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

10 C 13 - 1292

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 vs.

15 JUAN CARLOS BERTINI,

16 Defendant.

Case No. \_\_\_\_\_

COMPLAINT

JCS

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

20 **SUMMARY OF THE ACTION**

21 1. This case involves unlawful insider trading by Juan Carlos Bertini (the  
22 "Defendant" or "Bertini") in the securities of Del Monte Foods Company ("Del Monte") in  
23 advance of Del Monte's November 25, 2010 announcement that it would be acquired by an  
24 investor group. Bertini, a vice president of Finance at Del Monte, worked on the buyout  
25 transaction for Del Monte and obtained material nonpublic information regarding the investor  
26 group's pending offer. As an employee of Del Monte, Bertini had a relationship of trust and  
27 confidence with the company and was regularly in possession of sensitive and confidential  
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RICHARD W. WIEKING  
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NORTHERN DISTRICT OF CALIFORNIA

1 information. In breach of his duties, Bertini misappropriated material nonpublic information  
2 about Del Monte's pending acquisition by the investor group, and used that nonpublic  
3 information to trade in Del Monte stock in his mother's account in advance of the public  
4 announcement of the acquisition. As a result of his illegal trading on material nonpublic  
5 information, Bertini realized profits of approximately \$16,035 on the purchase and sale of 8,000  
6 shares of Del Monte stock in his mother's account.  
7

8 2. After reaping profits on the trades, Bertini told Del Monte's outside counsel that  
9 he had no role in the trades, which caused false information to be supplied to the Financial  
10 Industry Regulatory Authority ("FINRA").

11 3. By engaging in the conduct alleged in this Complaint, Bertini violated the  
12 antifraud provisions of the federal securities laws, specifically Section 10(b) of the Securities  
13 Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17  
14 C.F.R. § 240.10b-5]. The Commission requests that the Court permanently enjoin Bertini from  
15 further violations of the antifraud provisions of the federal securities laws, order him to disgorge  
16 his unlawful profits and pay prejudgment interest thereon, impose a civil penalty, and enter an  
17 order prohibiting him from acting as an officer or director of any publicly traded company.  
18

19 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

20 4. The Commission brings this action under Section 21(d) of the Exchange Act [15  
21 U.S.C. § 78u(d)].  
22

23 5. This Court has jurisdiction over this action under Sections 21(d), 21(e), 21A, and  
24 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1 & 78aa]. Bertini, directly or  
25 indirectly, made use of the means or instrumentalities of interstate commerce, or the mails, or the  
26 facilities of a national securities exchange in connection with the transactions, acts, practices, and  
27 courses of business alleged in this Complaint.  
28



1 **FACTS**

2 **A. BERTINI HAD A SPECIAL RELATIONSHIP OF TRUST AND CONFIDENCE**  
3 **WITH DEL MONTE AND OWED A DUTY OF CONFIDENTIALITY TO DEL**  
4 **MONTE**

5 13. As an employee of Del Monte, Bertini occupied a position of trust and confidence  
6 with Del Monte and was subject to Del Monte's insider trading policy, which expressly  
7 prohibited employees from trading when in the possession of material nonpublic information. In  
8 his capacity as an employee of Del Monte, Bertini regularly possessed sensitive and confidential  
9 information.

10 **B. BERTINI LEARNED OF THE INVESTOR GROUP'S OFFER FOR DEL MONTE**

11 14. No later than November 11, 2010, Bertini learned of Centerview, KKR, and  
12 Vestar's (collectively, the "Investor Group") interest in acquiring the stock of Del Monte. Senior  
13 executives invited Bertini to join a select group of Del Monte employees tasked with providing  
14 information to the Investor Group and Del Monte's Board of Directors. At the kickoff meeting  
15 on November 11, 2010, Del Monte told Bertini and other employees that the potential acquisition  
16 of Del Monte was confidential. To maintain the confidentiality of the process, Del Monte code  
17 named its efforts as "Project Cambridge." For Project Cambridge, Bertini reported directly to Del  
18 Monte's Executive Committee, including its Chief Executive Officer and Chief Financial Officer,  
19 and worked on presenting to the Investor Group the financial reporting information of Del Monte,  
20 including Del Monte's operational costs, balance sheet, and inventory turns. Bertini's  
21 responsibilities included gathering and providing financial information to the Investor Group in  
22 advance of the announcement of the Investor Group's offer.

23 15. As a result and in his capacity as a vice president of Finance at Del Monte, Bertini  
24 learned of confidential information relating to the Investor Group's potential offer for Del Monte  
25 and potential acquisition prices for the company.  
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1           16. By nature of his position and internal discussions, Bertini knew that the Investor  
2 Group's proposed acquisition of Del Monte was a substantial transaction. The Investor Group's  
3 offer was at a significant premium to the trading price of Del Monte stock in the weeks and  
4 months leading up to the offer.  
5

6           **C. BERTINI TRADED ON THE BASIS OF MATERIAL NONPUBLIC**  
7           **INFORMATION IN BREACH OF HIS DUTY TO DEL MONTE**

8           17. Between November 18, 2010 and November 23, 2010, Bertini purchased shares of  
9 Del Monte stock at prices below the eventual acquisition price. While Bertini possessed his own  
10 brokerage accounts, Bertini traded the shares of Del Monte in his mother's brokerage account.  
11 He purchased 8,000 shares of Del Monte for a total cost of approximately \$135,000 and at an  
12 average price of approximately \$16.82 per share. Bertini completed this trade with full  
13 knowledge of the Investor Group's pending offer to acquire Del Monte.  
14

15           18. On November 25, 2010, Del Monte announced via a press release that the Investor  
16 Group had entered into an agreement to acquire Del Monte for \$19.00 per share. As a result of  
17 his trading in the stock of Del Monte prior to this announcement, Bertini profited in the amount of  
18 approximately \$16,035.  
19

20           **D. THE FINRA INQUIRY**

21           19. On March 15, 2011, FINRA contacted Del Monte to inquire about certain trading  
22 that had occurred prior to the November 25, 2010 announcement. In the course of the  
23 investigation, Del Monte's counsel questioned Bertini about the trades in his mother's account.  
24 During this questioning, Bertini provided inaccurate information regarding his involvement in the  
25 trades. He told counsel that he learned of his mother's purchases of Del Monte shares after she  
26 purchased them and after the acquisition was announced in late November 2010. Bertini asserted  
27 that his mother purchased the Del Monte shares after she read articles suggesting that Del Monte  
28

1 was going to be acquired. Bertini further claimed that he had conveyed to his mother that these  
2 trades were unacceptable, and that he had requested she sell all of the stock.

3 20. In truth, Bertini was responsible for the trading that had occurred in his mother's  
4 brokerage account.

5  
6 **CLAIM FOR RELIEF**

7 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**  
8 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

9 21. The Commission realleges and incorporates by reference ¶¶ 1 through 20, above.

10 22. The information concerning the Investor Group's acquisition of Del Monte was  
11 material and nonpublic. In addition, Del Monte considered the information to be confidential.

12 23. At all times relevant to the complaint, Bertini acted knowingly or recklessly.

13 24. Through his employment at Del Monte, Bertini learned material nonpublic  
14 information regarding the Investor Group's proposed offer for Del Monte. At all relevant times,  
15 Bertini knew, or acted reckless in not knowing, that he, directly and/or indirectly, owed Del  
16 Monte a fiduciary duty, or similar duty of trust or confidence, to maintain such information in  
17 confidence.

18 25. By engaging in the conduct described above, Bertini, directly or indirectly, in  
19 connection with the purchase or sale of securities, by use of the means or instrumentalities of  
20 interstate commerce, or the mails, or the facilities of a national securities exchange, with scienter:

- 21  
22 a. employed devices, schemes, or artifices to defraud;  
23 b. made untrue statements of material fact or omitted to state material facts  
24 necessary in order to make the statements made, in light of the circumstances  
25 under which they were made, not misleading; and/or  
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1 c. engaged in acts, practices, or courses of business which operate or would  
2 operate as a fraud or deceit upon any persons, including purchasers or sellers  
3 of the securities.

4  
5 26. By engaging in the foregoing conduct, Bertini violated, and unless enjoined will  
6 continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. [15 U.S.C. § 78j(b)], and Rule  
7 10b-5 thereunder [17 C.F.R. § 240.10b-5].

8 **PRAAYER FOR RELIEF**

9 WHEREFORE, the Commission respectfully requests that the Court:

10 **I.**

11 Issue findings of fact and conclusions of law that Defendant committed the alleged  
12 violations.

13 **II.**

14 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining  
15 Defendant and his officers, agents, servants, employees, and attorneys, and those person in active  
16 concert or participation with any of them, who receive actual notice of the judgment by personal  
17 service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and  
18 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

19 **III.**

20 Order Defendant to disgorge, with prejudgment interest, the illegal trading profits or ill-  
21 gotten gains received as a result of the conduct alleged in this Complaint.

22 **IV.**

23 Order Defendant to pay a civil penalty under Section 21A of the Exchange Act [15 U.S.C.  
24 § 78u-1].

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V.

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2), prohibiting Defendant from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d)].

VI.

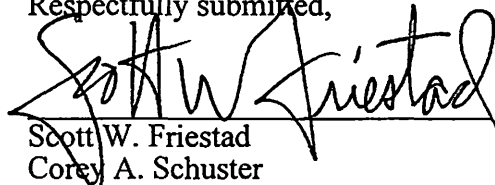
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: March 22, 2013 .

Respectfully submitted,



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