UP DOING?

10 THE WITNESS: I WORKED WITH A GROUP THAT ADVOCATES
11 AGAINST SOLITARY CONFINEMENT CALLED SOLITARY WATCH. I USED TO
12 WORK FOR RALPH NADER, AND HE PUT ME IN TOUCH WITH THEM. AND
13 I'VE DONE A LOT OF LEGAL RESEARCH AND PUBLISHING FOR THEM.

14 I ALSO WORKED FOR A MELANOMA EDUCATION FOUNDATION.
15 SO I'VE DONE ABOUT 80 HOURS WITH THAT GROUP. AND I AM ALSO
16 GIVING A GUEST LECTURE AT YALE LAW SCHOOL NEXT MONTH. THAT'S
17 ONLY GOING TO BE A FEW HOURS.

18 THE COURT: IS YOUR BROTHER-IN-LAW IN NEW ORLEANS?

19 THE WITNESS: MY BROTHER.

20 THE COURT: YOUR BROTHER, ACTUALLY.

21 THE WITNESS: YEAH. NO, HE LIVES IN SEATTLE.

22 THE COURT: AND HOW OLD ARE YOUR DAUGHTERS?

23 THE WITNESS: ELEVEN AND FIVE.

24 THE COURT: AND YOU WERE RELEASED WHEN?

25 THE WITNESS: I WAS RELEASED FROM PENSACOLA ON MAY

1 15TH OF THIS YEAR. AND I WAS RELEASED FROM THE HALFWAY HOUSE/
2 HOME CONFINEMENT JULY 22ND OF THIS YEAR.

3 THE COURT: WHEN DID YOUR FAMILY MOVE TO NEW ORLEANS?

4 THE WITNESS: NOT THIS PAST SUMMER BUT THE SUMMER OF
5 2014, JUST BEFORE I WENT TO PENSACOLA. MY SENTENCE STARTED
6 THERE SEPTEMBER 8TH OF 2014.

7 THE COURT: ANY QUESTIONS?

8 MR. MONNIN: NO, YOUR HONOR.

9 MR. HUDDLESTON: NO, YOUR HONOR.

10 THE COURT: THANK YOU.

11 THE WITNESS: THANK YOU.

12 MR. HUDDLESTON: YOU CAN COME DOWN.

13 THE COURT: YOU CAN STEP DOWN.

14 ALL RIGHT. SO I UNDERSTAND YOUR POSITION ABOUT
15 MATERIALITY. AND YOU PROBABLY JUST GIVE ME A FEW CASES ON THAT
16 AS MUCH AS ANYTHING ELSE, JUST YOUR VIEWPOINT. I DON'T KNOW
17 THAT WE NEED TO HAVE EVERYONE DO A LOT MORE BRIEFING IF THAT'S
18 THE FOCUS.

19 I GUESS MY QUESTION REALLY IS, AS TO THE OTHER ITEMS,
20 IS YOUR GENERAL THEORY THAT BASED ON THE TERMINATION PROVISION,
21 OR IS IT SIMPLY BASED ON THE TOTALITY OF GLOBAL'S PROFITS? I
22 JUST WOULD LIKE YOU TO RE-ARTICULATE TO ME YOUR THEORY --

23 MR. HUDDLESTON: SURE.

24 THE COURT: -- FOR HOW I SHOULD -- THE BASIS HERE OF
25 DISGORGEMENT AND THE CIVIL PENALTY, JUST SO I CAN HEAR IT AGAIN

1 BASED ON THE EVIDENCE.

2 MR. HUDDLESTON: SURE, YOUR HONOR.

3 THE COURT: GIVE THE OPPORTUNITY TO MR. MONNIN TO
4 RESPOND IF YOU NEED FURTHER REPLY. I JUST THINK IT WOULD
5 PROBABLY BE MORE USEFUL SINCE I'VE GOT YOU HERE AND I CAN DO
6 SOME LIVE EDUCATION RATHER THAN READING EDUCATION.

7 MR. HUDDLESTON: THERE YOU GO. WELL, I'LL DO MY
8 BEST.

9 WE'LL START WITH THE, THE POINT THAT WE BELIEVE THAT
10 THE CONTORINIS DECISION FROM THE SECOND CIRCUIT IS GOOD LAW AND
11 THAT THE CASE OUT OF THE FIFTH CIRCUIT, THE OLD FIFTH CIRCUIT,
12 BLATT, THAT YOUR HONOR CITED, NEED NOT BE READ TO CONTRADICT
13 CONTORINIS. BLATT WAS NOT AN INSIDER TRADING CASE. THERE WERE
14 SPECIAL CONSIDERATIONS REGARDING DISGORGEMENT IN INSIDER
15 TRADING CASES. AND BLATT STANDS FOR THE PROPOSITION THAT YOU
16 CAN'T MAKE SOMEBODY DISGORGE ASSETS THAT HAVE NOTHING TO DO
17 WITH THE FRAUD.

18 THAT'S NOT THE SITUATION WE FIND OURSELVES IN HERE.
19 AND SO WE WOULD URGE THE COURT TO LOOK AT CONTORINIS, WHICH
20 PROVIDES FOR HEDGE FUND MANAGERS, SPECIFICALLY A HEDGE FUND
21 MANAGER BEING ORDERED TO DISGORGE THE TRADES THAT HE ORDERED.

22 I WOULD ALSO MAKE THE POINT, IT'S WELL SETTLED LAW,
23 ALTHOUGH I DON'T BELIEVE THE 11TH CIRCUIT HAS RULED
24 SPECIFICALLY, THAT A TIPPER CAN BE RESPONSIBLE FOR THE TIPPEE'S
25 PROFITS. OTHERWISE, IT'S JUST WAY TOO EASY TO AVOID LIABILITY

1 AND THE FINANCIAL CONSEQUENCES THAT GO WITH VIOLATING THE
2 INSIDER TRADING LAW.

3 IN THIS CASE, WHEN WE GET DOWN TO IT, MR. MEGALLI WAS
4 THE TIPPER. LEVEL GLOBAL WAS THE TIPPEE. AND IT'S PERFECTLY
5 IN CONFORMITY WITH ALL THE AUTHORITIES THAT HE SHOULD BE
6 RESPONSIBLE FOR HIS TIPPEE'S PROFITS, THAT THERE BE JOINT AND
7 SEVERAL RESPONSIBILITY FOR THOSE.

8 NOW, THERE WAS A LOT OF TALK ABOUT THE LEVEL GLOBAL
9 SETTLEMENT WITH THE SEC. YOUR HONOR, I CAN REPRESENT TO YOU
10 THAT THAT CASE DID NOT INVOLVE TRADES IN CARTER'S SECURITIES.
11 IT DID NOT INVOLVE MR. MEGALLI'S MISCONDUCT. THEY ARE TWO
12 SEPARATE THINGS.

13 THE COURT: WHAT WAS THE SCOPE OF THE MONIES CLAIMED
14 BY THE SEC THERE, I GUESS, JUST IN TERMS OF SHEER EQUITY AND
15 PARITY AND THINKING ABOUT PROPORTIONALITY ISSUES. IT --
16 SHOULDN'T I BE CONCERNED AT ALL ABOUT WHAT THE SUM OF THE
17 PROFITS WERE THAT GLOBAL MIGHT HAVE OBTAINED IN THIS OTHER CASE
18 WITHOUT, I MEAN, I CAN OBVIOUSLY GO BACK TO THE RECORD.

19 MR. HUDDLESTON: AS A PRECEDENT FOR HOW MUCH TO --

20 THE COURT: WELL, POTENTIALLY, YES.

21 MR. HUDDLESTON: WELL, I'M NOT SURE THAT THE DOCUMENT
22 WE HAVE IN FRONT OF YOU LAYS OUT THE FACTORS AND ANALYZES THE
23 FACTORS THAT ARE RELEVANT. SO I'M NOT SURE I CAN COMMENT,
24 JUDGE. I DIDN'T WORK ON THE LEVEL GLOBAL CASE, SO I DON'T
25 KNOW.

1 THE OTHER POINT I WOULD MAKE IS THAT I THINK YOU WILL
2 REMEMBER THAT MR. MEGALLI ADMITTED THAT IT WAS FAIR TO SAY HE
3 CONTROLLED THE TRADING OF THE CONSUMER DISCRETIONARY SPACE,
4 THAT IT WAS HIS TO RUN, THAT BEFORE HE GOT THERE, THE FIRM WAS
5 LARGELY A TECHNICAL ORGANIZATION AND THAT HE'S THE PERSON THAT
6 THEY GAVE THAT KIND OF TRADING TO. THERE ARE PROVISIONS IN THE
7 SECURITIES LAW FOR CONTROL OF PERSONAL LIABILITY. THAT'S WHY I
8 BROUGHT OUT THE FACT THAT HE WAS PAID, AT LEAST IN 2010, AS IF
9 HE OWNED THREE PERCENT OF THE COMPANY. I UNDERSTAND THAT HE
10 WASN'T ON THE ARTICLES OF INCORPORATION, NOT LISTED AS AN
11 OWNER. BUT THE TRUTH IS, HE WAS PAID AS AN OWNER AND NOT JUST
12 ON HIS OWN PROFITS. YOU WILL REMEMBER HE WAS PAID ON THE LEVEL
13 RADAR PROFITS, AS WELL, WHICH HE HAD NOTHING TO DO WITH. AND
14 SO WE WOULD SAY HE WAS PAID LIKE AN OWNER. HE HAD CONTROL OF
15 THAT TRADING. THEREFORE, HE SHOULD BE HELD RESPONSIBLE FOR THE
16 DISGORGEMENT THAT LEVEL GLOBAL MADE.

17 BY THE WAY, IT WAS HIM.

18 THE COURT: I DON'T REALLY KNOW WHAT THE OWNERS MADE.

19 MR. HUDDLESTON: WHAT THE FIRM MADE.

20 THE COURT: RIGHT.

21 MR. HUDDLESTON: YEAH.

22 THE COURT: EQUITY SHAREHOLDERS. I MEAN, I DON'T
23 KNOW WHAT PERCENTAGE THEY MADE OR WHETHER THEY GOT EXTRA
24 BENEFITS.

25 MR. HUDDLESTON: WELL, WE KNOW THAT THEY GOT THE TWO

1 MILLION LOSS AVOIDED IN 2009 AND THE \$600,000.00 OF PROFIT IN
2 2010, SO WE BELIEVE THAT IS THE PROPER MEASURE OF DISGORGEMENT
3 HERE. THOSE, THOSE ARE AS TO THE DISGORGEMENT ISSUES.

4 LET ME SEE IF THERE'S SOMETHING THAT I'M FORGETTING.

5 I MENTIONED THE CONTROL. I MENTIONED TIPPER
6 RESPONSIBLE FOR THE TIPPEE'S LIABILITY.

7 OH, THE OTHER THAT YOU ASKED ME ABOUT BRINGING IN THE
8 EMPLOYMENT AGREEMENT. OBVIOUSLY DISGORGEMENT IS AN EQUITABLE
9 REMEDY AND THAT RESTS WITHIN THE SOUND DISCRETION OF THE COURT.

10 AND SO THE REASON I BROUGHT THAT OUT, JUDGE, IS THAT
11 THE MAN KNEW IN OCTOBER 2009 THAT HE HAD ACTED WRONGFULLY. HE
12 KNEW, IF HE HAD READ HIS EMPLOYMENT AGREEMENT, THAT HIS CONDUCT
13 WOULD HAVE BEEN GROUNDS FOR TERMINATION FOR CAUSE, WHICH WOULD
14 HAVE CUT OFF EVERY FINANCIAL BENEFIT HE RECEIVED THEREAFTER.

15 WE OFFERED THAT, MUCH AS MR. MONNIN OFFERED HIS SLIDE
16 DECK AS AN ALTERNATIVE THING FOR THE COURT TO CONSIDER, WE
17 OFFERED THAT AS A WAY FOR THE COURT TO CONSIDER THE INEQUITY
18 HE OUGHT TO BE -- HE OUGHT TO PAY BACK EVERYTHING HE RECEIVED
19 AFTER THAT FIRST VIOLATION.

20 SO THAT'S WHAT I HAVE TO SAY ABOUT DISGORGEMENT. IF
21 YOU WANT ME TO GO ON ABOUT CIVIL PENALTIES --

22 THE COURT: SURE.

23 MR. HUDDLESTON: OKAY. THE CIVIL PENALTIES, THE
24 FACTORS TO BE CONSIDERED ARE VERY SIMILAR TO THOSE TO BE
25 CONSIDERED FOR WHETHER TO IMPOSE INJUNCTIVE RELIEF. THERE'S

1 ONLY ONE THING THAT'S DIFFERENT THERE.

2 SO YOU'VE GOT, YOU KNOW, THE SERIOUSNESS OF THE
3 VIOLATION THAT YOU GOT. WAS IT ISOLATED. WAS IT REPEATED.
4 YOU'VE GOT THE LEVEL OF SCIENTER. YOU'VE GOT THE ASSURANCES
5 AGAINST MISCONDUCT AND HOW MUCH WEIGHT YOU CAN PUT ON THAT.
6 AND YOU'VE GOT WHETHER THE DEFENDANT'S AGE AND OCCUPATION MIGHT
7 GIVE HIM ADDITIONAL OPPORTUNITY FOR SIMILAR MISCONDUCT. AND SO
8 I WENT THROUGH THOSE, THE EVIDENCE THERE.

9 WHAT I WOULD SAY, YOUR HONOR, IS THAT ALL OF THEM CUT
10 IN FAVOR OF ENTERING AN INJUNCTION HERE. AND THE REASON I GO
11 BACK TO THE -- WHICH IS ALSO CIVIL PENALTIES. THE ONE THING
12 THAT'S DIFFERENT IN THE CIVIL PENALTIES ANALYSIS IS THAT YOU
13 ADD ONE ELEMENT, WHICH THE JUDGE HAS BROUGHT OUT, AND THAT IS
14 THAT THE DEFENDANT CAN COME FORWARD WITH EVIDENCE THAT HE
15 CANNOT PAY. RIGHT? IT'S NOT OUR BURDEN TO PROVE THAT, BUT THE
16 DEFENDANT CAN COME IN AND MAKE THAT RELEVANT. THERE IS NO
17 FACTOR STATED LIKE MATERIALITY OR WAS HIS MISCONDUCT JUST A
18 LITTLE DROP IN A BIGGER POOL. THAT'S NOT WHAT THE LAW IS.

19 SO, REGARDING THE INJUNCTIVE RELIEF, THE REASON I
20 BRING OUT WHAT HAPPENED AT THE SENTENCING HEARING, JUDGE, AND
21 YOU MADE THE POINT THAT IT'S PART OF THE RECORD, IN THE
22 SENTENCING MEMORANDUM, WHICH I DIDN'T ASK HIM TO READ, IT'S IN
23 THE BRIEFING, MR. MONNIN MADE THE POINT TO JUDGE STORY THAT
24 THIS GUY IS GOING TO BE BARRED FROM THE SECURITIES INDUSTRY.
25 WE STARTED THIS HEARING TODAY WITH US MAKING IT CLEAR THAT WE

1 DIDN'T EVEN PLEAD THAT. AND SO WE BELIEVE THAT THIS MAN WAS
2 SENTENCED, GOT AN UNDULY LIGHT SENTENCE BECAUSE OF
3 MISREPRESENTATIONS HE HAD MADE ABOUT THE RELIEF THE SEC WAS
4 SEEKING AND ABOUT THE DEFENDANT'S INTENT TO ENTER INTO A
5 SETTLEMENT WITH THE SEC.

6 AND SO WE THINK THAT GOES TO BOTH THE ASSURANCE OF,
7 YOU KNOW, GOOD BEHAVIOR IN THE FUTURE, GIVEN THE ASSURANCES HE
8 MADE TO THE SENTENCING COURT, AND TO CIVIL PENALTIES. AND,
9 GIVEN THE FACT THAT WE ARE NOT SEEKING TO BAR THE MAN FROM THE
10 SECURITIES INDUSTRY, NOR ARE WE SEEKING AN ORDER TO BAR HIM
11 FROM BEING AN OFFICER OR DIRECTOR OF A PUBLIC COMPANY, WHICH IS
12 ON THE TABLE IN SOME OF OUR CASES, WE BELIEVE THAT INJUNCTIVE
13 RELIEF IS EVEN MORE PROPER IN THIS CASE AS IT WILL BE THE ONLY
14 COURT ORDER THAT HAS A CHANCE OF RESTRAINING HIM. THERE'S
15 NOTHING ABOUT INSIDER TRADING THAT REQUIRES A SPECIAL
16 OCCUPATION OR SPECIAL LICENSE. IT REQUIRES ACCESS TO THE
17 INFORMATION, AND THAT'S IT.

18 THE COURT: SO REMIND ME WHAT, IF YOU SUBMITTED THE
19 PROPOSED TERM OF INJUNCTIVE RELIEF HERE, THE LANGUAGE THAT YOU
20 ARE SEEKING.

21 MR. HUDDLESTON: WELL, WE'RE SEEKING A PERMANENT
22 INJUNCTION, SO IT WOULD BE --

23 THE COURT: A PERMANENT INJUNCTION THAT STATES WHAT?

24 MR. HUDDLESTON: THAT STATES THAT HE IS ENJOINED FROM
25 FUTURE VIOLATIONS OF SECTION 10B OF THE EXCHANGE ACT AND RULE

1 10B-5 THEREUNDER, SECTION 17(A) OF THE SECURITIES ACT AND ALL
2 PROVISIONS OF THAT. AND THEN BECAUSE OF THE GOBLE CASE FROM
3 THE 11TH CIRCUIT, TYPICALLY WE PUT IN SOME SPECIFICS AS TO
4 INSIDER TRADING AND THAT SPECIFICALLY HE IS NOT ALLOWED TO
5 TRADE WHILE IN POSSESSION OF MATERIAL NONPUBLIC INFORMATION.

6 THE COURT: WELL, LET'S DEAL WITH THE EASY ISSUE.
7 MR. MONNIN, ARE YOU OBJECTING TO THAT?

8 MR. MONNIN: OF COURSE I AM. MY CLIENT HAS ALREADY
9 TESTIFIED THAT HE --

10 THE COURT: ALL RIGHT. WELL, FIRST OF ALL, AGAIN,
11 GET THROUGH, WHY DON'T YOU SUBMIT THE PROPOSED INJUNCTIVE
12 PROVISIONS THAT YOU ARE SEEKING, BECAUSE THAT DOESN'T SEEM TO
13 BE IN DISPUTE.

14 MR. MONNIN: WILL DO.

15 MR. HUDDLESTON: WILL DO.

16 THE COURT: AND SO, IN TOTAL, JUST REMIND ME, WHAT IS
17 THE SUM THAT YOU'RE LOOKING AT IN DISGORGEMENT, AND WHAT ARE
18 YOU SEEKING IN CIVIL PENALTIES?

19 MR. HUDDLESTON: WELL, THE DISGORGEMENT IS THE
20 \$2,034,000.00 FROM THE OCTOBER 2009 TRADES. AND THEN I DON'T
21 HAVE THE FIGURE RIGHT IN FRONT OF ME, THE 685,000.

22 THE COURT: THIS IS THE --

23 MR. HUDDLESTON: YEAH, IT'S IN THE BRIEFING.

24 THE COURT: ALL RIGHT. IT'S ROUGHLY 685,000.

25 MR. HUDDLESTON: EXACTLY. AND AS TO CIVIL PENALTIES,

1 JUDGE, AS YOU CORRECTLY STATED, YOU ALLOWED AN AWARD UP TO
2 THREE TIMES IN THAT AMOUNT IN CIVIL PENALTIES. YOU KNOW, I'M
3 NOT IN A POSITION TO GIVE YOU A NUMBER OTHER THAN THE MAXIMUM
4 BECAUSE THAT HAS TO BE CLEARED FIRST WITH MY CLIENT IN
5 WASHINGTON.

6 THE COURT: DISGORGEMENT, YOU WANTED BOTH ESSENTIALLY
7 THAT BOTH THE TWO MILLION PLUS AND 685 ORIGINALLY --

8 MR. HUDDLESTON: CORRECT.

9 THE COURT: -- THAT ARE AT ISSUE. AND YOU WANTED THE
10 CIVIL PENALTIES. AT THIS POINT, YOU'RE SAYING UP TO THE
11 MAXIMUM, WHICH WAS THREE TIMES THAT AMOUNT. IS THAT WHAT
12 YOU'RE SAYING?

13 MR. HUDDLESTON: THAT'S CORRECT, YOUR HONOR. WE MAKE
14 THE POINT THAT THIS IS A YOUNG, HIGHLY-EDUCATED MAN WITH LOTS
15 OF CONTACTS, A VERY BRIGHT FELLOW WHO IS GOING TO DO VERY WELL.

16 THE COURT: THANK YOU VERY MUCH.

17 DID YOU WANT TO RESPOND TO ANY OF THAT, MR. MONNIN?

18 MR. MONNIN: YES, I WOULD, YOUR HONOR. A NUMBER OF
19 THINGS.

20 WITH RESPECT, JUDGE, THE SEC ALREADY MADE THE SAME
21 ARGUMENT AND MADE THE SAME CONTENTIONS WITH REGARD TO
22 DISGORGEMENT IN A CIVIL PENALTY IN CONNECTION WITH THE SUMMARY
23 JUDGMENT BRIEF. AND I BELIEVE THAT WHAT THE COURT HAS STATED
24 IN ITS ORDER IS THAT THE CONTORINIS CASE FROM THE SECOND
25 CIRCUIT -- AND I'LL BYPASS THE IRONY OF THE SEC VOCIFEROUSLY

1 OBJECTING TO APPLICATION OF NEWMAN IN CONNECTION WITH THE
2 LIABILITY, BUT THEN ONCE DISGORGEMENT COMES AROUND, THEY ARE
3 RELYING ON A SECOND CIRCUIT CASE. SO YOU CAN'T RELY ON THE
4 SECOND CIRCUIT FOR PURPOSES OF LIABILITY BUT YOU CAN WHEN IT
5 HELPS YOU OUT WITH DISGORGEMENT.

6 AND ON THE ISSUE OF DISGORGEMENT, JUDGE, AT PAGE 23,
7 24, AND OVER THROUGH TO 25 OF THE COURT'S OPINION, THE COURT
8 HAS ALREADY FOUND -- I MEAN, IF YOU RECALL, I MADE A MOTION
9 WITH THE COURT THAT WE SHOULD BIFURCATE BRIEFING OF LIABILITY
10 AND FINANCIAL REMEDIES. WE DID NOT DO THAT. SO WE ADDRESSED
11 FINANCIAL REMEDIES. THE COURT'S RULING WITH REGARD TO
12 DISGORGEMENT IS THAT THE BLATT CASE IS CONTROLLING WITH REGARD
13 TO THE MEASURE, THE APPROPRIATE MEASURE OF DISGORGEMENT BEING
14 WHAT MR. MEGALLI PERSONALLY REALIZED IN TERMS OF HIS TRADING
15 PROFIT.

16 AND WHAT WE'VE SHOWN THE COURT OVER THE HOUR AND A
17 HALF OR THE HOUR AND 20 MINUTES OR SO THAT I WAS BEFORE THE
18 COURT IS A COUPLE OF THINGS. FIRST OF ALL, MR., MR. MEGALLI
19 DIDN'T HAVE A THREE PERCENT INTEREST IN THE PROFITS OF LEVEL
20 GLOBAL. HE HAD A THREE-THOUSANDTHS PERCENT INTEREST. IT'S
21 .003 INTEREST, MEANING .3 PERCENT INTEREST IN THE PROFITABILITY
22 OF LEVEL GLOBAL.

23 AND HE DIDN'T MAKE ANYTHING, AS A MATTER OF LAW, AS A
24 MATTER OF CONTRACT, AND AS A MATTER OF FACT, BASED ON THE
25 LIQUIDATION OF THE OCTOBER -- THE INITIAL LONG POSITION FROM

1 SEPTEMBER THROUGH OCTOBER 2009. THAT POSITION WAS LIQUIDATED
2 IN OCTOBER 2009. IT GENERATED A LOSS AVOIDED OF 2.053 MILLION.
3 AND HE GOT NONE OF THAT.

4 AND I THINK THAT WE HAVE COMPLETELY ESTABLISHED THAT,
5 JUDGE. AND YOUR RULING IS THAT HE SHOULD ONLY BE LIABLE IN
6 DISGORGEMENT. AND EVERY CASE IN THIS COURT, IN OTHER DISTRICT
7 COURTS OF THE NORTHERN DISTRICT OF GEORGIA AND THE 11TH
8 CIRCUIT, ALL OF THE CASES THAT ARE BINDING AND CONTROLLING ON
9 THIS COURT SAY THAT MR. MEGALLI SHOULD ONLY BE LIABLE IN
10 DISGORGEMENT FOR WHAT HE PERSONALLY REALIZED.

11 AND THAT'S WHY WE CAME IN HERE TO PUT THE EVIDENCE
12 BEFORE THE COURT THAT THIS IS WHAT HE PERSONALLY REALIZED BASED
13 ON THIS ADMITTEDLY ILLEGAL TRADING ACTIVITY THAT THE COURT HAS
14 FOUND HIM LIABLE FOR.

15 SO WITH REGARD TO DISGORGEMENT, I REALLY DON'T
16 UNDERSTAND WHY THE SEC SHOULD HAVE A SECOND BITE AT THE APPLE
17 WHEN THE COURT HAS ALREADY RULED IN ITS ORDER, AND I QUOTE, IN
18 BLATT, THE COURT IMPOSED DISGORGEMENT, BUT ONLY TO THE EXTENT
19 OF THE AMOUNT OF THE FEE REALIZED BY EACH DEFENDANT FOR HIS
20 ASSISTANCE IN EXECUTING THE FRAUD. SINCE BLATT, DISTRICT
21 COURTS IN THE 11TH CIRCUIT SEEM TO HAVE BEEN CAREFUL IN NOT
22 IMPOSING DISGORGEMENT ABOVE AND BEYOND A, QUOTE, REASONABLE
23 APPROXIMATION OF THE DIRECT GAIN ACCRUING TO THE WRONGDOER.

24 AND THERE'S NO -- HOLDING MR. MEGALLI LIABLE IN
25 DISGORGEMENT FOR THE FULL LOSS AVOIDED AND GAIN ASSOCIATED WITH

1 THE TWO TRANSACTIONS THAT WE'RE TALKING ABOUT HERE, IS IN NO
2 WAY A REASONABLE APPROXIMATION OF WHAT HE MADE. AND THE COURT
3 HAS ALREADY, HAS ALREADY FOUND THAT.

4 THE COURT: BUT THEN YOU SHIFT THE THING TO THE
5 QUESTION OF CIVIL PENALTIES.

6 MR. MONNIN: SURE.

7 THE COURT: AND THAT'S THE MORE DIFFICULT ISSUE.

8 MR. MONNIN: SURE.

9 THE COURT: I MEAN, I UNDERSTAND THE DISTINCTION THAT
10 THE MR. HUDDLESTON IS DRAWING MY ATTENTION TO, HIS PERSPECTIVE
11 AS TO THE DISGORGEMENT. BUT LET'S GET TO THE MORE DIFFICULT
12 QUESTION ABOUT THE CIVIL PENALTY.

13 MR. MONNIN: SURE.

14 THE COURT: DRAWS US BACK IN THE SAME WEB OF
15 PROBLEMS.

16 MR. MONNIN: WHAT I'D LIKE TO DO IS SHOW THE COURT
17 THE STATUTE THAT WE'RE TALKING ABOUT HERE, WHICH IS SECTION 78,
18 LITTLE U, DASH ONE OF TITLE 15 OF THE FEDERAL CODE, WHICH IS
19 SECTION 21(A) OF THE EXCHANGE ACT OF 1934. SO THIS IS THE
20 CIVIL PENALTIES PROVISION THAT IS IN ISSUE WITH RESPECT TO THIS
21 INSIDER TRADING ACTIVITY. IT RELATES TO CIVIL PENALTIES FOR
22 INSIDER TRADING.

23 AND I THINK THAT THE ISSUE THAT MR. HUDDLESTON AND
24 THE SEC HAS RECOMMENDED BE BRIEFED -- AND WE REALLY DON'T THINK
25 THAT IT SHOULD BE AN ISSUE, JUDGE -- IS SPECIFICALLY PARAGRAPH

1 (A) (2). AND THIS IS REALLY THE QUESTION, JUDGE.

2 SO WHAT THE STATUTE IS REFERRING TO IS, WHAT WAS THE
3 OVERALL PROFIT GAINED OR LOSS AVOIDED AS A RESULT OF THE
4 UNLAWFUL PURCHASE, SALE, OR COMMUNICATION IN FURTHERANCE OF THE
5 INSIDER TRADING. SO THE QUESTION BECOMES, WHAT IS THE
6 APPROPRIATE MEASURE OF THE CIVIL PENALTY. IS IT MR. MEGALLI'S
7 PERSONAL GAIN, OR IS IT LEVEL GLOBAL'S INSTITUTIONAL GAIN.

8 AND I THINK THAT WHAT WE HAVE, JUDGE, IS THAT YOU
9 DERIVED A FOOTNOTE IN YOUR ORDER, SPECIFICALLY FOOTNOTE NINE AT
10 PAGE 26 OF YOUR ORDER, I MEAN, YOU CAN READ IT FOR YOURSELF,
11 THAT THE APPROPRIATE MEASURE OF THE CIVIL PENALTIES HERE --

12 THE COURT: WELL, I UNDERSTAND THAT. BUT I ALSO
13 UNDERSTAND THE OBJECTION OF THE GOVERNMENT. AND I WILL TAKE
14 NOTE THAT I ASSUME WITHOUT DECIDING. SO I THINK WHAT THAT
15 NORMALLY SAYS IS, YOU KNOW, THAT'S AN ASSUMPTION. I HAVEN'T
16 DECIDED.

17 MR. MONNIN: SO YOU HAVEN'T DECIDED. SO REALLY THE
18 ISSUE I THINK THAT WE'RE TALKING ABOUT, JUDGE, WHAT'S CURRENTLY
19 BEING LITIGATED IN COURTS, CERTAINLY UP IN NEW YORK, IS THE
20 ISSUE OF, UNDER PARAGRAPH (A) (2) OF TITLE -- OR OF SECTION
21 21(A), WHAT IS THE APPROPRIATE LOADSTAR THAT YOU'RE SUPPOSED TO
22 LOOK AT. IS THE APPROPRIATE LOADSTAR INSTITUTION OR PERSONAL
23 GAIN. OUR POSITION IS CERTAINLY THAT IT IS ONLY PERSONAL GAIN.

24 AND, JUDGE, THE REASON THAT I SAY THAT AND WHAT WE
25 WOULD BRIEF FOR THE COURT IS THAT MORRISON AND FOERSTER, THE

1 LAW FIRM, HAS -- CREATES A MONOGRAPH EACH YEAR. IT'S AN
2 INSIDER TRADING MONOGRAPH. AND I'M NOT SUBMITTING THAT THIS IS
3 EVIDENCE, BUT I BELIEVE, GIVEN THAT THE COURT IS GOING TO GO
4 THROUGH -- HAS TO GO THROUGH FACTORS IN AGGRAVATION AND
5 MITIGATION, AND I AGREE WITH MR. HUDDLESTON ON THIS, THAT THIS
6 IS VERY MUCH LIKE A SENTENCING PROCEEDING WHERE YOU LOOK AT
7 SCIENTER AND YOU LOOK AT AGGRAVATING AND MITIGATING FACTORS.
8 WHAT THE COURT SAID AND ADDRESSED, THE ISSUE OF DISGORGEMENT IN
9 THE CIVIL PENALTY HAVE DONE IS THAT IN THE VAST MAJORITY OF
10 CASES, OUT OF 326 TOTAL CASES FROM 2010 TO 2014, THE COURT HAS
11 EITHER HELD --

12 THE COURT: IS THIS JUST FOR THE SECOND CIRCUIT OR IS
13 THIS THE SOUTHERN DISTRICT OF NEW YORK OR NATIONAL?

14 MR. MONNIN: THIS IS NATIONAL, JUDGE. SO IN THE 326
15 CASES, IN 43 PERCENT OF THE TIME, THE COURT HAS CONCLUDED THAT
16 THE CIVIL PENALTY AND THE DISGORGEMENT FIGURE SHOULD BE THE
17 SAME. NOW, IF DISGORGEMENT IS LIMITED TO A PERSONAL BENEFIT OR
18 PERSONAL GAIN, IT NECESSARILY FOLLOWS THAT THE COURTS HAVE
19 CONCLUDED THAT THE CIVIL PENALTY, THE LOADSTAR FOR A CIVIL
20 PENALTY SHOULD BE PURELY PERSONAL GAIN AS WELL.

21 THE COURT: LET'S LOOK AT THE OTHER ONE.

22 MR. MONNIN: SO THE OTHER ONE, WHAT YOU HAVE IS THAT
23 CIVIL PENALTY IS ZERO IN 27 PERCENT OF THE CASES. AND WHAT THE
24 COURTS ARE GETTING AT THERE IS, DOES THE DEFENDANT HAVE THE
25 ABILITY TO PAY A CIVIL PENALTY.

1 BUT I SUBMIT TO THE COURT THAT IF WE'RE TALKING ABOUT
2 43 PERCENT OF THE TIME, YOU KNOW, VIRTUALLY HALF OF THE TIME
3 WHERE DISGORGEMENT AND THE CIVIL PENALTY ARE THE SAME, THAT THE
4 IDEA THERE IS THAT THE COURTS WANT TO PROMOTE DISGORGEMENT. SO
5 THEY ARE ENSURING THAT THE DEFENDANT IS GOING TO BE ABLE TO PAY
6 DISGORGEMENT. SO EFFECTIVELY 70 PERCENT OF THE TIME, JUDGE,
7 27, 27 PLUS 43, WHAT THE COURTS HAVE CONCLUDED IS THAT EITHER A
8 CIVIL PENALTY IS NOT IN ORDER OR THE CIVIL PENALTY SHOULD
9 EQUATE TO DISGORGEMENT. I THINK WHAT THE --

10 THE COURT: AND WHAT DO THE OTHER HEADINGS SAY?

11 MR. MONNIN: THE OTHER HEADINGS ARE WHERE 17 PERCENT
12 OF THE TIME CIVIL PENALTY IS LESS THAN DISGORGEMENT.

13 THE COURT: ALL RIGHT.

14 MR. MONNIN: AND 13 PERCENT OF THE TIME CIVIL PENALTY
15 IS GREATER THAN DISGORGEMENT.

16 I AGREE WITH MR. HUDDLESTON. I THINK THAT WE SHOULD
17 BE BRIEFING THE ISSUE OF THE APPROPRIATENESS OF A CIVIL
18 PENALTY. BUT I THINK WHAT THE SEC IS SAYING HERE IS THAT,
19 FIRST OF ALL, IT'S REVISITING THE LAW OF THE CASE AND SAYING
20 THAT MR. MEGALLI SHOULD BE LIABLE FOR THE FULL TWO MILLION PLUS
21 \$648,000.00 ON DISGORGEMENT, WHEN MR. MEGALLI TOUCHED NONE OF
22 THAT. I MEAN, HE TOUCHED NONE OF IT ON THE TWO MILLION, AND HE
23 ONLY TOUCHED 2,000 OF IT ON THE \$648,000.00.

24 SO WE BELIEVE, LEGALLY, THE COURT HAS ALREADY RULED.
25 AND THE COURT ORDERED US TO BRIEF THIS ISSUE AND HAS ALREADY

1 RULED IN SUMMARY JUDGMENT AND WOULD HAVE TO REOPEN THAT RULING.
2 I MEAN, THAT'S NOT A FOOTNOTE ON DISGORGEMENT, JUDGE. I
3 BELIEVE THAT YOU ALREADY CONCLUDED THAT MY CLIENT'S
4 DISGORGEMENT LIABILITY IS TIED INTO HIS PERSONAL GAIN.

5 NOW, WHETHER THAT IS 2,000, BECAUSE IF YOU'LL RECALL,
6 THE NEXT THING YOU SAID IS, I DON'T KNOW THAT 2,000 IS
7 REASONABLE; GIVE ME SOMETHING ELSE TO GO ON HERE. AND THAT'S
8 WHY WE CAME INTO COURT TO PRESENT TO YOU AS WE DID.

9 BUT WITH RESPECT TO A CIVIL PENALTY, WHAT THE SEC IS
10 SAYING IS IS THAT THE CIVIL PENALTY STATUTORILY SHOULD BE
11 UNTETHERED FROM THE DISGORGEMENT ANALYSIS, BECAUSE WHILE
12 DISGORGEMENT IS BASED ON INDIVIDUAL OR PERSONAL GAIN, THE CIVIL
13 PENALTY MAY BE BASED ON THE OVERALL EMPLOYER GAIN, WHICH WE
14 SUBMIT IS NOT AT ALL WHAT WE'RE TALKING ABOUT WITH RESPECT TO
15 WHAT'S APPROPRIATE IN TERMS OF THE MAXIMUM CIVIL PENALTY
16 AMOUNT.

17 SO I HAVE TWO ARGUMENTS, JUDGE. ONE IS, WHAT SHOULD
18 BE BRIEFED TO YOU IS THE ISSUE OF WHETHER IT'S APPROPRIATE
19 STATUTORILY FOR THIS ITEM TO BE INSTITUTIONAL VERSUS PERSONAL.
20 AND I THINK I KNOW THE COURT UNDERSTANDS THAT.

21 AND, SECONDARILY, THESE ARE THE FACTORS THAT MR.
22 HUDDLESTON WAS REFERRING TO IN TERMS OF THE, THE FACTORS IN
23 AGGRAVATION AND MITIGATION THAT INFORM THE COURT'S DISCRETION.
24 SO MY SECOND ARGUMENT IS, LOOK, EVEN IF THE COURT CONCLUDES
25 THAT MR. MEGALLI MAY BE LIABLE OR COULD CONCEIVABLY BE LIABLE

1 IN A CIVIL PENALTY BASED ON INSTITUTIONAL GAIN, THE COURT
2 SHOULD STILL EXERCISE ITS DISCRETION TO LOOK AT THE FACTORS IN
3 AGGRAVATION AND MITIGATION.

4 AND THE MAJOR FACTORS IN MITIGATION ARE CERTAINLY
5 THAT MY CLIENT HAS ALREADY BEEN SIGNIFICANTLY PUNISHED. THERE
6 WAS A PARALLEL CRIMINAL CASE. THIS IS NOT -- THIS IS ISOLATED
7 CONDUCT. I MEAN, MR. HUDDLESTON SAID REPEATEDLY, THE
8 MATERIALITY HAS NOTHING WHATSOEVER TO DO WITH THE FACTORS IN
9 AGGRAVATION AND MITIGATION.

10 WELL, HOW DO YOU GET INTO THE EGREGIOUSNESS OF THE
11 DEFENDANT'S CONDUCT WITHOUT TALKING ABOUT THE MATERIALITY OF
12 THE TRADING ACTIVITY TO HIS OVERALL PORTFOLIO. I DON'T GET
13 THAT. OF COURSE, MATERIALITY IS RELEVANT TO EGREGIOUSNESS.
14 THE DEGREE OF HIS SCIENTER, WHAT WAS HE DOING WITH THE REST OF
15 HIS TIME, WHETHER THE DEFENDANT'S CONDUCT CREATED SUBSTANTIAL
16 LOSSES. YOU KNOW, OF COURSE YOU GET INTO MATERIALITY AND WHAT
17 HIS OVERALL TRADING ACTIVITY WAS.

18 SO I SUBMIT TO THE COURT, NUMBER ONE, MR. MEGALLI'S
19 ONLY LIABLE IN THE CIVIL PENALTY. THE MAXIMUM SHOULD BE THREE
20 TIMES WHATEVER HIS PERSONAL GAIN WAS, WHATEVER THE COURT
21 CONCLUDES. AND THEN IT CAN EXERCISE ITS DISCRETION THERE. AND
22 THE STATISTICS SHOW THAT HE SHOULD BE LIABLE NOT AT ALL BASED
23 ON WHAT OTHER COURTS HAVE CONCLUDED 27 PERCENT OF THE TIME, OR
24 JUST FOR A ONE-TIME CIVIL PENALTY BASED ON WHAT COURTS HAVE
25 CONCLUDED 43 PERCENT OF THE TIME BASED ON THE STATISTICS, WHICH

1 WE CAN CERTAINLY BRING FORWARD.

2 BUT, JUDGE, EVEN IF YOU WERE TO CONCLUDE THAT MR.
3 MEGALLI COULD BE LIABLE FOR, SAY, THREE TIMES THE LOSS AVOIDED
4 AND THE PROFITS FROM THE LIQUIDATION OF THE LONG POSITION AND
5 THE SHORT SALES, IT'S VERY SIMILAR TO WHAT YOU HAVE IN A
6 ROUTINE CRIMINAL PROCEEDING WHERE DEFENDANTS COME BEFORE YOU
7 POTENTIALLY BEING LIABLE CONSECUTIVELY. SAY THEY ARE CONVICTED
8 OF TWO 20-YEAR STATUTES. THEY ARE POTENTIALLY EXPOSED TO 40
9 YEARS. NOW, THE COURT IS NOT ROUTINELY IMPOSING 40-YEAR
10 SENTENCES. WHAT YOU DO IS YOU EXERCISE THE 3553(A) FACTORS,
11 WHICH ARE THE EXACT SAME FACTORS I HAVE UP HERE ON THE SCREEN,
12 TO REDUCE THE CIVIL PENALTY TO REALLY CORRESPOND TO WHAT MR.
13 MEGALLI ACTUALLY DID AND WHAT IS HE DESERVING OF PUNISHMENT
14 FOR.

15 AND I'LL WRAP UP BY SAYING, WHAT HE ACTUALLY DID, HE
16 RECOGNIZES THE SERIOUSNESS OF IT. HE RECOGNIZES THAT IT'S
17 MISCONDUCT. BUT HE'S PAID VERY DEARLY FOR IT. I MEAN, HE'S
18 GONE TO PRISON. HE'S PLED GUILTY. HE'S GOING TO BE OUT OF THE
19 INDUSTRY.

20 THE OTHER COMPONENT OF IT IS THAT, IF YOU LOOK AT THE
21 ACTUAL TRADING DATA AND IF YOU LOOK AT THE TRADES, THEY ARE
22 VERY ISOLATED, BOTH WITHIN THE OVERALL WORLD OF CARTER'S AS
23 WELL AS WITH REGARD TO THE CONSUMER PORTFOLIO AND CERTAINLY
24 WITH REGARD TO THE PROFITABILITY OVERALL OF LEVEL GLOBAL AND
25 LEVEL RADAR.

1 RECALL, WE'RE GIVING THE SEC THE BENEFIT OF THE DOUBT
2 IN THAT, BECAUSE MR. MEGALLI WAS BONUSED FOR LEVEL RADAR, THAT
3 WE'RE NOT SEEKING TO EXCLUDE THAT. I MEAN, HIS TRADING
4 ACTIVITY IN CARTER'S HAD NOTHING WHATSOEVER TO DO WITH WHETHER
5 HE WAS GOING TO GET BONUSED FOR LEVEL RADAR. BUT WE ARE NOT
6 SEEKING TO EXCLUDE, I THINK IT'S \$500,000.00 OR 300,000. IT'S
7 \$326,000.00 WORTH OF LEVEL RADAR PROFITABILITY THAT WE'RE NOT
8 TRYING TO EXCLUDE FROM THE COURT'S COMPUTATION OF DISGORGEMENT
9 OR POTENTIALLY A CIVIL PENALTY HERE.

10 SO I THINK, JUDGE, IF YOU RETIRE TO CHAMBERS AND YOU
11 LOOK AT -- WELL, SORRY.

12 THE COURT: THAT'S ALL RIGHT. I JUST LIKE THE IDEA
13 OF RETIRING.

14 MR. MONNIN: WELL, I KNOW.

15 IF YOU GO BACK TO CHAMBERS, I GUESS I SHOULD SAY, AND
16 YOU REALLY LOOK AT HOW, HOW MUCH WHAT MY CLIENT DID THAT WAS
17 WRONG AND THAT THE COURT HAS CONCLUDED WAS WRONG WAS REALLY
18 PART OF HIS DAY-IN-AND-DAY-OUT ACTIVITY, YOU'RE GOING TO
19 CONCLUDE THAT IT WASN'T VERY SERIOUS IN TERMS OF -- IT'S
20 SERIOUS IN ISOLATION. HE WENT TO JAIL FOR IT. HE'S PAID
21 DEARLY FOR IT. BUT IN TERMS OF EVERYTHING ELSE THAT HE WAS
22 DOING, IT'S NOT VERY SIGNIFICANT TO THAT. HE'S NOT LIABLE IN
23 DISGORGEMENT FOR FIGURES BEYOND HIS PERSONAL GAIN. HE
24 SHOULDN'T BE LIABLE IN A CIVIL PENALTY AT ALL. I MEAN, OUR
25 POSITION IS THAT HE SHOULDN'T BE LIABLE IN A CIVIL PENALTY AT

1 ALL. BUT IF YOU ARE GOING TO FIND A CIVIL PENALTY, THE
2 LOADSTAR FOR THAT SHOULD BE HIS PERSONAL PROFIT, HIS PERSONAL
3 COMPENSATION, AS OPPOSED TO ANYTHING RELATED TO LEVEL GLOBAL.

4 AND I GUESS WHAT I WOULD SAY IS, I WOULD VERY MUCH
5 APPRECIATE THE COURT'S, I GUESS, INDULGENCE IN TERMS OF LETTING
6 US KNOW WHERE YOU ARE ON THAT, BECAUSE WE'RE PERFECTLY WILLING
7 TO BRIEF IT. I CAME INTO THIS HEARING BELIEVING THAT
8 DISGORGEMENT WAS REALLY DONE IN TERMS OF THE LAW, AND WE'VE
9 PROVEN UP THE FACTS RELATED TO IT. AND THE CIVIL PENALTY I
10 GET. BUT THERE'S NO CIVIL PENALTY THAT SHOULD BE AN ISSUE
11 HERE.

12 THE COURT: ALL RIGHT. WELL, LET ME SAY, FIRST OF
13 ALL, I -- MY UNDERSTANDING IS THAT MR. HUDDLESTON'S TRIAL IN
14 FRONT OF JUDGE MAY IS IN THE RANGE OF TWO WEEKS OR EVEN MORE.
15 SO OBVIOUSLY HE IS NOT WRITING A BRIEF. HE'S HAD ENOUGH TIME
16 WITH ME FOR THE IMMEDIATE FUTURE. SO WE'LL TAKE -- WE'LL TALK
17 ABOUT IT AND SEE WHETHER THERE'S ANYTHING FURTHER THAT WE NEED,
18 OTHER THAN THE -- IF, IF YOU HAD YOUR DRUTHERS, OBVIOUSLY,
19 SOMEBODY HERE WANTS TO WRITE A BRIEF, APPARENTLY. IS THAT YOUR
20 PREFERENCE, TO BE ABLE TO WRITE A BRIEF, RATHER THAN JUST GIVE
21 ME SOME CITATIONS AS TO MATERIALITY?

22 MR. HUDDLESTON: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. IS THAT YOUR PREFERENCE AS
24 WELL, OR NOT?

25 MR. MONNIN: I GUESS MY QUESTION, JUDGE, IS, IS IT AN

1 OPEN ISSUE FOR THE COURT WHETHER THE APPROPRIATE MEASURE OF A
2 CIVIL PENALTY SHOULD BE LEVEL GLOBAL, AS OPPOSED TO MY CLIENT?

3 THE COURT: FOR DISGORGEMENT OR FOR ANYTHING?

4 MR. MONNIN: I THINK YOU'VE ALREADY DECIDED ON
5 DISGORGEMENT.

6 THE COURT: WELL, FOR ANYTHING, I THINK I HAVE TO GO
7 BACK AND LOOK IN LIGHT OF THIS EVIDENCE, SO I CERTAINLY CAN LET
8 YOU KNOW. BUT, OBVIOUSLY, THAT'S THE SINE QUA NON QUESTION
9 HERE.

10 MR. MONNIN: SURE.

11 THE COURT: BUT, BUT, YOU KNOW, IF THERE'S SOMETHING
12 ELSE THAT YOU THINK WILL BE HELPFUL, YOU KNOW, AS TO THAT ISSUE
13 OR ANYTHING ELSE, I'M WILLING TO POTENTIALLY THINK ABOUT IT.
14 BUT I NEED TO GO BACK AND LOOK AT MY ORDER, THINK ABOUT THE
15 EVIDENCE, REVIEW SOME OF THE CASES.

16 I THINK THE ONE THING THAT I WONDERED ABOUT, WHICH
17 WAS SOMETHING COMPLETELY DIFFERENT, IT'S LIKE THE JURY GOING
18 OFF ON YOU, IF ONE THING MR. HUDDLESTON ARGUES, HE IS NOT
19 REALLY A TIPPEE, THAT THE DEFENDANT IS NOT A TIPPEE, IS REALLY
20 A TIPPER, BECAUSE GLOBAL WAS THE TIPPEE, YOU WOULD TAKE THAT
21 PROPOSITION. IF YOU DON'T, IS THIS A MATTER OF FACT OR IS IT A
22 MATTER OF LAW?

23 MR. MONNIN: YOUR HONOR, FIRST OF ALL, OF COURSE, WE
24 DON'T ACCEPT THAT STANDARD. I BELIEVE THAT IT IS AN ISSUE OF
25 LAW. THE CONTORINIS CASE THAT WE BRIEFED AND THAT MR.

1 HUDDLESTON ARGUED, THE ESSENTIAL, I WOULD PUT IT, FICTION OF
2 THAT HOLDING WAS THAT THE WAY, THE ONLY WAY THAT YOU CAN, THE
3 ONLY WAY THAT YOU CAN HOLD AN INSIDER TRADER AS A TIPPEE LIABLE
4 FOR FUNDS THAT HE NEVER PERSONALLY POSSESSED, HIS EMPLOYER'S
5 FUNDS, IS TO GO THROUGH THE FICTION OF SAYING THAT THAT TRADER
6 IS JOINTLY AND SEVERALLY LIABLE WITH HIS EMPLOYER. AND THE
7 ONLY WAY THAT YOU CAN GET THERE IS TO SAY THAT THE TIPPEE, MR.
8 MEGALLI, BECAME THE TIPPER TO LEVEL GLOBAL. AND THAT'S, THAT'S
9 THE SECOND CIRCUIT'S RULING. AND, MIND YOU, I ATTACHED THE
10 WHOLE CERT PETITION RELATED TO CONTORINIS TO MY LAST SUMMARY
11 JUDGMENT FILING.

12 THE COURT: CONTORINIS IS NOT NECESSARILY LOOKING TO
13 FOLLOW A LOT MORE LAWS. I WANT TO GO BACK AND SEE WHAT'S
14 REALLY ON THE RECORD BEFORE WE TELL YOU ANYTHING.

15 MR. MONNIN: OKAY.

16 THE COURT: WE WILL MAKE A DECISION. BUT WE ARE NOT
17 GOING TO MAKE IT DUE THE FIRST WEEK HE'S OUT OF TRIAL.

18 MR. MONNIN: NO. THAT IS FINE.

19 THE COURT: I JUST WANTED TO NOT HAVE TO FIND A DAY
20 WHERE YOU ALL WERE AVAILABLE AND WE THINK THAT WE COULD PUT ALL
21 THESE PIECES TOGETHER. AND, PRESUMABLY, WE'LL HAVE A
22 TRANSCRIPT. SO THANK YOU VERY MUCH.

23 IS THERE ANYTHING ELSE WE NEED TO ADDRESS WHILE WE'RE
24 ALL TOGETHER?

25 MR. HUDDLESTON: NO, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. MONNIN: NO, YOUR HONOR.

3 THE COURT: I GATHER THIS IS YOUR WIFE WHO'S HERE
4 WITH YOU?

5 APPRECIATE YOUR BEING HERE. I ALWAYS LIKE TO SEE
6 FAMILY MEMBERS AT ANY TYPE OF PROCEEDING.

7 YOU CAN HAVE A SEAT.

8 I DON'T KNOW ENOUGH ABOUT EVERYTHING THAT HAS
9 HAPPENED AT GLOBAL. OBVIOUSLY I HAVE READ THESE DECISIONS AND
10 KEPT UP WITH THIS WITHOUT HAVING WASTING YOUR TIME WITHOUT
11 WATCHING ALL OF THIS. JUST ON A LARGER SCALE. AND I DON'T
12 KNOW, GIVEN EVERYTHING ELSE THAT WAS HAPPENING IN OUR SOCIETY,
13 HOW, WHATEVER HAPPENED HERE FITS INTO THIS PICTURE, WHAT WAS
14 GOING ON WALL STREET, WHAT THE CULTURE, HOW THE CULTURE EVOLVES
15 AND HOW EVERYONE STARTS ADOPTING THE SAME ATTITUDE ABOUT WHAT
16 IS ACCEPTABLE AND NOT.

17 AND I ASSUME THAT THOSE WHO ARE SITTING IN NEW YORK
18 ON THE BENCH ARE SEEING A LOT MORE OF IT AND HAVE MUCH MORE
19 DEVELOPED OPINIONS THAN I DO. I'VE PERHAPS MORE DEVELOPED
20 OPINIONS ABOUT FRAUDS THAT ARE COMING IN FRONT OF ME EVERY DAY.
21 SO IT'S, YOU KNOW, I'M TRYING TO LOOK -- SOME OF MY QUESTIONS
22 ABOUT GLOBAL WAS JUST TRYING TO UNDERSTAND WHAT THAT WILL LOOK
23 LIKE. TO UNDERSTAND MORE ABOUT THIS DEFENDANT'S CONDUCT AS
24 WELL. BUT IT'S CERTAINLY A SAD DAY WHEN SOMEBODY, THIS
25 DEFENDANT HAS -- MR. MEGALLI, YOU OBVIOUSLY HAD AN ENORMOUS

1 AMOUNT OF EDUCATION AND SKILLS. AND IT'S A WASTE TO OUR
2 SOCIETY.

3 SO WHATEVER HAPPENS HEREAFTER AND WHATEVER PENALTY I
4 IMPOSE, I JUST WANT TO SAY -- BECAUSE I MIGHT NOT SEE YOU AGAIN
5 PERSONALLY -- I HOPE THAT YOU'RE ABLE TO CONTINUE THE WORK THAT
6 YOU WERE DOING, HOWEVER DIFFICULT IT WAS, ON THE VOLUNTEER
7 WORK. YOU HAVE A LOT TO CONTRIBUTE, A GREAT DEAL OF EDUCATION.
8 AND IT'S -- LIFE IS STRANGE IN A WAY THAT TERRIBLE MISFORTUNE
9 AND ERRORS OF JUDGMENT CAN END UP BEING USED TO BRING LIGHT AND
10 MEANING TO YOUR LIFE, TOO.

11 AND MAYBE I'M SPEAKING MORE AS A SENTENCING JUDGE IN
12 THAT REGARD, BUT WHEN I SEE SOMEBODY WITH ALL THE TALENT AND
13 EDUCATION YOU HAVE AND YOUR WIFE STANDING BY YOUR SIDE, YOUR
14 HAVING TWO SMALL CHILDREN, I GUESS I HAVE A DESIRE TO SAY THAT
15 YOU, YOU CAN MAKE A DIFFERENCE. I HOPE YOU WILL MAKE A
16 DIFFERENCE. I HOPE THAT THE HUNDRED HOURS IS NOT JUST 100
17 HOURS. OR 120 HOURS, BECAUSE TO THE EXTENT YOU RECONSTRUCT
18 YOUR LIFE AND ARE NOT PROFIT-DRIVEN AND BLIND TO THE
19 CONSEQUENCES OF YOUR CONDUCT, THERE'S AN EXTENT TO WHICH YOU
20 ARE GOING TO HELP OTHERS AS WELL.

21 AND THERE ARE MANY PEOPLE, WHETHER IN NEW ORLEANS OR
22 NEW YORK CITY, WHO NEED THE ASSISTANCE OF SOMEBODY SO TALENTED
23 AS YOU ARE. AND WHATEVER THE DIFFICULTIES YOU'VE HAD IN
24 FINDING WORK WITH A NONPROFIT, I DON'T THINK THAT THAT'S A -- I
25 DON'T THINK THAT'S GOING TO BE IN LOTS OF PLACES. YOU WILL

1 FIND YOUR NICHE. AND PEOPLE NEED YOU, AND PEOPLE NEED TO --
2 WHO HAVE REALLY BEEN IN THEIR OWN FORM OF DAMNATION, NEED A
3 HELPING HAND FROM SOMEBODY LIKE YOU. AND THE WAY THAT YOU
4 RESURRECT YOURSELF AND YOUR OWN CHILDREN AND YOUR WIFE IS THAT
5 WAY AS WELL.

6 SO I WISH YOU THE BEST OF LUCK, AS WELL AS YOUR WIFE
7 IN HER ARCHITECTURAL DEGREE.

8 AND, COUNSEL, YOU'VE BEEN MOST HELPFUL, BOTH OF YOU,
9 AND I APPRECIATE IT. AND IT'S REALLY A PLEASURE TO HEAR AN
10 ARGUMENT AND A DISPUTE SO WELL PRESENTED. VERY HELPFUL TO THE
11 COURT. THANK YOU.

12 MR. MONNIN: MAY I MAKE ONE SUGGESTIONS THAT MAY BE
13 HELPFUL? IF THE COURT IS INCLINED -- AND I THINK IT IS
14 IMPORTANT, PERHAPS, TO HAVE SUPPLEMENTAL BRIEFINGS, MAYBE JUST
15 HAVE US FILE AT THE SAME TIME AND JUST DO ONE BRIEF, AND YOU
16 CAN TELL US WHAT YOU'RE INTERESTED IN.

17 THE COURT: THAT WOULD BE FINE. THAT'S GREAT. AND
18 IF I'M INCLINED TO DO THAT, I'LL PROBABLY JUST TELL YOU, AS I
19 SAID, WHEN THE TIME, FROM ONE WEEK, WHATEVER THE CONCLUSION OF
20 HIS TRIAL IS, I'LL START THINKING ABOUT IT, REASONABLY ABOUT A
21 WEEK AFTERWARDS AFTER HE'S CHECKED ALL HIS E-MAILS AND ALL THE
22 CRAZINESS.

23 THANK YOU.

24 MR. HUDDLESTON: THANK YOU, JUDGE.

25 THE COURTROOM DEPUTY: ALL RISE. COURT'S IN RECESS.

(PROCEEDINGS CONCLUDED AT 5:22 P.M.)

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1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF GEORGIA

3 CERTIFICATE OF REPORTER

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6 I DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A
7 TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN DOWN BY
8 ME IN THE CASE AFORESAID.

9

THIS, THE 30TH DAY OF DECEMBER, 2015.

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/S/ ELIZABETH G. COHN

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ELIZABETH G. COHN, RMR, CRR
OFFICIAL COURT REPORTER

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