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12 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 v.

17 DEAN A. GOETZ,

18 Defendant.  
19

Case No. '11CV1220 IEG NLS

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

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

21 **SUMMARY OF THE ACTION**

22 1. This case involves unlawful insider trading by Defendant Dean A. Goetz (the  
23 "Defendant"), an attorney who is a resident of Carlsbad, California. In December 2008, the  
24 Defendant's daughter ("Daughter") was visiting her parents for the holidays and stayed at  
25 Defendant's home. At the time, Daughter was a corporate associate in the Los Angeles office of a  
26 large, international law firm (the "Firm") who was working on an impending merger and  
27 acquisition involving Abbott Laboratories ("Abbott") and her Firm's client, Advanced Medical  
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1 Optics, Inc. (which hereinafter is referred to by its former New York Stock Exchange ticker  
2 symbol, "EYE"). Because the timing of her visit coincided with the anticipated closing of the  
3 Abbott-EYE transaction in January 2009, Daughter performed deal-related work in various  
4 locations in Defendant's home while she was staying there and worked on deal-related documents  
5 that identified EYE by name.

6 2. In breach of his duty of trust and confidence to Daughter, the Defendant  
7 misappropriated from her material, nonpublic information regarding the impending Abbott-EYE  
8 merger while she worked in her family home.

9 3. On January 8, 2009, the day the deal was scheduled to be announced, shortly before  
10 the market was to close, Defendant bought 900 shares of EYE, the company Daughter's Firm was  
11 advising, through an online brokerage account he had not accessed in almost a year. Four days  
12 later, on January 12, 2009, EYE publicly announced that it had entered into an agreement with  
13 Abbott pursuant to which Abbott planned to acquire EYE at the cash price of \$22.00 per share  
14 through a tender offer. Ultimately, Defendant sold all 900 shares of EYE stock, making a profit of  
15 \$11,418.

16 4. Through his conduct, Defendant violated Sections 10(b) and 14(e) of the Securities  
17 Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) & 78n(e)] and Rules 10b-5 and  
18 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 & 240.14e-3].

19 **JURISDICTION AND VENUE**

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

**A. EYE Sought Strategic Options, Including a Possible Acquisition by Abbott**

11. In October 2008, EYE hired an investment banking firm (the “Investment Bank”) to assist it in exploring several strategic options for the company, including capital raising transactions and possibly the sale of the company. During the week of October 13, at the request of EYE, the Investment Bank contacted Abbott to gauge Abbott’s interest in acquiring EYE or some other strategic transaction involving both companies.

12. In late October 2008, EYE sought the Firm’s assistance in connection with EYE’s search for strategic options, including a possible acquisition by Abbott.

13. The Firm is a major international law firm and is one of the largest merger and acquisitions firms in the country. Daughter, then an associate in the Firm’s Los Angeles office, began working on the transaction in early November 2008. Among other things, Daughter assembled the “data room” at the Firm’s offices so that Abbott and its legal and financial advisors could conduct due diligence of EYE. Daughter also assisted in the drafting of the merger agreement, drafted various disclosure schedules, and performed other administrative tasks related to the transaction.

**B. During a Visit by His Daughter, Defendant Misappropriated Material, Nonpublic Information Regarding the Impending Abbott-EYE Merger**

14. From about December 17 or 18, 2008, to about January 1, 2009, Daughter stayed at her parents’ home in Carlsbad, California. Because the Abbott-EYE merger was expected to close in January 2009, Daughter worked at her parents’ house during her visit and, indeed, could not participate in family activities.

15. While she was at her parents’ home, Daughter prepared the disclosure schedules related to the Abbott-EYE transaction, which identified, among other things, EYE’s license agreements, material contracts to which EYE was a party, employment and indemnification

1 agreements between EYE and certain of its employees, EYE's products, EYE's subsidiaries, and  
2 the lawsuits in which EYE was engaged. Significantly, unlike other deal-related documents  
3 circulated among the members of the Abbott-EYE deal team, the draft schedules that Daughter  
4 worked on at her parents' home did not substitute a code name for EYE to preserve confidentiality  
5 and identified the company by name. In addition, the schedules identified the names of certain  
6 individuals with whom the company had employment or indemnification agreements.

7  
8 16. Daughter worked in several areas of her parents' home, including a desk in a  
9 common area of the home, her bedroom, and Defendant's home office. When she worked on the  
10 deal-related documents, Daughter would "park" herself in common work spaces, including  
11 Defendant's home office, and spread out her work.

12 17. On or about December 31, 2008, Daughter learned that the Abbott-EYE transaction  
13 was going to close earlier than expected and that Abbott's acquisition of EYE would be announced  
14 on January 8, 2009, after the close of the market. As a result, Daughter cut short her visit to her  
15 parents' home and returned to work in Los Angeles on January 1, 2009. When she left, she told  
16 her parents that she had to return to work because she was working on a transaction and that  
17 "[h]opefully we'll close soon."

18  
19 **C. Defendant Misappropriated Material, Nonpublic Information from His Daughter**  
20 **About the Abbott-EYE Transaction and Traded EYE Stock on the Basis of That**  
21 **Information**

22 18. Defendant misappropriated material, nonpublic information regarding the  
23 impending Abbott-EYE merger from Daughter while she was staying at his home and working on  
24 the transaction.

25 19. On January 8, 2009, at or about 12:28 p.m. Pacific time – shortly before the close of  
26 the market on the day the merger was supposed to be announced – Defendant logged on to his  
27 online brokerage account. This was the first time Defendant had logged on to his brokerage  
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1 account in almost a year. At or about 12:36 p.m. Pacific time, Defendant purchased 500 shares of  
2 EYE stock at an average price of \$8.82 per share. At 12:45 p.m. Pacific time, Defendant  
3 purchased an additional 400 shares of EYE stock at an average price of \$8.79 per share.

4 20. At the time Defendant purchased the 900 shares of EYE stock, substantial steps had  
5 been taken to commence a tender offer, including, but not limited to, the drafting of a merger  
6 agreement.

7  
8 21. When Defendant misappropriated information about the pending Abbott-EYE  
9 transaction from Daughter and then traded on the basis of this information, he breached his duty of  
10 loyalty and confidentiality to Daughter.

11 22. At or about 5:01 a.m. Pacific time on January 12, 2009, EYE announced that it had  
12 entered into an agreement with Abbott pursuant to which Abbott planned to acquire EYE at the  
13 cash price of \$22.00 per share through a tender offer. Following this announcement, EYE's stock  
14 price closed at \$21.50 on January 12, 2009, an increase of \$12.65 per share, or approximately  
15 143% over the prior trading day's closing price of \$8.85 per share.

16  
17 23. On February 19, 2009, Defendant sold his 900 shares of EYE stock at \$21.93 per  
18 share and, accordingly, made a profit of \$11,418.

19 **D. Defendant Breached His Fiduciary Duty to His Daughter When He Traded on the**  
20 **Basis of the Material, Nonpublic Information to Which His Daughter Had Access**

21 24. Based on the close nature of their relationship, Defendant owed to Daughter a duty  
22 of trust and confidence.

23 25. At all times, Defendant knew or should have known that Daughter, due to her  
24 employment and position at the Firm, had access to material, nonpublic information about  
25 prospective mergers or acquisitions involving Firm clients.  
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1 33. By engaging in the conduct described above, Defendant, directly or indirectly, in  
2 connection with the purchase or sale of securities, by the use of means or instrumentalities of  
3 interstate commerce, or the mails, or the facilities of a national securities exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of material facts or omitted to state material facts  
6 necessary in order to make the statements made, in the light of the  
7 circumstances under which they were made, not misleading; and/or  
8
- 9 c. engaged in acts, practices, or courses of business which operated or would  
10 operate as a fraud or deceit upon any person in connection with the purchase  
11 or sale of any security.

12 34. By engaging in the foregoing conduct, Defendant violated, and unless enjoined will  
13 continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5  
14 thereunder [17 C.F.R. § 240.10b-5].  
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16 **SECOND CLAIM FOR RELIEF**  
**Violation of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder**

17 35. The Commission re-alleges and incorporates by reference each and every allegation  
18 in paragraphs 1 through 34, inclusive, as if they were fully set forth herein.  
19

20 36. The Firm was the legal advisor to EYE in connection with Abbott's tender offer for  
21 the securities of EYE.

22 37. By January 8, 2009, the date on which Defendant placed his illegal trades, one or  
23 more substantial steps had been taken to commence the tender offer for EYE securities.

24 38. Because Defendant knew or should have known that the material, nonpublic  
25 information about the Abbott tender offer came from Daughter, who worked for the legal advisor  
26 to EYE, Defendant knew or had reason to know that the information that he received, directly or  
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1 indirectly, about the pending merger was material and nonpublic and that he was prohibited from  
2 causing the purchase or sale of the security to be sought by the tender offer.

3 39. By engaging in the foregoing conduct, Defendant violated, and unless enjoined will  
4 continue to violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3  
5 thereunder [17 C.F.R. § 240.14e-3].

6  
7 **PRAYER FOR RELIEF**

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

10 **I.**

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

15  
16 **II.**

17 Ordering Defendant to disgorge the unlawful trading profits derived from the activities set  
18 forth in this Complaint, together with prejudgment interest thereon;

19 **III.**

20 Ordering Defendant to pay a civil penalty pursuant to Section 21A of the Exchange Act [15  
21 U.S.C. § 78u-1]; and  
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IV.

Granting such other and further relief as the Court may deem just, equitable, and necessary.

Respectfully submitted,

By: /s/ Michael J. Rinaldi

Daniel M. Hawke  
Elaine C. Greenberg  
Michael J. Rinaldi  
Colleen K. Lynch  
David W. Snyder

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Dated: June 3, 2011

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
 Securities and Exchange Commission

**(b)** County of Residence of First Listed Plaintiff \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)  
 Michael J. Rinaldi, U.S. Securities and Exchange Commission, 701  
 Market St., Ste. 2000, Phila., Pa., 19106, (215) 597-3100

**DEFENDANTS**  
 Goetz, Dean A. '11CV1220 IEG NLS

County of Residence of First Listed Defendant San Diego County, Cal.  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED.

Attorneys (If Known)  
 John D. Kirby, 1010 Second Ave., Ste. 1850, San Diego, Cal.,  
 92101, (619) 557-0100

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Dislosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. §§ 78j(b) & 78n(e)

Brief description of cause:  
insider trading

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \_\_\_\_\_ **CHECK YES only if demanded in complaint:**  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 06/03/2011 SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael J. Rinaldi

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_