

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 14-20025-CR-JEM (s)(s)
18 U.S.C. § 1349
26 U.S.C. § 7201
18 U.S.C. § 981(a)(1)(C)**

UNITED STATES OF AMERICA

vs.

CARL FIORENTINO,

Defendant.

SECOND SUPERSEDING INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At times material to this Second Superseding Information:

1. Systemax, Inc. ("Systemax") was a Delaware corporation with its principal place of business in Port Washington, New York. Systemax sold personal computers and other consumer electronics through its websites, retail stores and direct mail catalogs. In fiscal year 2010, Systemax had annual sales revenue of approximately \$3.6 billion. Systemax was a public company and its common stock was traded on the New York Stock Exchange. Systemax was an issuer with a class of securities registered pursuant to Section 12 of the Securities and Exchange Act of 1934, and it was obligated to file reports with the U.S. Securities and Exchange Commission ("SEC") pursuant to Section 15(d) of the Act.

2. TigerDirect was a subsidiary of Systemax with its principal place of business in Miami, Florida. TigerDirect was a part of the Technology Products Group (“TPG”) of Systemax. TPG marketed and sold technology products under several brand names, including TigerDirect, CompUSA, and Circuit City.

3. Defendant **CARL FIORENTINO** was a resident of Miami, Florida and a senior executive of TigerDirect who used the title of President. **CARL FIORENTINO** had responsibility for negotiating and purchasing technology products from vendors who did business with TigerDirect.

4. Conspirator Gilbert Fiorentino was a resident of Miami, Florida, the Chief Executive Officer of TPG and TigerDirect, and a member of the Board of Directors of Systemax. **CARL FIORENTINO** reported to his brother, Gilbert Fiorentino, and both worked at TigerDirect’s Miami offices.

5. As a public company, Systemax was required to comply with Section 404 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7262, that required certain management personnel to sign annual conflict of interest questionnaires, certifications of compliance with Systemax’s corporate ethics policy, and representations about transactions out of the course of ordinary business. These questionnaires included a representation whether the employee had “receive[d] or ma[de] any arrangements for the receipt of any compensation or other personal financial benefit from a current or potential supplier, competitor or customer” of Systemax.

6. **CARL FIORENTINO** and Gilbert Fiorentino periodically signed conflict of interest questionnaires from 2005 through 2011, and provided these to Systemax as part of the company’s internal control over financial reporting.

7. Pursuant to Regulation S-K, 17 C.F.R. § 229.404(c)(2)(ix), Systemax was required to disclose all compensation Gilbert Fiorentino received each fiscal year, including all personal benefits and property, unless the amount was less than \$10,000. Regulation S-K, 17 C.F.R. § 229.404(a), also required that Systemax provide a description of any transaction or series of transactions exceeding \$120,000, to which Systemax was a party, and that Gilbert Fiorentino or **CARL FIORENTINO** had a direct or indirect financial interest.

8. E.K. was the principal of R.I., T.S. and C.O., all of which operated as one entity (collectively "R.I."). Between 2002 and 2011, R.I. was a supplier of computer components to TigerDirect. R.I. sourced and purchased computer products in Asia and re-sold and delivered them to TigerDirect at a markup. R.I. conducted nearly all of its sales with TigerDirect, had no other significant customers, and had more than \$150 million in sales to TigerDirect during this time period.

9. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury responsible for enforcing and administering the tax laws, and ascertaining, computing, assessing and collecting income taxes owed to the United States.

COUNT 1
Conspiracy to Commit Mail and Wire Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 9 of the General Allegations section of this Second Superseding Information are re-alleged and incorporated herein by reference.

2. Beginning in or around January, 2003, and continuing until at least on or about April 18, 2011, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

CARL FIORENTINO,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Gilbert Fiorentino, E.K. and others known and unknown to the United States Attorney to commit certain offenses against the United States, that is:

a) to knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and knowingly causing to be delivered certain mail matter by U.S. mail and by private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1341; and

b) to knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted in interstate and foreign commerce, by means of wire communication, certain writings, signs, signals, pictures and sounds, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was a purpose of the conspiracy for **CARL FIORENTINO** and his conspirators to unlawfully enrich themselves by concealing from the independent auditors and shareholders of Systemax, the receipt by **CARL FIORENTINO** and Gilbert Fiorentino of monies and valuable goods and services from various vendors and third parties who did business

with Systemax, and to not pay income taxes related to such monies, goods and services, so that **CARL FIORENTINO** and Gilbert Fiorentino could keep the monies, goods and services for their own personal use and benefit, and certain conspirators could obtain and retain business with Systemax.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and his conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. **CARL FIORENTINO** and Gilbert Fiorentino, along with their conspirators, agreed to receive undisclosed kickbacks and side payments from third parties, vendors and independent contractors who did business with TigerDirect and other TPG businesses of Systemax. In exchange for such payments, **CARL FIORENTINO** and Gilbert Fiorentino directed business to the third party vendors who made such payments.

5. **CARL FIORENTINO** instructed the third parties to pay him directly and indirectly through intermediaries, in cash, or in a form that could not be easily traced or detected by Systemax or the IRS.

6. In the case of E.K. and his companies, **CARL FIORENTINO** and Gilbert Fiorentino caused TigerDirect to pay approximately \$157 million between January 2003 and January 2011, for computer and electronics components. During this time, E.K. paid **CARL FIORENTINO** and Gilbert Fiorentino kickbacks in the form of cash payments, indirect payments, gift cards, and the purchase of luxury items. In total, E.K. paid kickbacks to **CARL FIORENTINO** and Gilbert Fiorentino totaling more than \$9 million, though the amounts paid to **CARL FIORENTINO** by E.K. were substantially greater than those paid to Gilbert Fiorentino.

7. Kickback payments were made by E.K. to **CARL FIORENTINO** in the form of interstate and international wire transfers, among other ways. E.K. and **CARL FIORENTINO**

coordinated kickback payments using personal email accounts that would not be detected, and would send and receive interstate and international email communications between Miami, Florida and other states and countries. E.K. and **CARL FIORENTINO** caused to be delivered in the U.S. mail, various documents and communications related to the scheme, including invoices from third parties that provided goods or services to **CARL FIORENTINO** but for which E.K. paid directly as a form of kickback.

8. **CARL FIORENTINO** demanded and obtained kickbacks from other vendors who did business with TigerDirect, and demanded that these payments be made in the form of cash, direct payments for goods or services, or other forms.

9. Between 2005 and 2011, **CARL FIORENTINO** and Gilbert Fiorentino signed conflict of interest questionnaires in which they falsely and fraudulently concealed from Systemax their receipt of cash, and other remuneration from vendors who did business with Systemax. Gilbert Fiorentino regularly met with the independent auditors of Systemax at the offices of TigerDirect in Miami, while the auditors were conducting quarterly reviews and annual audits of the company. In written management representation letters and in direct conversations, Gilbert Fiorentino made false and misleading statements to the company's auditors regarding the accuracy of the company's books, records and accounts, as they pertained to his own compensation, the compensation of his brother **CARL FIORENTINO**, and their receipt of kickbacks from third parties, among other things. These false and misleading statements and omissions were material to the ability of the auditors to perform accurate reviews and audits of the company's books, records, and accounts, and to assess Systemax's internal controls over financial reporting.

10. Between 2003 and March 17, 2011, **CARL FIORENTINO** and Gilbert Fiorentino caused Systemax to file Forms 10-K with the SEC that failed to disclose the

fraudulent kickback scheme and the related party transactions involving **CARL FIORENTINO** and Gilbert Fiorentino, and underreported the compensation of Gilbert Fiorentino, for the time periods covered by the reports. These reports represented to the investing public that Systemax had internal controls over financial reporting that allowed for the company's books, records and accounts to fairly and accurately depict the transactions of the company. By their actions, **CARL FIORENTINO** and Gilbert Fiorentino caused Systemax to not disclose their kickback scheme to the investing public.

11. **CARL FIORENTINO** filed personal income tax returns on IRS Form 1040 for tax years 2007 through 2010, that failed to disclose compensation he received in the form of kickbacks from third party vendors, including cash and other payments, by at least \$5,256,705.75, and resulting in a tax loss of at least \$1,810,760.

All in violation of Title 18, United States Code, Section 1349.

COUNT 2
Tax Evasion
(26 U.S.C. § 7201)

1. Paragraphs 1 through 9 of the General Allegations section of this Second Superseding Information are re-alleged and incorporated herein by reference.

2. On or about August 20, 2008, in Miami-Dade County, in the Southern District of Florida, the defendant,

CARL FIORENTINO,

a resident of Miami, Florida, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2007, by filing and causing to be filed with the Internal Revenue Service Center, at Philadelphia, Pennsylvania, a false and fraudulent U.S. Individual Income Tax Return, Form 1040. In that false return,

CARL FIORENTINO stated that his taxable income for the calendar year 2007 was the sum of \$718,680, and that the amount of tax due and owing thereon was the sum of \$215,530. In fact, as he then and there knew, his taxable income for the calendar year was the sum of \$4,989,378.45, upon which taxable income there was owing to the United States of America an income tax of \$1,409,640.

In violation of Title 26, United States Code, Section 7201.

FORFEITURE
(18 U.S.C. § 981(a)(1)(C))

1. The General Allegations section of this Second Superseding Information is re-alleged and incorporated herein by reference for the purpose of alleging forfeiture to the United States of America, of property in which **CARL FIORENTINO** has an interest.

2. Upon conviction of Count 1 of this Second Superseding Information, **CARL FIORENTINO** shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the offense of conviction.

3. The property subject to forfeiture includes, but is not limited to:

a. a sum of \$1,961,049.90, and all proceeds traceable thereto, as proceeds from the defendant's December 2013 sale of his former residence at 130 Casuarina Concourse, Coral Gables, Florida;

b. \$7,500 in cash from Wells Fargo bank account ending in X-5221;

c. Any financial interest in, or licenses related to, professional sports tickets, including any such license or interest related to the ATP Sony Ericsson Open Tennis Event in Key Biscayne, Florida;

d. All interest in 100 shares of the securities of "GOGO.com;"

e. Jewelry, including watches, valued at approximately \$40,000; and

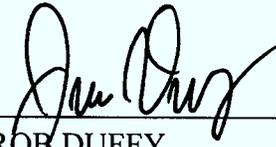
f. Any saleable home furnishings valued at greater than \$5,000, including one chandelier valued at approximately \$30,000.

4. Pursuant to Title 21, United States Code, Section 853(p), made applicable through Title 28, United States Code, Section 2461, if any property described above as being subject to forfeiture, as a result of any act or omission of the defendant: cannot be located upon due diligence; has been transferred, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or, has been commingled with other property which cannot be subdivided without difficulty; it is the intent of the United States to seek the forfeiture of other property of the defendant up to the value of the above-described forfeitable property.

All pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and the procedures set forth in Title 21, United States Code, Section 853, made applicable through Title 28, United States Code, Section 2461(c).



WIFREDO A. FERRER
UNITED STATES ATTORNEY



JERROB DUFFY
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: CARL FIORENTINO

Case No: 14-20025-CR-JEM(s)(s)

Count #: 1

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: Twenty (20) years' imprisonment

Count #: 2

Tax Evasion

Title 26, United States Code, Section 7201

* Max. Penalty: Five (5) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**