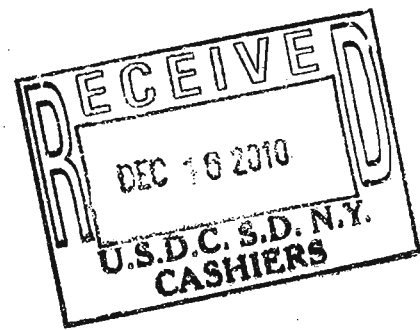


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----: :
SECURITIES AND EXCHANGE COMMISSION, : :
: :

Plaintiff, : :
: :

- against - : :
: :

KENNETH IRA STARR, : :
STARR INVESTMENT ADVISORS, LLC, : :
STARR & COMPANY, LLC, : :
and : :
JONATHAN STAR BRISTOL, : :
: :

Defendants, : :
: :

DIANE PASSAGE : :
and : :
COLCAVE, LLC, : :
: :

Relief Defendants. : :
-----: :

10 Civ. 4270 (SHS)

ECF CASE

AMENDED
COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges the following against Defendants Kenneth Ira Starr (“Starr”), Starr Investment Advisors, LLC (“SIA”), Starr & Company, LLC (“Starrco”) and Jonathan Star Bristol (“Bristol”) (collectively, the “Defendants”) and against Relief Defendants Diane Passage (“Passage”) and Colcave LLC (“Colcave”) (collectively, the “Relief Defendants”):

SUMMARY

1. This action concerns a fraudulent scheme by the Defendants to misappropriate over \$9 million from Starr’s investment advisory and bill-pay clients. Prior to Starr’s arrest and guilty plea, Starr and SIA – an entity that Starr then controlled – provided investment advisory services to more than thirty high net-worth clients. Prior to Starr’s arrest, SIA managed over \$700 million. In addition, Starr and Starrco – another

entity that Starr also then controlled – provided advisory, accounting, tax preparation, business management, bill-paying, and “concierge” services to a larger but overlapping group of approximately 175 clients. Starr, SIA, and Starrco (the “Starr Parties”) had power of attorney or signatory authority over many bank and investment accounts belonging to their clients.

2. Since at least 2007, Bristol served as counsel to the Starr Parties. Bristol represented the Starr Parties during the Commission’s investigation that preceded the filing of the original complaint in this civil action. Bristol also attempted to represent at least one victim of the fraud in connection with the Commission’s investigation of the Starr Parties.

3. The Starr Parties abused the signatory power that they held over their clients’ bank and investment accounts by misappropriating over \$9 million of client funds for their own purposes, including \$7.6 million to purchase a luxury Manhattan apartment for Starr and his wife, Passage.

4. To avoid detection of the misappropriation scheme, Bristol repeatedly allowed Starr, beginning in or around November 2008 until Starr’s arrest in May 2010, to use Bristol’s attorney trust accounts (collectively, the “Attorney Trust Account”) as conduit accounts when Starr stole assets from Starrco’s and SIA’s clients (the “Starr clients”). Bristol, who was the sole owner of the Attorney Trust Account and had sole authority to authorize outgoing transfers, would then send these monies to the Starr Parties among others, even though Bristol knew that the money belonged to the Starr clients. Bristol did not disclose the existence of the Attorney Trust Account to any of his colleagues at his law firm.

5. Over \$25 million belonging to Starr clients was deposited in the Attorney Trust Account prior to Starr's arrest. The balance in the Attorney Trust Account was less than \$3,000 in or around May 2010.

6. Even though the Attorney Trust Account was styled as an official Attorney Trust Account, all account documentation was sent directly to Bristol's home address. Bristol received monthly account statements for the Attorney Trust Account, which repeatedly listed the names of Starr's clients as the source of the incoming transfers.

7. Between April 13 and April 16, 2010, the Starr Parties transferred \$7 million from the accounts of three SIA and Starrco clients to the Attorney Trust Account. The transfers from the accounts of the three SIA and Starrco clients were not authorized. Bristol then transferred these funds to accounts in the name of the Starr Parties and for their benefit. These funds were ultimately used on April 16, 2010, to purchase a luxury apartment in which Starr and Passage resided. The owner of the apartment is Colcave, a limited liability company controlled by Starr at the time of the apartment purchase. A court-appointed receiver now controls Colcave.

8. One of the clients whose funds the Starr Parties misappropriated to purchase the apartment was Investor No. 1. On April 13, 2010, the Starr Parties transferred \$1 million out of a bank account belonging to Investor No. 1 and into the Attorney Trust Account. Investor No. 1 complained and demanded that the money be refunded. On April 26, 2010, after confronting both Starr and Bristol about the unauthorized \$1 million transfer, Investor No. 1 received a refund from Starr of \$1 million. The source of the \$1 million, however, was money taken from the account of

Investor No. 2. The Starr Parties transferred \$1 million from Investor No. 2 to the Attorney Trust Account, which Bristol then transferred to Investor No. 1. Defendants did not inform Investor No. 2 that money was being transferred from Investor No. 2's account to repay Investor No. 1, nor did Investor No. 2 authorize the transfer.

9. These unauthorized transfers in April 2010 were not the only instances where Defendants misappropriated client funds. Starting in August 2009, the Starr Parties transferred approximately \$1.7 million from the personal account of Investor No. 3 and from the account of a charity run by Investor No. 3. These were all unauthorized transfers. In April 2010, the Starr Parties attempted to transfer an additional \$750,000 from one of Investor No. 3's accounts but the bank notified Investor No. 3 who halted the transfer. When Investor No. 3 confronted Starr and counsel for Investor No. 3 confronted Bristol over these transactions, the Defendants paid Investor No. 3 back from money that came from the bank account of another unrelated party.

10. Bristol lied in order to help Starr perpetuate the misappropriation scheme. After Investor No. 2 discovered an unauthorized \$1 million transfer from his accounts to the Attorney Trust Account in January 2010, Investor No. 2 contacted Starrco to ask about the \$1 million withdrawal and was told by a trusted Starr employee that Bristol had bundled the \$1 million with money from other clients for an investment with UBS Financial Services LLC ("UBS").

11. Investor No. 2 proceeded to phone Bristol concerning the \$1 million transfer. Bristol confirmed the Starrco employee's explanation about the purported UBS investment of Investor No. 2's money. This was a knowing misrepresentation. Bristol never transferred Investor No. 2's \$1 million to UBS. Rather, Bristol had already wired

the money to Starrco and to an entity controlled by Investor No. 9 in satisfaction of a lawsuit Investor No. 9 had threatened against Starr. By January 31, 2010, the balance in the Attorney Trust Account was less than \$60,000.

12. Defendants' ability to misappropriate client funds was also enhanced by SIA's failure to comply with custodial rules. Indeed, SIA failed to engage an independent public accountant for the years 2006-2009 to perform a surprise examination of its advisory clients' assets over which the Starr Parties had custody. Moreover, certain assets of SIA clients were held in a physical form in a safe in Starrco's offices despite the fact that none of Defendants is a qualified custodian.

13. The Commission seeks permanent injunctions against the Defendants, disgorgement of ill-gotten gains plus prejudgment interest on a joint and several basis against the Starr Parties, disgorgement of ill-gotten gains plus prejudgment interest against Bristol, and civil monetary penalties against the Defendants. The Commission also seeks an order requiring that Relief Defendants disgorge all assets of Defendants' clients that improperly were transferred to them, together with prejudgment interest, including, but not limited to, the apartment purchased by Colcave in which Starr and Passage reside.

VIOLATIONS

14. By virtue of the conduct alleged herein:

- a. The Starr Parties, directly or indirectly, singly or in concert, engaged in acts, practices and courses of business, that constitute violations of Sections 206(1) and 206(2) of the Investment Advisers Acts of 1940 ("Advisers Act");

- b. Bristol aided and abetted the violations set forth in Paragraph 14(a); and
- c. SIA, directly or indirectly, singly or in concert, engaged in acts, practices and courses of business, that constitute violations of Section 206(4) of the Advisers Act and Rules 206(4)-2(a)(1) thereunder.

15. Unless Defendants are permanently enjoined, they will continue to engage in the acts, practices and courses of business set forth in this Complaint and in acts, practices, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

16. The Commission brings this action pursuant to the authority conferred upon it by Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to enjoin permanently the Defendants from engaging in the acts, practices and courses of business alleged herein.

17. In addition to the injunctive relief recited above, the Commission seeks: (i) final judgments ordering the Starr Parties to disgorge their ill-gotten gains with prejudgment interest thereon on a joint and several basis; (ii) a final judgment ordering Bristol to disgorge his ill-gotten gains with prejudgment interest thereon; (iii) final judgments ordering Defendants to pay civil penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(d)]; (iv) final judgments ordering Relief Defendants to disgorge their ill-gotten gains with prejudgment interest thereon; and (v) such other relief as the Court deems just and appropriate.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this action, pursuant to Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

19. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails and wires, in connection with the transactions, acts, practices, and courses of business alleged herein. A substantial part of the events comprising Defendants' fraudulent activities giving rise to the Commission's claims occurred in the Southern District of New York as Defendants live in the Southern District of New York and/or maintained their offices in this district.

THE DEFENDANTS

20. **Starr Investment Advisors, LLC ("SIA")**, currently defunct, was a Delaware limited liability company previously based in New York, New York. Beginning in June 2, 2006, SIA was registered with the Commission as an investment advisor. A court-appointed receiver now controls SIA.

21. **Starr & Company, LLC ("Starrco")**, currently defunct, was a New York limited liability company located in New York, New York. It owned 100 percent of SIA. While Starrco was not registered with the Commission in any capacity, Starrco provided investment advisory services to its clients who were not also SIA clients. A court-appointed receiver now controls Starrco.

22. **Kenneth Ira Starr ("Starr")**, age 66, is currently incarcerated in the Metropolitan Correctional Center in New York, New York. Up until his arrest in May 2010, he was the Chief Executive Officer of SIA. He also owned 95 percent of Starrco

and was a manager of that company. The other 5 percent interest in Starrco is held by Kisco, CPA, PC (formerly Starr & Company, CPA PC), a company wholly-owned by Starr. Starr is also an attorney and since 1967 has been admitted to practice law in the State of New York. Until March 2010, Starr was a registered representative of Diamond Edge Capital Partners, LLC, a registered broker-dealer. Starr is a partner in Diamond Edge Capital Holdings, LLC. In September 2010, Starr pleaded guilty to one count of securities fraud, as well as to one count each of wire fraud and money laundering. *United States v. Kenneth Starr*, 10 Cr. 520 (S.D.N.Y.) (SAS).

23. **Jonathan S. Bristol** (“Bristol”), age 55, is a resident of Chatham, New Jersey. From November 2008 through June 2010, Bristol was a partner with a prominent international law firm (the “Law Firm”). Bristol is a graduate of University of Virginia Law School and is admitted to practice law in New York and New Jersey. Bristol previously served as a member of the New Jersey Supreme Court’s Office of Attorney Ethics.

THE RELIEF DEFENDANTS

24. **Diane Passage** (“Passage”), is a resident of New York, New York and is presently married to Starr. Ms. Passage purports to be a producer of films and plays, and a philanthropist. Starr Parties’ clients’ funds were improperly sent to an account jointly held by Starr and Passage.

25. **Colcave, LLC** (“Colcave”), is a Delaware limited liability corporation created on April 13, 2010 and controlled by Starr. On April 16, 2010, Colcave purchased a condominium apartment in Manhattan for use as the personal residence of Starr and Passage. This apartment was purchased with funds that were misappropriated from at

least three SIA and Starrco clients. In connection with this transaction, Starr signed all documents on behalf of Colcave. A court-appointed receiver now controls Colcave.

FACTS

26. Prior to his arrest and guilty plea, Starr, through SIA, an entity he controlled, provided investment advisory services to more than thirty high net-worth individuals, many of whom are socialites or luminaries in the entertainment and business worlds. Assets under management at SIA exceeded \$700 million. Through Starrco, SIA's unregistered parent company that is also controlled by Starr, Starr provided advisory, accounting, tax preparation, business management, bill paying, and concierge services to a larger but overlapping group of approximately 175 clients. The Starr Parties had power of attorney or signatory authority over many bank and investment accounts belonging to SIA's and Starrco's clients.

27. Over \$25 million belonging to Starr clients was deposited in the Attorney Trust Account prior to May 2010. The balance in the Attorney Trust Account was less than \$3,000 on or around May 2010.

28. Between April 13 and April 16, 2010, the Starr Parties transferred approximately \$7 million from the accounts of three SIA and Starrco clients, including \$1 million from the account of Investor No. 1, \$5.75 million from the account of Investor No. 4 and \$250,000 from the account of Investor No. 5. None of these transfers was authorized.

29. As reported in the press, the apartment purchased for Starr and Passage is a 5-bedroom, 6.5 bathroom "townhouse condominium home," which includes a recreation room with a wet bar, a 32-foot granite lap pool, and a 1,500 square-foot

garden. Starr sent change of address cards stating that he and Passage had moved to this apartment. While the purchaser of the apartment was Colcave, Starr controlled Colcave at the time of the purchase. Starr signed all documents on behalf of Colcave in connection with the apartment purchase.

30. The money from Investor No. 1, Investor No. 4, and Investor No. 5 was transferred to the Attorney Trust Account. Although Bristol was a partner at the Law Firm during the relevant period of time, the Attorney Trust Account was held in Bristol's own name, not in the Law Firm's name. After the client money was transferred to the Attorney Trust Account, Bristol wired \$6 million of that money to the attorney representing the seller of the Colcave apartment. Bristol transferred the remainder of the client money from the Attorney Trust Account to Starr's brokerage account, much of which was used for costs relating to the apartment purchase.

31. After discovering the \$1 million transfer on April 26, 2010, Investor No. 1 separately confronted both Starr and Bristol about the unauthorized nature of the withdrawal and demanded the return of the \$1 million. Later that same day, Defendants refunded Investor No. 1's money through a transfer from the Attorney Trust Account. Bristol authorized this transfer out of the Attorney Trust Account. However, Starr had transferred \$1 million from the account belonging to Investor No. 2 into the Attorney Trust Account. This transfer of funds from Investor No. 2 was also unauthorized. In sum, Defendants used funds from Investor No. 2 to repay what they had misappropriated from Investor No. 1. Investor Nos. 4 and 5 have not been repaid.

32. This was not the first time that Defendants misappropriated money from the accounts of SIA and Starrco clients. On four dates (August 12, October 8, October 9,

and October 13, 2009), Starr transferred a total of \$1.2 million from the account of Investor No. 3 to the Attorney Trust Account. Of this amount, \$700,000 was unauthorized. In addition, on four later dates (November 2, 13, 18, and 25, 2009), Starr transferred a total of \$1 million from the account of a charity run by Investor No. 3 without Investor No. 3's authorization and for purposes having no connection to the charity or Investor No. 3. The vast majority of these funds were sent to the Attorney Trust Account, and then transferred by Bristol from this account to Starrco among others. In April 2010, Starr attempted to withdraw an additional \$750,000 from the personal account of Investor No. 3. Starr's plans were frustrated, however, when the bank alerted Investor No. 3 and Investor No. 3 halted the transfer.

33. When confronted by Investor No. 3 and counsel for Investor No. 3, Starr explained that the transfers were in error and that he had intended to transfer the money from a different investor. That other investor, however, had ceased being a client of SIA or Starrco as of September 2008. Consequently, Starr's explanation to Investor No. 3 for the transfer of the funds is not credible.

34. When counsel for Investor No. 3 asked Bristol why Starr sent \$750,000 to Bristol, Bristol told counsel for Investor No. 3 that Starr was buying an apartment for \$7.5 million. When counsel for Investor No. 3 asked Bristol why this \$750,000 was coming from Investor No. 3, Bristol stated that "perhaps" Investor No. 3 was loaning Starr the money. After being confronted by Investor No. 3, the Starr Parties paid Investor No. 3 back from money that came from the bank account of another unrelated party.

35. On May 4, 2010, in an apparent attempt to resolve the matter, Defendants delivered two checks, totaling \$1.7 million, to Investor No. 3. These checks were

written from the Attorney Trust Account. The apparent source of the money paid to Investor No. 3 was a \$2 million deposit into the Attorney Trust Account by a third party. Upon information and belief, the third party was not informed that the money deposited into the Attorney Trust Account would be used to repay money Defendants had misappropriated.

36. Another instance of the Starr Parties' misappropriating client funds took place in 2008. During the time period of May through June 2008, Starr told Investor No. 6 of certain investments in which only close personal friends were allowed to participate. Starr told Investor No. 6 that these investments were sure things that would generate a return of 5 to 10 times the initial investment.

37. In response to the Starr Parties' recommendation, Investor No. 6 provided at least \$2 million to the Parties. This money was deposited in an account in the name of an LLC, controlled by Starr but outside of SIA or Starrco. At least \$1.1 million of this money was subsequently transferred to the personal bank account of Starr and Passage.

38. In 2009, Investor No. 6 requested the money back. Starr informed Investor No. 6 that it was too early. Starr subsequently stated that he could arrange for Investor No. 6 to get the money back in exchange for an 11 percent commission. To date, however, Starr has not returned Investor No. 6's money.

39. Defendants were able to misappropriate client funds, in part, because SIA violated various Commission rules applicable to investment advisors concerning the custody of client funds and securities. SIA failed to make sure that its clients' funds and securities were maintained by a qualified custodian. In fact, certain client assets were

being held in physical form in a safe in Starrco's offices despite the fact that Starrco was not a qualified custodian. And from 2006-2009, SIA failed to engage an independent public accountant to verify through the performance of surprise examinations that the funds and securities of the Starr Parties' clients were being properly maintained.

40. Bristol touted his relationship with Starr to his colleagues and others, falsely claiming that Starr managed \$70 billion in client assets, when in fact Starr managed a fraction of that amount.

41. Notwithstanding Bristol's personal role in the misappropriation scheme, Bristol represented the Starr Parties throughout the Commission's investigation of this matter and in connection with a cause examination of SIA by the Commission's examination staff. Bristol also attempted to represent at least one victim of the fraud after the victim was contacted by the Commission. In addition to the fact that such representations violated the ethical obligations of lawyers, Bristol's clear intent was to obstruct and undermine the Commission's investigation and cause exam in order to conceal the Starr Parties' – as well as his own – wrongdoing.

FIRST CLAIM FOR RELIEF
(Violations of Section 206(1) and 206(2) of the Advisers Act)
(Against the Starr Parties)

42. The Commission realleges and incorporates by reference herein each and every allegation contained in Paragraphs 1 through 41 of this Complaint.

43. The Starr Parties are all investment advisors. SIA is a registered investment advisor and its clients signed an Investment Advisory Agreement under which SIA was appointed investment manager and adviser in exchange for a percentage fee.

44. As the co-owner and managing director of SIA, Starr is also an investment advisor under Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

45. While Starrco is not a registered investment advisor, Starrco provided advisory services to its clients who had not entered into advisory agreements with SIA.

46. The Starr Parties directly or indirectly, singly or in concert, knowingly or recklessly, through the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)]: (a) employed devices, schemes, and artifices to defraud any client or prospective client; or (b) engaged in acts, practices, or courses of business which operate as a fraud or deceit upon any client or prospective client.

47. By reason of the foregoing, the Starr Parties, directly or indirectly, singly or in concert, have violated, are violating, and unless enjoined, will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

SECOND CLAIM FOR RELIEF
(Violations of Section 206(4) of the Advisers Act and Rules 206(4)-2(a)(1))
(Against SIA)

48. The Commission realleges and incorporates by reference herein each and every allegation contained in Paragraphs 1 through 47 of this Complaint.

49. SIA at all relevant times was a registered investment adviser within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

50. Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] prohibits any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, from directly or indirectly, engaging in any act, practice of course of business which is fraudulent, deceptive or manipulative.

51. Advisers Act Rule 206(4)-2(a)(1) [75 C.F.R. § 275.206(4)-2(a)(1)] provides that an investment advisor engaged in a fraudulent act if it has custody of client funds or securities unless: (a) the funds or securities are maintained by a qualified custodian; (b) notice of the qualified custodian is provided to the clients; (c) the adviser has a reasonable basis for believing that the qualified custodian has sent account statements, at least quarterly; and (d) there is verification of funds and securities by an independent public accountant.

52. SIA violated Section 206(4) and Rule 206(4)-2(a)(1) as it maintained SIA client securities in Starrco's safe and had signatory authority over client bank and securities accounts, despite the fact that none of SIA, Starrco, or Starr is a qualified custodian. Further, SIA failed to engage an independent public accountant to conduct a verification of these securities and to verify that the signatory authority was used for valid purposes only.

53. By reason of the foregoing, SIA, directly or indirectly, singly or in concert, has violated, is violating, and unless enjoined, will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2(a)(1) promulgated thereunder [75 C.F.R. § 275.206(4)-2(a)(1)].

THIRD CLAIM FOR RELIEF
(Aiding and Abetting Violations of Section 206(1) and 206(2) of the Advisers Act)
(Against Bristol)

54. The Commission realleges and incorporates by reference herein each and every allegation contained in Paragraphs 1 through 53 of this Complaint.

55. The Starr Parties directly or indirectly, singly or in concert, knowingly or recklessly, through the use of the mails or any means or instrumentality of interstate

commerce, while acting as investment advisers within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)]: (a) employed devices, schemes, and artifices to defraud any client or prospective client; or (b) engaged in acts, practices, or courses of business which operate as a fraud or deceit upon any client or prospective client.

56. Bristol knew that the Starr Parties misappropriated millions of dollars from their clients and used Bristol's Attorney Trust Account to conceal this theft.

57. Bristol substantially assisted the Starr Parties' misappropriation. For example, Bristol authorized the transfer of \$7 million belonging to Starr clients from his Attorney Trust Account for the purpose of the purchase of Starr's luxury apartment.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

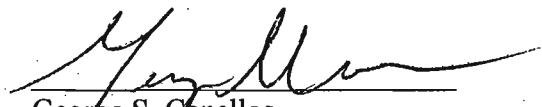
A. Permanently enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them, who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1)-(2)];

B. Permanently enjoining SIA, its agents, servants, employees and attorneys and all persons in active concert or participation with it, who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 206(4) of the Advisers Act [15 U.S.C. § 806-6(4)] and Rule 206(4)-2(a)(1) promulgated thereunder [75 C.F.R. § 275.206(4)-2(a)(1)];

- C. Ordering the Starr Parties to disgorge their ill-gotten gain, plus prejudgment interest on a joint and several basis;
- D. Ordering Bristol to disgorge his ill-gotten gains, plus prejudgment interest;
- E. Ordering Defendants to pay civil money penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9];
- F. Ordering Relief Defendants to disgorge all funds belonging to the clients of Defendants and all property, real or otherwise, purchased with the funds of Defendants' clients, plus prejudgment interest; and
- G. Such other and further relief as to this Court deems just and proper.

Dated: December 16, 2010
New York, New York

Respectfully submitted,



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CERTIFICATE OF SERVICE

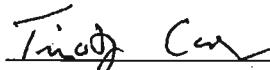
I, Timothy Casey, hereby certify that on this 16th day of December 2010, I caused true and correct copies of Plaintiff Securities and Exchange Commission's Amended Complaint to be served upon the following via UPS:

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