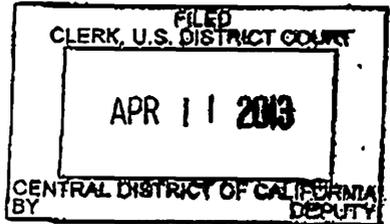


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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 SECURITIES AND EXCHANGE
COMMISSION
13
14 Plaintiff,
15
16 vs.
17 SCOTT LONDON AND BRYAN SHAW,
Defendants.

CV 13-02558 - RGA
Case No. (FJW)

COMPLAINT

18
19 Plaintiff Securities and Exchange Commission (the "SEC") alleges as
20 follows:

21 JURISDICTION AND VENUE

- 22 1. The SEC brings this action pursuant to Sections 21(d) and 21A of the
23 Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d) & 78u-1.
24 2. This Court has jurisdiction over this action pursuant to Sections 21(e),
25 21A and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e), 78u-1 & 78aa.
26 3. In connection with the conduct described in this complaint,
27 Defendants, directly or indirectly, made use of the means or instrumentalities of
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1 interstate commerce, or the mails, or the facilities of a national securities exchange.

2 4. Venue is proper in this district under Section 27 of the Exchange Act,
3 15 U.S.C. § 78aa, because a substantial portion of the conduct alleged in this
4 complaint occurred within the Central District of California. As alleged in this
5 complaint, much of the conduct arose out of Defendant Scott London's
6 misappropriation of material non-public information while he worked in Los
7 Angeles, California and out of Defendant Bryan Shaw's trading on that
8 information while living and working in Lake Sherwood and Encino, California,
9 respectively.

10 SUMMARY OF THE ACTION

11 5. This SEC enforcement action concerns insider trading by Defendants
12 Scott London ("London") and Bryan Shaw ("Shaw") between 2010 and 2012 in
13 the securities of five companies which were clients of KPMG LLP ("KPMG").
14 London, until his recent termination resulting from his conduct alleged in this
15 complaint, was a lead partner at KPMG and used his position at KPMG to
16 misappropriate material, non-public information regarding these five companies.
17 He passed this material, non-public information, which concerned the companies'
18 upcoming release of financial results and earnings or merger announcements, to his
19 friend and co-Defendant Shaw, who then traded in the companies' securities using
20 that information.

21 6. By providing Shaw with material, non-public information concerning
22 KPMG clients, London breached a duty of trust and confidence that he owed to
23 KPMG and clients he audited. London and Shaw have both admitted their illegal
24 conduct. London also notified KPMG of his actions on or about April 5, 2013,
25 causing the firm to immediately terminate him.

26 7. Shaw made at least \$1.27 million in illicit profits by knowingly
27 trading on the material, non-public information that London provided him in
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1 violation of London's duty of trust and confidence owed to KPMG and clients he
2 audited. In exchange for this information, Shaw paid London \$50,000 in cash and
3 provided him with jewelry, meals and tickets to entertainment events, as well as
4 other benefits.

5 8. By engaging in this conduct, Defendants London and Shaw violated
6 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule
7 10b-5, 17 C.F.R. § 240.10b-5. The SEC, therefore, seeks permanent injunctions
8 prohibiting future violations, disgorgement of ill-gotten gains together with
9 prejudgment interest, and civil penalties.

10 DEFENDANTS

11 9. Scott London, CPA, age 50, resides in Agoura Hills, California.
12 Until his termination on April 5, 2013, London was the partner in charge of
13 KPMG's Pacific Southwest audit practice. He had been employed by KPMG since
14 1984, and has been licensed as a CPA in California since 1987. London is licensed
15 as a CPA in Nevada as well.

16 10. Bryan Shaw, age 52, resides in Lake Sherwood, California. Shaw is
17 the owner and operator of a jewelry business located in Encino, California.

18 RELEVANT ENTITIES

19 11. KPMG LLP is a Delaware limited liability partnership and the U.S.
20 member firm of the KPMG network of independent member firms affiliated with
21 KPMG International Cooperative, a Swiss entity. KPMG is registered with the
22 Public Company Accounting Oversight Board. At all relevant times and
23 continuing to the present, KPMG has provided auditing and other services to a
24 variety of companies whose securities are registered with the SEC and traded in
25 U.S. markets.

26 12. Herbalife, Ltd. ("Herbalife") is a Cayman Islands corporation whose
27 offices are located in Los Angeles, California. Herbalife is a global network
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1 marketing company that sells weight loss, nutritional supplements, and other
2 products through a network of independent distributors. Herbalife's common stock
3 is registered with the SEC pursuant to Section 12(b) of the Exchange Act, and its
4 shares trade on the New York Stock Exchange. Until April 8, 2013, Herbalife was
5 a KPMG audit client. On April 9, 2013, Herbalife filed a Form 8-K announcing
6 that KPMG had concluded it was not independent because of alleged insider
7 trading in the company's securities by one of KPMG's former partners. KPMG
8 resigned as Herbalife's auditor and withdrew its previously issued audit reports for
9 the fiscal years ended December 31, 2010, 2011 and 2012.

10 13. **Skechers USA, Inc.** ("Skechers") is a Delaware corporation whose
11 offices are located in Manhattan Beach, California. Skechers designs and markets
12 footwear for men and women. Skechers's common stock is registered with the
13 SEC pursuant to Section 12(b) of the Exchange Act, and its shares are traded on
14 the New York Stock Exchange. Until April 8, 2013, Skechers was a KPMG audit
15 client. On April 9, 2013, Skechers filed a Form 8-K announcing that KPMG had
16 concluded it was not independent because of alleged insider trading in the
17 company's securities by one of KPMG's former partners. KPMG resigned as
18 Skechers' auditor and withdrew its previously issued audit reports for the fiscal
19 years ended December 31, 2011 and 2012.

20 14. **Deckers Outdoor Corp.** ("Deckers") is a Delaware corporation
21 whose offices are located in Goleta, California. Deckers is a designer, producer,
22 marketer and brand manager of footwear, apparel and accessories. Deckers's
23 common stock is registered with the SEC pursuant to Section 12(b) of the
24 Exchange Act, and its shares are traded on the Nasdaq Global Select Market.
25 Deckers is a KPMG audit client.

26 15. **RSC Holdings, Inc.** ("RSC Holdings") was a Delaware corporation
27 whose offices were located in Scottsdale, Arizona. RSC Holdings was an
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1 London has admitted that he was trying to help Shaw due to his economic
2 situation.

3 20. Shaw knew, or was reckless in not knowing, that the information
4 London was providing him was non-public, and that London should not have been
5 doing so. Shaw also knew, or was reckless in not knowing, that he should not have
6 traded on the basis of the information he received from London.

7 21. Shaw and London communicated about the non-public information
8 almost exclusively using their cellular telephones, although on at least one
9 occasion, London disclosed non-public information in the presence of others
10 during a golf outing.

11 **B. London and Shaw Engaged in Insider Trading**

12 **1. Trading in Advance of Earnings Announcements and Releases of**
13 **Financial Results for Herbalife, Skechers and Deckers**

14 22. London was the lead audit partner at KPMG for Herbalife and
15 Skechers, and therefore was able to obtain material, non-public information
16 regarding each company before each company announced its earnings or issued its
17 financial results. He was also the KPMG account executive for Deckers and
18 therefore was able to obtain material, non-public information regarding Deckers
19 before its earnings announcements.

20 23. Prior to public announcements, Shaw received material non-public
21 information from London about numerous earnings announcements and releases of
22 financial results for Herbalife, Skechers and Deckers. Shaw traded upon that
23 information by purchasing either options or stock, which he then sold following
24 these announcements and releases. London provided material non-public
25 information and Shaw traded on the following announcements and releases:

26 (a) The earnings announcement for Deckers's third quarter 2010
27 results took place on October 28, 2010. On that same date, and in advance of the
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1 earnings announcement, Shaw purchased 25 call options for Deckers common
2 stock. Deckers's stock price increased 7.6% after the announcement.

3 (b) Herbalife's Form 10-Q for the third quarter of 2010 was
4 released on November 1, 2010. On October 27 and October 28, 2010, in advance
5 of the release, Shaw purchased 35 call options for Herbalife common stock.
6 Herbalife's stock price increased 3.38% after its Form 10-Q was released.

7 (c) The earnings announcement for Skechers's fourth quarter 2010
8 results took place on February 16, 2011. Between January 25 and February 16,
9 2011, Shaw placed over 20 telephone calls to London. On February 15 and 16,
10 2011, in advance of the earnings announcement, Shaw purchased 215 put options
11 for Skechers common stock. Skechers's stock price did not materially change
12 following the announcement.

13 (d) Herbalife's Form 10-K for the fiscal year ended December 31,
14 2010 was released on February 22, 2011. Between January 25 and February 22,
15 2011, Shaw placed over 20 telephone calls to London. Between January 27 and
16 February 16, 2011, in advance of the release, Shaw purchased 210 call options and
17 1,300 shares of Herbalife common stock. Herbalife's stock price increased 9.16%
18 after its Form 10-K was released.

19 (e) The earnings announcement for Skechers's first quarter 2011
20 results took place on April 27, 2011. Between April 1 and April 25, 2011, Shaw
21 placed at least ten telephone calls to London. Between April 19 and April 26,
22 2011, in advance of the earnings announcement, Shaw purchased 425 put options
23 for Skechers common stock. Skechers's stock price declined 7.5% after the
24 earnings announcement.

25 (f) Herbalife's Form 10-Q for the first quarter of 2011 was released
26 on May 2, 2011. Between April 1 and April 30, 2011, Shaw placed more than 10
27 telephone calls to London. Between April 27 and May 2, 2011, in advance of the
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1 release, Shaw purchased 305 call options for Herbalife common stock. Herbalife's
2 stock price increased 13.26% after its Form 10-Q was released.

3 (g) The earnings announcement for Skechers's second quarter 2011
4 results took place on July 27, 2011. Between July 15 and July 25, 2011, Shaw
5 placed three telephone calls to London. Between July 19 and July 21, 2011, in
6 advance of the earnings announcement, Shaw purchased 1,195 put options and
7 short sold 10,000 shares of Skechers's common stock. Skechers's stock price
8 increased 18.5% after the announcement.

9 (h) Herbalife's Form 10-Q for the second quarter of 2011 was
10 released on August 1, 2011. Between July 15 and August 1, 2011, Shaw placed six
11 telephone calls to London. Between July 22 and August 1, 2011, in advance of the
12 release, Shaw purchased 769 call options and 5,000 shares of Herbalife common
13 stock. Herbalife's stock price increased 5.68% after its Form 10-Q was released.

14 (i) The earnings announcement for Skechers's third quarter 2011
15 results took place on October 26, 2011. Shaw and London spoke by telephone on
16 October 26, 2011 for seven minutes. On October 26, 2011, in advance of the
17 earnings announcement, Shaw purchased 140 put options for Skechers common
18 stock. Skechers's stock price declined 5.5% after the announcement.

19 (j) The earnings announcement for Deckers's third quarter 2011
20 results took place on October 27, 2011. Shaw and London spoke by telephone on
21 October 26, 2011 for seven minutes. On October 26, 2011, in advance of the
22 earnings announcement, Shaw purchased 55 call options for Deckers common
23 stock. Deckers's stock price increased 10.8% after the announcement.

24 (k) Herbalife's Form 10-K for the fiscal year ended December 31,
25 2011 was released on February 21, 2012. Between February 6 and February 21,
26 2012, Shaw placed over 15 telephone calls to London. Between February 10 and
27 February 21, 2012, in advance of the release, Shaw purchased 345 call options for
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1 Herbalife common stock. Herbalife's stock price increased 6.96% after its Form
2 10-K was released.

3 (l) The earnings announcement for Deckers's fourth quarter 2011
4 results took place on February 23, 2012. Between February 6 and February 23,
5 2012, Shaw placed over 15 telephone calls to London. On February 22 and
6 February 23, 2012, in advance of the earnings announcement, Shaw purchased 155
7 put options for Deckers common stock. Deckers's stock price declined 13.8%
8 after the announcement.

9 (m) The earnings announcement for Deckers's first quarter 2012
10 results took place on April 26, 2012. Between April 17 and April 26, 2012, Shaw
11 placed at least five telephone calls to London. Between April 19 and April 26,
12 2012, in advance of the earnings announcement, Shaw purchased 222 put options
13 for Deckers common stock. Deckers's stock price declined 25.38% after the
14 announcement.

15 24. Shaw realized gross profits of at least \$714,389 from the trades
16 identified and described in sub-paragraphs 23(a)-(m) above.

17 **2. Trading in Advance of Merger Announcements for RSC Holdings**
18 **and Pacific Capital**

19 **a. The RSC Holdings and United Rentals Merger**

20 25. RSC Holdings was a KPMG audit client until at least December 2011.
21 On December 15, 2011, United Rentals, Inc. ("United Rentals") announced that it
22 was acquiring RSC Holdings for \$18 per share, in a cash and stock transaction
23 valued at \$1.9 billion.

24 26. In advance of this announcement, London learned information about
25 RSC Holdings's upcoming merger with United Rentals while in KPMG's Phoenix
26 office on other business. London initiated a call to Shaw on December 14, 2011
27 and shared with Shaw material, non-public information concerning the merger.
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1 27. Acting on London's tip, between December 14 and 15, 2011, and in
2 advance of the announcement of the merger, Shaw purchased 27,000 shares of
3 RSC Holdings common stock. Following the announcement of the merger, RSC
4 Holdings's stock increased 58%, on volume of 63 million shares, compared to the
5 prior day's volume of less than one million shares. Shaw sold his RSC Holdings
6 stock shortly after the announcement, and realized a profit of at least \$191,000.

7 **b. The Pacific Capital and Union Bank Merger**

8 28. Pacific Capital was a KPMG audit client until at least March 2012.
9 On March 9, 2012, UnionBanCal Corporation ("Union Bank") announced that it
10 had acquired Pacific Capital for \$46 per share in a transaction valued at \$1.5
11 billion.

12 29. Based on his position at KPMG, London had access to non-public
13 information concerning Pacific Capital and its upcoming merger with Union Bank
14 in advance of the merger announcement. Sometime in early February 2012,
15 London tipped Shaw and provided him with material, non-public information
16 about the merger.

17 30. Acting on London's tip, between February 8 and March 9, 2012, and
18 in advance of the announcement of the merger, Shaw purchased 12,225 shares of
19 Pacific Capital common stock and 120 call options. After the announcement,
20 Pacific Capital's stock increased 57% on increased trading volume of 2.1 million
21 shares, as compared to 13,000 shares traded on the prior day. Shaw ultimately
22 realized a profit of at least \$365,000 on the Pacific Capital stock and call options
23 he purchased.

24 **C. Shaw's Kickbacks to London**

25 31. Shaw compensated London for passing him non-public information.
26 Shaw paid London over \$50,000 in cash, which he usually delivered to London in
27 bags outside of Shaw's Encino, California jewelry store. Additionally, Shaw
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1 routinely covered the costs of dinners and concerts the two men shared along with
2 their families, even though London's income was significantly higher than Shaw's.
3 Finally, Shaw gave London several pieces of expensive jewelry for his wife, and
4 gave London a Rolex watch that Shaw valued at \$12,000.

5 32. London received approximately \$50,000 in compensation in cash,
6 jewelry, and entertainment expenses in exchange for the information he provided
7 to Shaw. In making tips to Shaw, London also obtained personal benefits,
8 including, without limitation, reputational enhancement as a source of stock tips,
9 gratitude for being the cause of trading profits, and the ability, through his
10 misappropriation of information concerning corporate announcements and pending
11 acquisitions and attendant breach of duty to his employer and its clients, to confer
12 "gifts" of trading profits on his friend.

13 **D. The Aftermath**

14 33. On or about April 4 or 5, 2013, London informed KPMG that he was
15 under investigation by the SEC and criminal authorities for insider trading in the
16 securities of several of KPMG's clients. KPMG promptly terminated London. On
17 April 8, 2013, KPMG announced that it was "resigning two clients after
18 concluding today that the firm's independence has been impacted as a result
19 [London's] behavior, and we have informed those companies it is necessary to
20 withdraw our auditor reports." KPMG resigned as the auditor of Herbalife and
21 Skechers, and withdrew its audit reports for Herbalife's fiscal years 2010, 2011
22 and 2012, and its audit reports for Skechers's fiscal years 2011 and 2012. Both
23 companies filed Form 8-Ks announcing this news on April 9, 2013, and there was
24 a temporary halt in the trading in the securities of both issuers that day.

25 34. On the afternoon of April 9, 2013, London publicly released a
26 statement in which he expressed his regret for his "actions in leaking non-public
27 data to a third-party regarding the clients [he] served for KPMG." The statement,
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1 which does not name Shaw, further states that his tips were done “in an effort to
2 help out someone whose business was struggling,” and that he “spoke on the
3 phone” with Shaw, providing him with “suggestion[s]” as to which stocks to
4 purchase, and that Shaw “traded on the information.” The full text of London’s
5 April 9th statement is reprinted in the attached Appendix A.

6 35. Shaw also issued a public statement on April 10, 2013, in which he
7 similarly expressed regret for his “wrongful conduct.” In his statement, he stated
8 that “[d]uring 2010 through 2012, I received non-public information from Scott
9 London about a number of companies and then profited substantially from stock
10 trades based upon that information.” He further stated: “I accept full and complete
11 responsibility for what I have done” and “expect that my actions will result in
12 significant civil and criminal consequences.” The full text of Shaw’s April 10th
13 statement is reprinted in the attached Appendix B.

14 **E. London’s Breach of His Fiduciary Duty to KPMG and Its Audit Clients**

15 36. As a partner at KPMG, London owed a fiduciary duty of trust and
16 confidence to KPMG. As a fiduciary, he was obligated to keep his firm’s client
17 information confidential and not to misappropriate it for his own financial or
18 personal benefit.

19 37. As the lead KPMG audit partner for Herbalife and Skechers, London
20 was also a temporary insider of Herbalife and Skechers, and therefore owed a
21 fiduciary duty of trust and confidence to those clients. Herbalife and Skechers
22 shared confidential information about their respective earnings and financial results
23 for the corporate purpose of allowing KPMG to conduct its audits and reviews of
24 the companies’ financial results. London owed a duty to these clients and
25 breached this duty when he tipped Shaw in advance of the earnings announcements
26 and release of financial results by Herbalife and Skechers.

27 38. By providing Shaw with the material non-public information that
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1 London misappropriated from KPMG and its audit clients, London breached a duty
2 of trust or confidence he owed to KPMG and its audit clients.

3 **F. Materiality of the Non-Public Information Provided by London to Shaw**

4 39. For each of the instances described above where London
5 misappropriated confidential and non-public information about KPMG clients and
6 provided that information to Shaw, that information was material because it would
7 be important to a reasonable investor in making his or her investment decision.
8 There is a substantial likelihood that the disclosure of the information
9 misappropriated by London and on which Shaw traded would have been viewed by
10 a reasonable investor as having significantly altered the total mix of information
11 available to investors.

12 **G. Defendants' Scienter**

13 40. London has admitted that he knew that passing material non-public
14 information to Shaw was wrong, and acknowledged taking annual ethics training at
15 KPMG which explicitly prohibited employees from disclosing inside information
16 regarding clients.

17 41. Because of his experience as an audit partner at KPMG with
18 responsibility for auditing publicly-traded companies, London was, or should have
19 been, familiar with the federal securities laws concerning insider trading.

20 42. London knew or was reckless in not knowing that if he obtained
21 access to confidential information in the course of his work at KPMG that he
22 should maintain such information in confidence and not use that information to his
23 personal benefit.

24 43. Shaw acted with scienter by trading in the securities of Herbalife,
25 Skechers, Deckers, RSC Holdings and Pacific Capital while he was aware of
26 material, non-public information he obtained from London.

27 44. At all relevant times, Shaw knew, or was reckless in not knowing, that
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1 London, due to his position in the audit services unit at KPMG, had access to
2 material, non-public information about earnings releases, financial results and
3 prospective mergers involving KPMG's audit clients.

4 45. Shaw knew, or was reckless in not knowing, that if he obtained access
5 to confidential information to which London had access in connection with his
6 employment at KPMG, that Shaw should maintain such information in confidence
7 and not use that information to his personal benefit.

8 46. Shaw knew, or was reckless in not knowing, that the information
9 provided to him by London regarding Herbalife, Skechers, Deckers, RSC Holdings
10 and Pacific Capital was confidential and material, non-public information.

11 **CLAIM FOR RELIEF**

12 **Fraud In Connection With The Purchase Or Sale Of Securities**

13 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

14 47. The SEC realleges and incorporates by reference paragraphs 1
15 through 46 above.

16 48. As alleged above, while a partner at KPMG, Defendant London
17 learned material non-public information concerning KPMG audit clients. At all
18 relevant times, London owed KPMG and its audit clients a fiduciary duty, or
19 similar duty of trust or confidence, to maintain such information in confidence.

20 49. London, in breach of fiduciary duty or similar relationship of trust or
21 confidence owed to KPMG and its audit clients, misappropriated the material, non-
22 public information described above from KPMG and its audit clients in breach of
23 his duties to them and used that information to tip Shaw, with whom he had a
24 friendship.

25 50. Shaw knew, or was reckless in not knowing, that the information he
26 received from London was material, non-public information that London had
27 misappropriated from KPMG and its clients, and that it was unlawful for Shaw to
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1 use the information for his benefit.

2 51. Shaw used the information he received from London to purchase and
3 trade securities in Herbalife, Skechers, Deckers, RSC Holdings and Pacific Capital
4 for his own benefit.

5 52. The misappropriated information was material because it would be
6 important to a reasonable investor in making his or her investment decision. There
7 is a substantial likelihood that the disclosure of the misappropriated information
8 would have been viewed by a reasonable investor as having significantly altered
9 the total mix of information available to investors.

10 53. At all relevant times, London and Shaw acted knowingly and/or
11 recklessly by misappropriating material, non-public information about the earnings
12 announcements and financial results of Herbalife, Skechers and Deckers, and the
13 acquisitions of RSC Holdings and Pacific Capital, and, in Shaw's case, purchasing
14 and trading in the securities of those issuers on the basis of that information.
15 Because he was aware of the material non-public information at the time he
16 purchased the securities, Shaw traded on the basis of that material non-public
17 information.

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

- 22 a. employed devices, schemes, or artifices to defraud;
- 23 b. made untrue statements of material facts or omitted to state
24 material facts necessary in order to make the statements made,
25 in light of the circumstances under which they were made, not
26 misleading; and/or

1 c. engaged in acts, practices, or courses of business which
2 operated or would operate as a fraud or deceit upon any person.

3 55. By engaging in the foregoing conduct, London and Shaw violated,
4 and unless enjoined will continue to violate, Section 10(b) of the Exchange Act, 15
5 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the SEC respectfully requests that the Court:

8 **I.**

9 Issue findings of fact and conclusions of law that London and Shaw
10 committed the alleged violations.

11 **II.**

12 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
13 permanently enjoining Defendants London and Shaw and their agents, servants,
14 employees, attorneys and those persons in active concert or participation with
15 them, who receive actual notice of the order by personal service or otherwise, from
16 violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
17 thereunder, 17 C.F.R. § 240.10b-5.

18 **III.**

19 Order London and Shaw to disgorge the illegal trading profits described
20 herein, plus prejudgment interest.

21 **IV.**

22 Order London and Shaw to pay civil penalties under Section 21A of the
23 Exchange Act, 15 U.S.C. § 78u-1.

24 **V.**

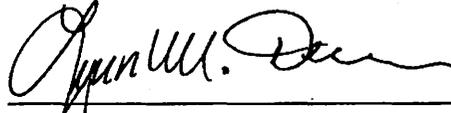
25 Retain jurisdiction of this action in accordance with the principles of equity
26 and the Federal Rules of Civil Procedure in order to implement and carry out the
27 terms of all orders and decrees that may be entered, or to entertain any suitable
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1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

2 VI.

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

5 Dated: April 11, 2013



6 Lynn M. Dean
7 William S. Fiske
8 Attorneys for Plaintiff
9 Securities and Exchange Commission
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