

FEDERAL
ELECTRONIC

Nov 20, 2014

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
14-20854-CR-COOKE/TORRES
CASE NO. _____

18 U.S.C. § 371

18 U.S.C. § 981(a)(1)(C)

UNITED STATES OF AMERICA

vs.

GILBERT FIORENTINO,

Defendant.

_____ /
INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At times material to this 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 **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.

4. Conspirator Carl Fiorentino was a senior executive of TigerDirect and used the title of President of TigerDirect. Carl Fiorentino had responsibility for negotiating and purchasing technology products from vendors who did business with TigerDirect. 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. **GILBERT FIORENTINO** and conspirator Carl 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. Systemax had independent auditors who conducted periodic and quarterly reviews of the company's books, records and accounts. As part of the quarterly reviews and annual audits of the company, **GILBERT FIORENTINO** signed management representation letters to

the auditors that represented, among other things, that he had “no knowledge of any fraud or suspected fraud involving management or other employees who have a significant role in the Company’s internal control over financial reporting,” and that no officer of Systemax had a business interest in conflict with the company.

8. 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.

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.

**CONSPIRACY TO COMMIT SECURITIES FRAUD
AND TO IMPEDE AND IMPAIR THE IRS
(18 U.S.C. § 371)**

Beginning in or around January, 2002, 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,

GILBERT FIORENTINO,

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

(1) to knowingly and willfully, directly and indirectly (a) make and cause to be made materially false and misleading statements; and (b) omit and cause others to omit material

facts necessary to make statements made, in light of the circumstances in which they were made, not misleading, to Systemax's independent accountants in connection with (i) audits, reviews and examinations of the financial statements of Systemax required to be filed under the Securities and Exchange Act of 1934; and (ii) the preparation and filing of documents and reports required to be filed with the SEC pursuant to regulations promulgated by the SEC, in violation of Title 17, Code of Federal Regulations, Section 240.13b2-2(a), and Title 15, United States Code, Sections 78m(a) and 78ff; and

(2) to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the IRS in the ascertainment, computation, assessment and collection of federal income taxes.

PURPOSE OF THE CONSPIRACY

10. It was a purpose of the conspiracy for **GILBERT FIORENTINO** and his conspirators to unlawfully enrich themselves by concealing from the independent auditors and shareholders of Systemax, the receipt by **GILBERT FIORENTINO** and Carl 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 **GILBERT FIORENTINO** and Carl 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 object and purpose of the conspiracy included, among others, the following:

11. **GILBERT FIORENTINO** and Carl 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.

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

13. In the case of E.K. and his companies, **GILBERT FIORENTINO** and Carl 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 to **GILBERT FIORENTINO** and Carl Fiorentino kickbacks in the form of cash payments, indirect payments, gift cards, and the purchase of luxury items. E.K., in turn, paid kickbacks to **GILBERT FIORENTINO** and Carl 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**.

14. **GILBERT FIORENTINO** demanded and obtained kickbacks from other vendors who did business with TigerDirect, and demanded these payments be made in the form of cash, direct payments for goods or services, or other forms. For example, **GILBERT FIORENTINO** caused vendor W.B., who provided shrink-wrap packaging services for TigerDirect, to pay cash kickbacks over several years, including by giving him bags of cash in the parking lot of TigerDirect's offices in Miami, Florida. In another example, **GILBERT FIORENTINO** demanded W.L. pay kickbacks in the form of numerous gold coins, paid over several years, in order to retain a marketing contract with TigerDirect.

15. **GILBERT FIORENTINO** and his conspirators discussed how the kickback payments would need to be concealed from others, including Systemax and the IRS. When questions were later asked by Systemax about his relationship with W.L., **GILBERT**

FIORENTINO requested that W.L. provide a W-2 to **GILBERT FIORENTINO** that falsely claimed he had served as a consultant to W.L.'s business, and that underreported the value of the gold coins W.L. had paid to **GILBERT FIORENTINO** for tax year 2010.

16. **GILBERT FIORENTINO** also misappropriated merchandise from TigerDirect as a means of compensation for himself, and used this merchandise to pay third parties for goods and services that were provided for his own personal benefit. For example, **GILBERT FIORENTINO** provided in excess of a hundred thousand dollars worth of misappropriated merchandise to G.T., in exchange for G.T. providing upkeep for **GILBERT FIORENTINO**'s yacht.

17. During the conspiracy, Systemax accrued a substantial number of American Express points that **GILBERT FIORENTINO** diverted for his own personal benefit without disclosing this fact to the Board of Directors of Systemax or its outside auditors. **GILBERT FIORENTINO** was in a position to cause TigerDirect to make payments to certain vendors and for accounts payable, using a corporate American Express account. **GILBERT FIORENTINO** caused the points that accrued from these corporate transactions to inure to his personal benefit, totaling approximately 300 million American Express points.

18. Between 2004 and 2011, **GILBERT FIORENTINO** and Carl 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.

19. Between 2002 and March 17, 2011, **GILBERT FIORENTINO** and Carl 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 **GILBERT FIORENTINO** and Carl Fiorentino, and underreported the compensation of **GILBERT FIORENTINO**, for the time periods covered by the reports. Furthermore, the Forms 10-K contained opinions from the outside auditors of the company that were based, in part, on materially false and misleading statements that **GILBERT FIORENTINO** made and caused to be made to the auditors. For example, by making false and misleading statements, **GILBERT FIORENTINO** caused independent auditors Ernst & Young LLP to issue a report to the Board of Directors of Systemax, dated March 17, 2011, that opined that Systemax "maintained, in all material respects, effective internal control over financial reporting as of December 31, 2010." This opinion was included in Systemax's Form 10-K filed with the SEC on March 17, 2011, and thereby made available to the investing public.

20. **GILBERT FIORENTINO** filed personal income tax returns on IRS Form 1040 for tax years 2004 through 2011, that failed to disclose compensation he received in the form of kickbacks from third party vendors, including cash, other payments, gold coins, maintenance to his yacht and other valuable goods and services totaling at least \$512,239.20, and resulting in a tax loss of at least \$179,283.71.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects and purpose thereof, at least one conspirator committed or caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. On or about August 7, 2006, **GILBERT FIORENTINO** caused E.K. to transfer \$10,200 from Citibank, N.A. account ending in X-5602, in Taipei, Taiwan to a Bank of America account ending in X-6953, in Miami, Florida, for the benefit of S.G., for high-end custom furniture that was delivered to **GILBERT FIORENTINO**'s residence, as a kickback so that E.K. could obtain and retain business with TigerDirect.
2. In or around December 2009, W.L. provided a quantity of gold coins to **GILBERT FIORENTINO** in Miami, Florida, so that W.L. could obtain and retain a marketing contract with TigerDirect.
3. On or about January 21, 2011, W.B. provided a cash kickback to **GILBERT FIORENTINO** at the Miami, Florida offices of TigerDirect, to obtain and retain a contract with TigerDirect.
4. On or about February 9, 2011, **GILBERT FIORENTINO**, having executed a conflict of interest questionnaire in which he falsely certified that he had no "financial or other beneficial interest in any transaction between the Company and any third party," caused the questionnaire to be transmitted via e-mail from TigerDirect's offices in Miami, Florida, to Systemax's offices in Port Washington, New York.
5. On or about March 17, 2011, **GILBERT FIORENTINO** caused, in New York, New York, Ernst & Young, LLP as outside auditor for Systemax, to execute a letter to the Board of Directors of Systemax representing that Systemax "maintained, in all material respects,

effective internal control over financial reporting" for fiscal year 2010, that was attached to Systemax's Form 10-K filed the same day.

6. On or about March 17, 2011, in Port Washington, New York, **GILBERT FIORENTINO**, having signed Systemax's Form 10-K as Chief Executive, Technology Products Group and Director, caused it to be filed with the SEC.

7. On or about October 13, 2011, in Miami, Florida, **GILBERT FIORENTINO** executed and caused to be submitted to the IRS, a Form 1040 for tax year 2010 that underreported his income for the taxable period, including by failing to disclose his receipt of cash, goods and services, and that included the false W-2 he had received from W.L. in relation to the kickbacks for that calendar year.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE
(18 U.S.C. § 981(a)(1)(C))

1. The General Allegations section of this 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 **GILBERT FIORENTINO** has an interest.

2. Upon conviction of the offense alleged in this Information, **GILBERT 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.

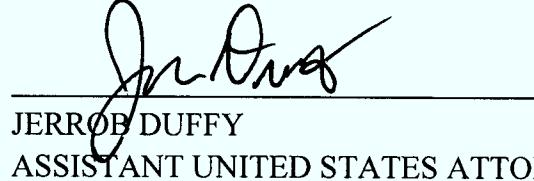
3. The property subject to forfeiture includes, but is not limited to, 99 gold coins surrendered to the Federal Bureau of Investigation on or about October 2, 2014.

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, Section 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).

I Second Note
WIFREDO A. FERRER
UNITED STATES ATTORNEY


JERRROB DUFFY
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

vs.

GILBERT FIORENTINO,

CASE NO. _____

CERTIFICATE OF TRIAL ATTORNEY*

Defendant. _____ /

Superseding Case Information:**Court Division:** (Select One)

Miami Key West
 FTL WPB FTP

New Defendant(s)
Number of New Defendants
Total number of counts

Yes _____ No _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) NO
List language and/or dialect _____
4. This case will take 0 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<input checked="" type="checkbox"/>
II	6 to 10 days	_____
II	11 to 20 days	_____
IV	21 to 60 days	_____
V:	61 days and over	_____

Petty	_____
Minor	_____
Misdem.	_____
Felony	<input checked="" type="checkbox"/>

6. Has this case been previously filed in this District Court? (Yes or No) No

Judge: _____ Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No) No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the _____

District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes No _____

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes No _____


JERROD DUFFY
ASSISTANT UNITED STATES ATTORNEY
Court ID No. A5501106

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

PENALTY SHEET

Defendant's Name: GILBERT FIORENTINO

Case No: _____

Count #: 1

Conspiracy to Commit Securities Fraud and to Impede and Impair the IRS

Title 18, United States Code, Section 371

* 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.**