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18 Securities and Exchange Commission

19 **UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

20 SECURITIES AND EXCHANGE  
21 COMMISSION,

22 Plaintiff,

23 v.

24 JAMES V. MAZZO, DAVID L.  
PARKER, and EDDIE C. MURRAY,

25 Defendants.

Case No. *SAcv 12-1327 JST (JPRc)*

**COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS**

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1 Plaintiff Securities and Exchange Commission (the "Commission") alleges as  
2 follows:

3 **SUMMARY OF THE ACTION**

4 1. This case involves unlawful insider trading by James V. Mazzo  
5 ("Mazzo"), David L. Parker ("Parker"), Eddie C. Murray ("Murray"), and others in  
6 advance of the January 12, 2009 public announcement that Abbott Laboratories, Inc.  
7 ("Abbott") agreed to acquire the outstanding shares of Advanced Medical Optics,  
8 Inc. (hereinafter referred to by its former New York Stock Exchange ticker symbol,  
9 "EYE") through a tender offer (the "EYE/Abbott Transaction"). Throughout this  
10 complaint, Mazzo, Parker, and Murray will be referred to collectively as the  
11 "Defendants." The Court has jurisdiction over this action pursuant to Sections 21A  
12 and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C.  
13 §§ 78u-1 and 78aa].

14 2. Mazzo, who at the time was the Chairman and Chief Executive Officer  
15 of EYE, tipped material, nonpublic information about the EYE/Abbott Transaction  
16 to his friend and neighbor, Douglas V. DeCinces ("DeCinces"), before the public  
17 announcement of the EYE/Abbott Transaction. Mazzo had access to material,  
18 nonpublic information regarding the impending EYE/Abbott Transaction because he  
19 was directly involved with the transaction, and Mazzo knew that the information  
20 should be kept confidential.

21 3. In the weeks preceding the public announcement, Mazzo tipped  
22 DeCinces the material, nonpublic information regarding the impending EYE/Abbott  
23 Transaction in breach of a duty Mazzo owed to EYE's shareholders. DeCinces used  
24 the material, nonpublic information in breach of a duty. DeCinces bought 90,700  
25 shares of EYE in several brokerage accounts he controlled on the basis of the  
26 material, nonpublic information regarding the impending EYE/Abbott Transaction  
27 that he received from Mazzo.

1           4.     On January 12, 2009, EYE publicly announced that it had entered into  
2 an agreement for Abbott to acquire EYE for \$22 per share through a tender offer.  
3 On the day of the public announcement, EYE's stock price closed at \$21.50 per  
4 share, which was an increase of \$12.65 per share, approximately 143% over the prior  
5 trading day's closing price.

6           5.     Following the public announcement, DeCinces sold the 90,700 EYE  
7 shares for a profit of approximately \$1,386,306.

8           6.     In addition, DeCinces tipped material, nonpublic information that he  
9 received from Mazzo regarding the impending EYE/Abbott Transaction to at least  
10 five individuals: Parker, Murray, Joseph J. Donohue ("Donohue"), Fred Scott  
11 Jackson ("Jackson"), and Roger A. Wittenbach ("Wittenbach"). After receiving the  
12 material, nonpublic information from DeCinces, Parker, Murray, Donohue, Jackson,  
13 and Wittenbach each traded EYE stock on the basis of the material, nonpublic  
14 information that he received from DeCinces.

15           7.     Specifically, Parker bought 25,000 shares of EYE stock on the basis of  
16 DeCinces' tip before the public announcement. Parker sold all of his EYE stock  
17 following the public announcement of the EYE/Abbott Transaction and profited by  
18 approximately \$347,920.

19           8.     Murray bought 17,000 shares of EYE stock on the basis of DeCinces'  
20 tip before the public announcement. Murray sold all of his EYE stock following the  
21 public announcement of the EYE/Abbott Transaction and profited by approximately  
22 \$235,314.

23           9.     Donohue bought 5,000 shares of EYE stock on the basis of DeCinces'  
24 tip before the public announcement. Donohue sold all of his EYE stock following  
25 the public announcement of the EYE/Abbott Transaction and profited by  
26 approximately \$75,570.

27           10.    Jackson bought 11,000 shares of EYE stock on the basis of DeCinces'  
28 tip before the public announcement. Jackson sold all of his EYE stock following the

1 public announcement of the EYE/Abbott Transaction and profited by approximately  
2 \$140,259.

3 11. Wittenbach bought 15,000 shares of EYE stock on the basis of  
4 DeCinces' tip before the public announcement. Wittenbach sold all of his EYE  
5 stock following the public announcement of the EYE/Abbott Transaction and  
6 profited by approximately \$201,692. Wittenbach also directed his sister to purchase  
7 EYE stock on the basis of the information he received from DeCinces. On the basis  
8 of his recommendation, she bought 1,000 shares of EYE stock before the public  
9 announcement, sold all of her EYE stock after the public announcement, and  
10 profited by approximately \$13,214.

11 12. Collectively, Parker, Murray, DeCinces, Donohue, Jackson, and  
12 Wittenbach realized \$2,400,275 in illicit profits (including the trades Wittenbach  
13 directed in his sister's account).

14 13. By knowingly or recklessly engaging in the conduct described in this  
15 complaint, Mazzo, Parker, and Murray violated and, unless enjoined, will continue  
16 to violate 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] and Section 14(e) of the Exchange Act [15  
18 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

19 14. The Commission seeks Final Judgments: (a) permanently restraining  
20 and enjoining Defendants from, directly or indirectly, engaging in conduct in  
21 violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5  
22 thereunder [17 C.F.R. § 240.10b-5] and from engaging in conduct in violation of  
23 Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder  
24 [17 C.F.R. § 240.14e-3]; (b) ordering Defendants to disgorge the unlawful trading  
25 profits derived from the activities set forth in this complaint, together with  
26 prejudgment interest thereon; (c) ordering defendant Mazzo to pay disgorgement and  
27 prejudgment interest with respect to unlawful trading profits obtained by DeCinces  
28 and persons tipped by DeCinces, derived from the activities set forth in this

1 complaint, together with prejudgment interest thereon; (d) ordering Defendants to  
2 pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];  
3 (e) pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)],  
4 prohibiting defendant Mazzo from acting as an officer or director of any issuer that  
5 has a class of securities registered pursuant to Section 12 of the Exchange Act [15  
6 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the  
7 Exchange Act [15 U.S.C. § 78o(d)]; and (f) granting such other and further relief as  
8 this Court may deem just, equitable, or necessary.

### 9 JURISDICTION AND VENUE

10 15. The Commission brings this action pursuant to Section 21A of the  
11 Exchange Act [15 U.S.C. § 78u-1] to enjoin such acts, practices, and courses of  
12 business and to obtain disgorgement, prejudgment interest, civil money penalties,  
13 and such other and further relief as the Court may deem just and appropriate.

14 16. The Court has jurisdiction over this action pursuant to Sections 21A and  
15 and 27 of the Exchange Act [15 U.S.C. §§ 78u-1 and 78aa].

16 17. Venue in this district is proper pursuant to Section 27 of the Exchange  
17 Act [15 U.S.C. § 78aa]. Among other things, certain of the acts, practices, and  
18 courses of business constituting the violations of the federal securities laws alleged  
19 herein occurred within the Central District of California.

### 20 DEFENDANTS

21 18. **James V. Mazzo**, age 55, currently resides in or around Laguna Beach,  
22 California. From 2002 to 2006, Mazzo was the President and Chief Executive  
23 Officer of EYE, and, from 2006 to at least January 2009, Mazzo was the Chairman  
24 and Chief Executive Officer of EYE. Mazzo is currently an executive officer at  
25 Abbott, holding the position of Senior Vice President, Abbott Medical Optics.

26 19. **David L. Parker**, age 60, currently resides in or around Provo, Utah.  
27 Parker is a Managing Partner and Principal at a general partnership located in or  
28 around Irvine, California, that is engaged in private equity investment, investment

1 banking, and venture capital transactions. Parker is also the Chief Executive Officer  
2 of a privately-held health food company headquartered in or around Draper, Utah.

3 20. **Eddie C. Murray**, age 56, currently resides in or around Santa Clarita,  
4 California. Murray was a Major League Baseball player from 1977 to 1997. From  
5 1977 to 1988, he was a first baseman for the Baltimore Orioles. Murray and  
6 DeCinces were Baltimore Orioles teammates from 1977 to 1981. After DeCinces  
7 left the Baltimore Orioles, DeCinces and Murray maintained, and currently have, a  
8 close friendship.

9 **RELATED PERSONS AND ENTITY**

10 21. **DeCinces**, age 61, currently resides in or around Laguna Beach,  
11 California. DeCinces was a Major League Baseball player from 1973 to 1987.  
12 Currently, DeCinces is the President and Chief Executive Officer of a real estate  
13 development firm in or around Irvine, California.

14 22. **Donohue**, age 50, currently resides in or around Trabuco Canyon,  
15 California. Donohue is a physical therapist licensed in the State of California and is  
16 the owner of a physical therapy practice located in or around Newport Beach,  
17 California. From at least August 2004 through January 2009, DeCinces was one of  
18 Donohue's clients.

19 23. **Jackson**, age 66, currently resides in or around Newport Beach,  
20 California. Jackson is a real estate lawyer who has been licensed to practice law in  
21 the State of California since 1972. Jackson is a founding member and shareholder of  
22 a California law firm.

23 24. **Wittenbach**, age 70, currently resides in or around Lutherville-  
24 Timonium, Maryland. Wittenbach is the Chairman and Chief Executive Officer of a  
25 privately-held company headquartered in or around Sparks, Maryland.

26 25. **Advanced Medical Optics, Inc.** (or "EYE") was a manufacturer of  
27 medical products for the eye that was headquartered in or around Santa Ana,  
28 California. It now operates as a subsidiary of Abbott called Abbott Medical Optics,

1 Inc. Before the January 12, 2009 public announcement that Abbott would acquire  
2 EYE through a tender offer, EYE traded on the New York Stock Exchange under the  
3 ticker symbol "EYE."

4 **FACTS**

5 **A. Mazzo Possessed Material, Nonpublic Information Regarding the**  
6 **Impending EYE/Abbott Transaction**

7 26. Mazzo, as the Chairman and Chief Executive Officer of EYE, knew or  
8 should have known that that he had a duty to the shareholders of EYE not to discuss  
9 or to disclose information about the impending EYE/Abbott Transaction to  
10 individuals outside of EYE. Also, Mazzo received company policies or procedures  
11 regarding confidentiality and insider trading, knew that he was required to abide by  
12 the policies or procedures, and agreed to do so.

13 27. Mazzo was directly involved in the impending EYE/Abbott Transaction  
14 from its inception in October 2008. Mazzo knew that EYE's Code of Ethics and its  
15 incorporated "Insider Trading Policy" clearly set forth that he had a duty not to  
16 disclose confidential information to anyone outside the company. Indeed, EYE's  
17 Insider Trading Policy specifically identified "news of a pending or proposed merger  
18 or acquisition, or a tender offer or exchange offer," "news of a significant sale of  
19 assets or the disposition of a significant subsidiary," and "changes in management"  
20 as examples of what it considered to be "material non-public information." In  
21 addition, on December 3, 2007, Mazzo signed EYE's "Statement of Policies and  
22 Procedures For the Board of Directors," which stated in part: "In connection with  
23 the performance of their duties as directors, Board members can expect that they  
24 may periodically (and sometimes for substantial periods of time) be in possession of  
25 non-public information relating to the business, operations, financial condition, plans  
26 or prospects of the Company. All such information must be held in strictest  
27 confidence." (Emphasis added.)

1           **B. Mazzo and DeCinces Were Close Friends**

2           28. Since well before Mazzo tipped DeCinces and during the relevant time  
3 period, Mazzo and DeCinces were close friends.

4           29. Mazzo and DeCinces lived very close to one another in the same  
5 neighborhood, which was part of an exclusive gated community in Laguna Beach,  
6 California.

7           30. Mazzo and DeCinces communicated frequently with one another, by e-  
8 mail, in person, and through telephone calls; they and their wives socialized together  
9 often; they attended social events together; they belonged to the same Orange  
10 County country club; and they vacationed together overseas.

11           31. Mazzo invested in DeCinces' son's restaurant business. And DeCinces'  
12 daughter provided interior decorating services for Mazzo and his wife.

13           **C. Mazzo Tipped Material, Nonpublic Information to DeCinces**  
14                   **Regarding the Impending EYE/Abbott Transaction, and DeCinces**  
15                   **Traded on the Basis of Mazzo's Tip**

16           32. During the week of October 13, 2008, an investment bank, at EYE's  
17 request, contacted Abbott to see if it was interested in an acquisition of or strategic  
18 transaction with EYE. Abbott expressed an interest in an acquisition of or strategic  
19 transaction with EYE. Mazzo and a senior executive of Abbott met for dinner on  
20 October 22, 2008, to discuss the possibility of an acquisition or similar merger  
21 transaction involving Abbott and EYE.

22           33. On October 23, 2008, Mazzo sent DeCinces an e-mail message, which  
23 was part of a larger e-mail chain. Mazzo's e-mail message suggested, among other  
24 things, that the two talk when DeCinces returned from a trip.

25           34. On October 24, 2008, Mazzo, as EYE's Chairman and Chief Executive  
26 Officer, executed a nondisclosure agreement between EYE and Abbott, which  
27 allowed Abbott to conduct its due diligence, and, on October 26, 2008, Mazzo and  
28



1 other EYE executives met with Abbott to discuss, among other things, EYE's  
2 business and Abbott's level of interest in acquiring EYE.

3 35. On November 2, 2008, there was a telephone call between telephone  
4 numbers associated with Mazzo and DeCinces, respectively.

5 36. With knowledge of the aforementioned material, nonpublic information  
6 and his duty not to disclose it, Mazzo tipped DeCinces material, nonpublic  
7 information regarding the impending EYE/Abbott Transaction.

8 37. On November 5, 2008, DeCinces bought 3,500 shares of EYE on the  
9 basis of material, nonpublic information regarding the impending EYE/Abbott  
10 Transaction that Mazzo tipped DeCinces.

11 38. On November 14, 2008, Mazzo and other representatives of EYE met  
12 with Abbott to discuss EYE's business, historical financial results, and business  
13 strategy in greater detail.

14 39. On November 23, 2008, there was a telephone call between telephone  
15 numbers associated with Mazzo and DeCinces, respectively.

16 40. On the evening of November 24, 2008, Mazzo and DeCinces attended a  
17 professional hockey game together.

18 41. On the next morning, November 25, 2008, DeCinces called his broker.

19 42. On November 26, 2008, an Abbott executive informed Mazzo that  
20 Abbott intended to forward a tender offer proposal in the next few days.

21 43. On December 1, 2008, an Abbott executive sent Mazzo a nonbinding,  
22 preliminary proposal in which Abbott offered to buy EYE's outstanding shares of  
23 common stock through a tender offer for the cash price range of \$21 to \$23 per  
24 share. Also on December 1, 2008, a senior executive at Abbott sent an e-mail  
25 message to Mazzo regarding the impending EYE/Abbott Transaction.

26 44. On December 2, 2008, members of EYE's management team and  
27 EYE's Board of Directors met telephonically to discuss the proposal. Mazzo was  
28 present for this Board meeting. At the Board meeting, the Board authorized Mazzo

1 to agree to a limited period of exclusive negotiations with Abbott with respect to the  
2 purchase of EYE.

3 45. With knowledge of the aforementioned material, nonpublic information,  
4 Mazzo tipped DeCinces material, nonpublic information regarding the impending  
5 EYE/Abbott Transaction.

6 46. From November 26, 2008, to December 2, 2008, DeCinces bought  
7 11,500 additional shares of EYE on the basis of material, nonpublic information  
8 regarding the impending EYE/Abbott Transaction that Mazzo tipped DeCinces.

9 47. On December 6, 2008, Mazzo and DeCinces and their wives attended a  
10 benefit dinner to support a Newport Beach, California, hospital.

11 48. Abbott's due diligence of EYE began on or about December 8, 2008.

12 49. During the morning of December 8, 2008, less than forty-eight hours  
13 after attending the benefit dinner with Mazzo, DeCinces tipped his physical  
14 therapist, Donohue, with material, nonpublic information regarding the impending  
15 EYE/Abbott Transaction that DeCinces obtained from Mazzo. Also, between  
16 December 8, 2008, and December 10, 2008, there were several telephone calls  
17 between telephone numbers associated with DeCinces and his former Baltimore  
18 Orioles teammate, Murray, respectively.

19 50. On December 10, 2008, an Abbott senior executive (who was based out  
20 of Illinois) met with Mazzo at Mazzo's office in Santa Ana, California, to discuss,  
21 among other things, Mazzo's future employment at Abbott after Abbott's acquisition  
22 of EYE.

23 51. With knowledge of the aforementioned material, nonpublic information,  
24 Mazzo tipped DeCinces material, nonpublic information regarding the impending  
25 EYE/Abbott Transaction.

26 52. On December 10, 2008, DeCinces placed a limit order for an additional  
27 4,000 shares of EYE on the basis of material, nonpublic information regarding the  
28

1 impending EYE/Abbott Transaction that Mazzo tipped DeCinces. This limit order  
2 was executed on December 12, 2008.

3 53. On December 12, 2008, EYE's and Abbott's respective representatives  
4 exchanged drafts of the merger agreement and related documentation.

5 54. On December 15 and 16, 2008, Mazzo and other of EYE's executives,  
6 as well as EYE's legal and financial advisors, met with Abbott and its legal and  
7 financial advisors. During this two-day meeting, EYE's representatives presented  
8 Abbott with overviews of EYE's business, historical financial results, business  
9 strategy, legal matters, and financial projections.

10 55. Also on December 16, 2008, Mazzo met with a senior executive of  
11 Abbott at a private social club located in or around Costa Mesa, California.

12 56. With knowledge of the aforementioned material, nonpublic information,  
13 Mazzo tipped DeCinces material, nonpublic information regarding the impending  
14 EYE/Abbott Transaction.

15 57. From December 15, 2008, to December 18, 2008, DeCinces bought an  
16 additional 27,000 shares of EYE in his personal brokerage account on the basis of  
17 material, nonpublic information regarding the impending EYE/Abbott Transaction  
18 that Mazzo tipped DeCinces. DeCinces' stock purchase was funded, in part, by  
19 approximately \$160,000 that was generated from DeCinces' liquidation of securities  
20 (including some positions held since 2001). And, on December 17, 2008, DeCinces  
21 bought an additional 8,000 EYE shares (through accounts set up for his  
22 grandchildren) on the basis of material, nonpublic information regarding the  
23 impending EYE/Abbott Transaction that Mazzo tipped DeCinces.

24 58. As of December 17 and 18, 2008, EYE's Board planned to vote on the  
25 merger on Monday, January 5, 2009, and to announce the merger on Wednesday,  
26 January 7, 2009.

1           59. On December 19, 2008, members of EYE management met with the  
2 EYE Board of Directors, along with EYE's legal and financial advisors, and advised  
3 the Board that Abbott was still targeting an early January 2009 decision.

4           60. On December 21, 2008, Abbott called Mazzo and confirmed that, after  
5 completion of Abbott's preliminary legal and financial due diligence review of EYE,  
6 the proposed purchase price remained in the range of \$21 to \$23 per share.

7           61. On December 28, 2008, Abbott called Mazzo and confirmed that it  
8 would be willing to propose a purchase price of \$21 per share.

9           62. During this same time period, the EYE/Abbott Transaction progressed  
10 and several key events occurred. Among other things, between at least  
11 December 29, 2008, and January 4, 2009, Mazzo negotiated the terms of his  
12 employment agreement with Abbott. During the December 29, 2008, to January 4,  
13 2009, time period, there were at least six telephone calls between telephone numbers  
14 associated with Mazzo and DeCinces, respectively. Among other things, soon after  
15 an approximately eighty-four minute telephone call between Mazzo and an Abbott  
16 senior executive on Saturday, January 3, 2009, there was a telephone call from a  
17 telephone number associated with Mazzo to a telephone number associated with  
18 DeCinces.

19           63. On or before Wednesday, December 31, 2008, the EYE Board of  
20 Directors meeting was moved from Monday, January 5, 2009, to Thursday,  
21 January 8, 2009.

22           64. On December 31, 2008, Mazzo and DeCinces were at the same country  
23 club in Orange County, California, playing golf at the same time.

24           65. That same day, December 31, 2008, there were at least two telephone  
25 calls from DeCinces' mobile telephone to Murray's mobile telephone, at least one of  
26 which was placed while DeCinces was at the Orange County country club playing  
27 golf.

28

1           66. With knowledge of the aforementioned material, nonpublic information,  
2 Mazzo tipped DeCinces material, nonpublic information regarding the impending  
3 EYE/Abbott Transaction.

4           67. On January 2, 2009, DeCinces bought an additional 12,500 shares of  
5 EYE on the basis of material, nonpublic information regarding the impending  
6 EYE/Abbott Transaction that Mazzo tipped DeCinces.

7           68. Shortly thereafter and also on January 2, 2009, DeCinces bought an  
8 additional 1,200 shares of EYE on the basis of material, nonpublic information  
9 regarding the impending EYE/Abbott Transaction that Mazzo tipped DeCinces.

10          69. On January 4, 2009, Mazzo reached a verbal agreement with Abbott as  
11 to the terms of his future employment with Abbott.

12          70. On January 4, 2009, Mazzo and DeCinces had dinner together at a  
13 country club located in Orange County, California.

14          71. With knowledge of the aforementioned material, nonpublic information,  
15 Mazzo tipped DeCinces material, nonpublic information regarding the impending  
16 EYE/Abbott Transaction.

17          72. Early the next morning, January 5, 2009, DeCinces bought an additional  
18 23,000 shares of EYE: 8,000 shares of EYE in accounts set up for his grandchildren  
19 and 15,000 shares in a personal brokerage account. These purchases were made on  
20 the basis of material, nonpublic information regarding the impending EYE/Abbott  
21 Transaction that Mazzo tipped DeCinces. To pay for the shares DeCinces bought in  
22 his grandchildren's accounts, DeCinces transferred \$60,000 from a personal  
23 brokerage account to the four grandchildren's brokerage accounts, dividing the  
24 \$60,000 equally among them.

25          73. Also on January 5, 2009, the day after DeCinces' dinner with Mazzo at  
26 the Orange County country club, DeCinces tipped his physical therapist, Donohue,  
27 with material, nonpublic information regarding the impending EYE/Abbott  
28 Transaction that DeCinces obtained from Mazzo.

1           74. On January 5 and 6, 2009, there were also several telephone calls  
2 between telephone numbers associated with DeCinces and Murray, respectively.  
3 Soon after one of these telephone calls, there were two calls from Murray's mobile  
4 telephone to Murray's broker (one call to the broker's home telephone number, and  
5 one call to the broker's mobile telephone number).

6           **D. The January 12, 2009 Public Announcement**

7           75. At 5:01 a.m. Pacific time on January 12, 2009, EYE announced that it  
8 had entered into an agreement with Abbott pursuant to which Abbott planned to  
9 acquire EYE through a tender offer of \$22 per share in an all cash offer. EYE's  
10 stock price closed at \$21.50 per share, an increase of \$12.65 per share, or  
11 approximately 143%, over the prior trading day's closing price of \$8.85 per share.

12           76. On the day of the announcement, DeCinces sold all 90,700 shares of  
13 EYE stock (including shares acquired through the accounts for his grandchildren).  
14 DeCinces realized illegal profits of approximately \$1,386,306.

15           **E. DeCinces Tipped Material, Nonpublic Information About the**  
16           **EYE/Abbott Transaction That He Received from Mazzo to at Least**  
17           **Five Individuals**

18           77. DeCinces tipped material, nonpublic information about the  
19 EYE/Abbott Transaction that he received from Mazzo to at least five individuals:  
20 Donohue, Jackson, Wittenbach, Parker, and Murray, all of whom traded on the basis  
21 of that information.

22           **(1) DeCinces Tipped Donohue Material, Nonpublic Information**  
23           **That DeCinces Received from Mazzo, and Donohue Traded**  
24           **on the Basis of DeCinces' Tip**

25           78. Donohue was DeCinces' physical therapist from at least August 2004  
26 through January 2009. Donohue previously had a business relationship with  
27 members of the DeCinces family in a venture that ultimately failed.

1           79. During an in-person discussion on December 8, 2008, DeCinces tipped  
2 Donohue material, nonpublic information that DeCinces received from Mazzo. In  
3 particular, DeCinces told Donohue, among other things, that a deal would be going  
4 down, that EYE was one of the companies involved in the deal, and that Donohue  
5 should definitely call his broker. On December 9, 2008, Donohue bought 3,000  
6 shares of EYE on the basis of material, nonpublic information regarding the  
7 impending EYE/Abbott Transaction that DeCinces tipped Donohue (and which  
8 DeCinces had received from Mazzo in breach of a duty).

9           80. During an in-person discussion on January 5, 2009, DeCinces tipped  
10 Donohue material, nonpublic information that DeCinces received from Mazzo. In  
11 particular, DeCinces told Donohue that the deal was still going through and that  
12 Donohue should hang tight. On January 7, 2009, Donohue bought an additional  
13 2,000 shares of EYE on the basis of material, nonpublic information regarding the  
14 impending EYE/Abbott Transaction that DeCinces tipped Donohue (and which  
15 DeCinces had received from Mazzo in breach of a duty).

16           81. On January 12, 2009, Donohue sold all 5,000 shares of EYE for a profit  
17 of approximately \$75,570.

18           82. Later, DeCinces asked Donohue whether he had sold his EYE stock and  
19 congratulated him.

20                   (2) **DeCinces Tipped Jackson Material, Nonpublic Information**  
21                   **That DeCinces Received from Mazzo, and Jackson Traded on**  
22                   **the Basis of DeCinces' Tip**

23           83. DeCinces and Jackson had a social and business relationship.

24           84. On January 8, 2009, DeCinces and Jackson met for a breakfast meeting  
25 to discuss, among other things, a shared business transaction. During that meeting,  
26 Jackson used a mobile handheld device to buy 8,500 shares of EYE based on  
27 material, nonpublic information regarding the impending EYE/Abbott Transaction  
28

1 that DeCinces tipped Jackson (and which DeCinces had received from Mazzo in  
2 breach of a duty).

3 85. Later that day, Jackson bought an additional 1,700 shares of EYE based  
4 on material, nonpublic information regarding the impending EYE/Abbott  
5 Transaction that DeCinces tipped Jackson (and which DeCinces had received from  
6 Mazzo in breach of a duty).

7 86. On January 9, 2009, Jackson bought an additional 800 shares of EYE  
8 based on material, nonpublic information regarding the impending EYE/Abbott  
9 Transaction that DeCinces tipped Jackson (and which DeCinces had received from  
10 Mazzo in breach of a duty).

11 87. Following the public announcement of the EYE/Abbott Transaction,  
12 Jackson sold all 11,000 shares of EYE for a profit of approximately \$140,259.

13 (3) **DeCinces Tipped Wittenbach Material, Nonpublic**  
14 **Information That DeCinces Received from Mazzo, and**  
15 **Wittenbach Traded on the Basis of DeCinces' Tip**

16 88. Wittenbach and DeCinces became friends when DeCinces was playing  
17 professional baseball and living in Maryland. Since that time, Wittenbach and  
18 DeCinces have remained close friends.

19 89. On January 8, 2009, Wittenbach bought 15,000 shares of EYE on the  
20 basis of material, nonpublic information regarding the impending EYE/Abbott  
21 Transaction that DeCinces tipped Wittenbach (and which DeCinces had received  
22 from Mazzo in breach of a duty).

23 90. Also on January 8, 2009, Wittenbach called his sister and recommended  
24 that she buy 1,000 shares of EYE stock. Later that day, on the basis of her brother's  
25 recommendation, Wittenbach's sister bought 1,000 shares of EYE on margin.

26 91. On the day of the public announcement of the EYE/Abbott Transaction,  
27 Wittenbach sold all 15,000 shares of EYE for a profit of approximately \$201,692.  
28 That same day, Wittenbach called his sister and told her she should sell her EYE



1 stock. Thereafter, she sold 1,000 shares of EYE for a profit of approximately  
2 \$13,214.

3 (4) **DeCinces Tipped Parker Material, Nonpublic Information**  
4 **That DeCinces Received from Mazzo, and Parker Traded on**  
5 **the Basis of DeCinces' Tip**

6 92. Parker and DeCinces are friends and have been business partners in  
7 several investments. Parker shared office space at DeCinces' business offices, and  
8 Parker and DeCinces shared the same secretary.

9 93. Parker knew that DeCinces knew Mazzo. Among other things, in 2007,  
10 Parker invited DeCinces to a political fundraiser. DeCinces attended the political  
11 fundraiser and brought Mazzo with him. Parker met Mazzo at the political  
12 fundraiser and knew that Mazzo and DeCinces were friends.

13 94. Between January 5 and 8, 2009, there were numerous telephone calls  
14 between telephone numbers associated with DeCinces and Parker, respectively.  
15 During this same time period, there were numerous telephone calls between  
16 telephone numbers associated with Parker and Parker's broker, respectively. Certain  
17 of the telephone calls between numbers associated with Parker and Parker's broker,  
18 respectively, occurred in the evening, after business hours.

19 95. On January 6, 2009, Parker bought 6,000 shares of EYE on the basis of  
20 material, nonpublic information regarding the impending EYE/Abbott Transaction  
21 that DeCinces tipped Parker (and which DeCinces had received from Mazzo in  
22 breach of a duty). Later that day, Parker bought an additional 9,000 shares of EYE  
23 on the basis of material, nonpublic information regarding the impending EYE/Abbott  
24 Transaction that DeCinces tipped Parker (and which DeCinces had received from  
25 Mazzo in breach of a duty).

26 96. On January 8, 2009, Parker wired \$100,000 into the brokerage account  
27 through which he had recently purchased EYE stock and bought an additional  
28 10,000 shares of EYE on the basis of material, nonpublic information regarding the

1 impending EYE/Abbott Transaction that DeCinces tipped Parker (and which  
2 DeCinces had received from Mazzo in breach of a duty).

3 97. Parker's broker thought that Parker's EYE purchases were suspicious in  
4 part because of the large position Parker was taking in EYE.

5 98. On the day of the public announcement of the EYE/Abbott Transaction,  
6 Parker sold all 25,000 shares of EYE for a profit of approximately \$347,920.

7 **(5) DeCinces Tipped Murray Material, Nonpublic Information**  
8 **That DeCinces Received from Mazzo, and Murray Traded on**  
9 **the Basis of DeCinces' Tip**

10 99. Murray and DeCinces have been close friends since the mid-1970s and  
11 have invested in businesses together.

12 100. Murray and Mazzo knew each other. Mazzo maintained Murray's  
13 name and telephone numbers in Mazzo's electronic contact list.

14 101. On January 6, 2009, Murray directed his broker to use all of the cash in  
15 his self-directed brokerage account to purchase EYE stock, and, on January 7, 2009,  
16 Murray bought 17,000 shares of EYE on the basis of material, nonpublic information  
17 regarding the impending EYE/Abbott Transaction that DeCinces tipped Murray (and  
18 which DeCinces had received from Mazzo in breach of a duty).

19 102. Following the public announcement of the EYE/Abbott Transaction,  
20 Murray sold all 17,000 shares of EYE for a profit of approximately \$235,314.

21 **F. Mazzo, DeCinces, Parker, Murray, Donohue, Jackson, and**  
22 **Wittenbach Breached Their Duties to Maintain Material,**  
23 **Nonpublic Information in Confidence**

24 103. The information regarding the impending EYE/Abbott Transaction that  
25 Mazzo tipped DeCinces was material and nonpublic. A reasonable investor would  
26 have viewed the information regarding the impending EYE/Abbott Transaction as  
27 being important to his investment decision or a significant alteration of the total mix  
28 of information available to the public. In addition, the information was considered

1 confidential by EYE, and EYE had policies or procedures protecting confidential  
2 information.

3 104. EYE and its employees assumed and owed a duty to EYE's  
4 shareholders to maintain the confidentiality of information related to the impending  
5 EYE/Abbott Transaction.

6 105. Mazzo learned the information regarding the impending EYE/Abbott  
7 Transaction in his capacity as Chairman and Chief Executive Officer of EYE.  
8 Mazzo knew that he owed a fiduciary duty, or other obligation arising from a similar  
9 relationship of trust and confidence, to keep the information confidential. Mazzo  
10 also knew that he was subject to written policies or procedures regarding  
11 confidentiality and insider trading.

12 106. DeCinces, who knowingly or recklessly received material, nonpublic  
13 information about the impending EYE/Abbott Transaction from Mazzo, assumed a  
14 duty. By trading on the material, nonpublic information DeCinces received from  
15 Mazzo, DeCinces breached a derivative duty he inherited from Mazzo to keep the  
16 material, nonpublic information confidential. In addition, by tipping material,  
17 nonpublic information DeCinces received from Mazzo to others (at least Parker,  
18 Murray, Donohue, Jackson, and Wittenbach), DeCinces breached the derivative duty  
19 DeCinces inherited from Mazzo to keep the material, nonpublic information  
20 confidential.

21 107. DeCinces' tippees (at least Parker, Murray, Donohue, Jackson, and  
22 Wittenbach), each of whom knowingly or recklessly received material, nonpublic  
23 information about the impending EYE/Abbott Transaction from DeCinces, assumed  
24 a duty. When they traded on the information that they received from DeCinces, or  
25 caused another to trade on the information, DeCinces' tippees (at least Parker,  
26 Murray, Donohue, Jackson, and Wittenbach) knew or should have known that they  
27 were breaching a derivative duty they inherited from DeCinces to keep the material,  
28 nonpublic information confidential.

1 108. Mazzo tipped the material, nonpublic information regarding the  
2 impending EYE/Abbott Transaction to DeCinces with the expectation of receiving a  
3 benefit or as a gift to his friend, DeCinces.

4 109. DeCinces tipped material, nonpublic information regarding the  
5 impending EYE/Abbott Transaction to Parker, Murray, Donohue, Jackson, and  
6 Wittenbach with the expectation of receiving a benefit or as a gift to his friends,  
7 Parker, Murray, Donohue, Jackson, and Wittenbach, respectively.

8 110. Significantly, even in the absence of fiduciary or other duties,  
9 DeCinces, Parker, Murray, Donohue, Jackson, and Wittenbach all had a duty to  
10 abstain from, and were prohibited from, trading given that substantial steps had been  
11 taken to commence Abbott's tender offer to EYE's shareholders and given that they  
12 all knew or had reason to know that the confidential information they received came  
13 from an individual closely associated with EYE, the target of the tender offer. When  
14 Mazzo tipped this confidential information about the impending EYE/Abbott  
15 Transaction to DeCinces, it was reasonably foreseeable that this communication  
16 would result in unlawful trading. In addition, when DeCinces received this  
17 confidential information about the impending EYE/Abbott Transaction and then  
18 tipped confidential information to Parker, Murray, Donohue, Jackson, and  
19 Wittenbach, respectively, it was reasonably foreseeable that this communication  
20 would result in unlawful trading.

21 **FIRST CLAIM FOR RELIEF**

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

23 **(Against All Defendants)**

24 111. The Commission re-alleges and incorporates by reference each and  
25 every allegation in paragraphs 1 through 110, inclusive, as if they were fully set forth  
26 herein.

27 112. The information concerning the EYE/Abbott Transaction was material  
28 and nonpublic. In addition, the information was considered confidential by EYE.

1 113. At all times relevant to the complaint, Defendants acted knowingly or  
2 recklessly.

3 114. Defendants learned material, nonpublic information regarding the  
4 impending EYE/Abbott Transaction and knew, recklessly disregarded, or should  
5 have known that they, directly, indirectly, and/or derivatively, owed a fiduciary duty,  
6 or obligation arising from a similar relationship of trust and confidence, to keep the  
7 information confidential.

8 115. By engaging in the conduct described above, Defendants, directly or  
9 indirectly, in connection with the purchase or sale of securities, by use of the means  
10 or instrumentalities of interstate commerce, or the mails, or the facilities of a national  
11 securities exchange:

- 12 a. employed devices, schemes or artifices to defraud;
- 13 b. made untrue statements of material facts or omitted to state  
14 material facts necessary in order to make the statements made, in  
15 light of the circumstances under which they were made, not  
16 misleading; and/or
- 17 c. engaged in acts, practices, or courses of business which operated  
18 or would operate as a fraud or deceit upon any person in  
19 connection with the purchase or sale of any security.

20 116. By engaging in the foregoing conduct, Defendants violated and, unless  
21 enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C.  
22 § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

23 **SECOND CLAIM FOR RELIEF**

24 **Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder**

25 **(Against All Defendants)**

26 117. The Commission re-alleges and incorporates by reference each and  
27 every allegation in paragraphs 1 through 116, inclusive, as if they were fully set forth  
28 herein.

1 118. Mazzo communicated material, nonpublic information regarding  
2 Abbott's tender offer for the securities of EYE to DeCinces. DeCinces  
3 communicated material, nonpublic information regarding Abbott's tender offer for  
4 the securities of EYE that he received from Mazzo to at least Parker, Murray,  
5 Donohue, Jackson, and Wittenbach.

6 119. The communications regarding the impending EYE/Abbott Transaction  
7 between Mazzo and DeCinces and then between DeCinces and at least Parker,  
8 Murray, Donohue, Jackson, and Wittenbach, respectively, occurred under  
9 circumstances in which it was reasonably foreseeable that unlawful trading would  
10 result.

11 120. By November 2008, the time period during which the first trades  
12 alleged herein occurred, or by such other times when trades alleged herein occurred,  
13 substantial steps had been taken to commence a tender offer for the securities of  
14 EYE by Abbott, including, among other things: (a) senior members of EYE and  
15 Abbott met in person to discuss the possibility of a merger between the two  
16 companies; (b) EYE and Abbott entered into a nondisclosure agreement on  
17 October 24, 2008; (c) Abbott submitted, on December 1, 2008, a nonbinding,  
18 preliminary proposal to acquire EYE's outstanding shares for between \$21 and \$23  
19 per share; (d) Abbott conducted due diligence on EYE; and (e) the EYE Board held a  
20 meeting on January 5, 2009, to evaluate the proposed transaction with Abbott.

21 121. DeCinces, Parker, Murray, Donohue, Jackson, and Wittenbach knew or  
22 had reason to know that the confidential information that each of them received had  
23 been acquired, directly or indirectly, from EYE, the target of the tender offer, and  
24 therefore they were prohibited from trading in the securities of EYE.

25 122. By reason of the foregoing, Defendants violated and, unless enjoined,  
26 will continue to violate Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and  
27 Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].  
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court enter

3 Final Judgments:

4 **I.**

5 Permanently restraining and enjoining Defendants from, directly or indirectly,  
6 engaging in conduct in violation of Section 10(b) of the Exchange Act [15 U.S.C.  
7 § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and from engaging in  
8 conduct in violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and  
9 Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3];

10 **II.**

11 Ordering Defendants to disgorge the unlawful trading profits derived from the  
12 activities set forth in this complaint, together with prejudgment interest thereon;

13 **III.**

14 Ordering defendant Mazzo to pay disgorgement with respect to unlawful  
15 trading profits obtained by DeCinces and persons tipped by DeCinces, derived from  
16 the activities set forth in this complaint, together with prejudgment interest thereon;

17 **IV.**

18 Ordering Defendants to pay civil penalties pursuant to Section 21A of the  
19 Exchange Act [15 U.S.C. § 78u-1];

20 **V.**


21 Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)],  
22 prohibiting defendant Mazzo from acting as an officer or director of any issuer that  
23 has a class of securities registered pursuant to Section 12 of the Exchange Act [15  
24 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the  
25 Exchange Act [15 U.S.C. § 78o(d)]; and

1 VI.

2 Granting such other and further relief as this Court may deem just, equitable,  
3 or necessary.

4 Respectfully submitted,

5  
6 Dated: August 17, 2012.

7   
8 John B. Bulgozdy, Local Counsel  
9 SECURITIES AND EXCHANGE  
10 COMMISSION

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