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NORTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 SECURITIES AND EXCHANGE COMMISSION,
17 Plaintiff,
18 vs.
19 SAMIR I. ABED and ELIAS J. ANTOUN,
20 Defendants.

C 08

45-9

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF

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

22 SUMMARY OF THE ACTION

23 1. This case involves unlawful insider trading in the securities of Silicon Valley technology
24 company Genesis Microchip, Inc. ("Genesis") by the company's Chief Executive Officer as well as a
25 childhood friend of the CEO. While in the midst of confidential negotiations for the sale of the
26 company at a significant premium, Genesis' President and CEO, defendant Elias J. Antoun,
27 purchased Genesis stock in the brokerage accounts of a relative and a friend. At the same time,
28 defendant Samir I. Abed – a close friend with whom Antoun had discussed the merger in confidence
– misappropriated the information to make his own unlawful purchases of Genesis stock and options.

1 **RELEVANT ENTITIES**

2 9. Genesis Microchip, Inc. was, prior to being acquired by STM in 2008, a Delaware
3 corporation headquartered in Santa Clara, California. Genesis was a supplier of display image
4 processors in both the flat-panel TV and LCD monitor markets. Prior to January 25, 2008, Genesis'
5 securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act [15
6 U.S.C. § 78l(g)] and were traded on the NASDAQ Global Select Market under the symbol "GNSS."

7 10. STMicroelectronics, headquartered in Geneva, Switzerland, is one of the world's largest
8 semiconductor companies. STM's securities are registered with the Commission pursuant to Section
9 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and are traded on the New York Stock Exchange
10 under the symbol "STM."

11 **FACTUAL ALLEGATIONS**

12 **A. Antoun Purchased Genesis Stock While Aware Of Confidential Merger Discussions.**

13 11. In early 2007, Genesis' Board began to consider potential business partnerships or
14 mergers. Genesis first approached STM in late June 2007, and on June 28 STM indicated its initial
15 willingness to consider a potential collaboration.

16 12. Antoun, as Genesis's CEO, along with other Genesis employees, met with representatives
17 of STM in Santa Clara, California in late July 2007 and again in Paris in late August 2007. Genesis
18 and STM signed a confidentiality agreement at the August meeting.

19 13. In mid-September 2007, STM contacted Antoun to advise Genesis of STM's interest in
20 pursuing further discussions about the potential acquisition of Genesis by STM. At the end of
21 September 2007, STM again indicated its interest in moving forward. Antoun met with STM
22 representatives in Geneva on October 15 to continue the confidential merger discussions.

23 14. Genesis received a letter of intent from STM on November 5, 2007. The letter proposed
24 that STM would acquire Genesis through a cash tender offer at a price of \$9.50 per share, a
25 significant premium over Genesis' then-trading price of around \$6.54 per share. The companies then
26 began negotiating the terms of a merger agreement and STM commenced due diligence for purposes
27 of the merger.

1 15. Throughout this period, the companies' negotiations remained confidential. As Genesis'
2 CEO, Antoun was intimately familiar with each of these steps and the confidential nature of the
3 negotiations.

4 16. During the course of these negotiations, Antoun purchased Genesis stock in two separate
5 accounts in which he had trading authority, one opened by a relative and another opened by a friend.
6 Antoun purchased 9,750 shares of Genesis stock in his relative's account in multiple transactions on
7 November 12, 13 and 19, and December 3, 2007. Antoun also purchased 2,500 shares of Genesis
8 stock in his friend's account on November 12, 2007.

9 17. On December 5, 2007, STM revised its per share proposal to \$8.25, which Genesis
10 rejected. The companies continued their merger negotiations until they reached an agreement in
11 principle on Sunday, December 9, at a price of \$8.65 per share. (On Friday, December 7, Genesis'
12 stock price had closed at \$5.35 per share.) The next day, December 10, Genesis' Board approved the
13 merger agreement and the parties executed the agreement.

14 18. On December 11, 2007, at 3:00 a.m. Eastern Time, Genesis and STM issued a joint press
15 release announcing the merger. That day nearly 15 million shares of Genesis stock traded, compared
16 to 342,208 shares on December 10, 2007, and Genesis' stock price increased 57% to close at \$8.49.

17 19. In January 2008, Antoun tendered all of the shares he had purchased in the two accounts
18 from November 12 through December 3, for total profits of approximately \$33,975.

19 20. As CEO and President of Genesis, Antoun had a duty to Genesis' shareholders to maintain
20 the confidentiality of material nonpublic information about the STM merger and not to trade based on
21 that information. In purchasing Genesis shares in the accounts of his relative and friend, Antoun
22 breached that duty.

23 **B. Antoun Had Previously Traded On Material Nonpublic Information.**

24 21. Antoun's 2007 pre-merger trades were not his first instance of insider trading in Genesis'
25 stock. On July 21, 2006, Antoun purchased 900 shares of Genesis stock in his friend's account in
26 advance of a Genesis earnings announcement. At the time of the purchase, Antoun was privy to
27 material nonpublic information that the earnings announcement would reveal positive results.
28

1 22. On July 27, 2006, after market close, Genesis announced the results of its fiscal quarter
2 ended June 30, 2006. The next day, the stock opened at \$13.44, 19.85% higher than the previous
3 day's close, and Antoun sold the 900 shares of Genesis at \$13.18 per share, for a profit of
4 approximately \$2,235.

5 23. As CEO and President of Genesis, Antoun had a duty to Genesis' shareholders to maintain
6 the confidentiality of material nonpublic information about the company's financial performance and
7 not to trade based on that information. In purchasing Genesis shares in the account of his friend,
8 Antoun breached that duty.

9 **C. Abed Misappropriated Material Nonpublic Information About The Genesis/STM**
10 **Merger From Antoun And Traded Based On That Information.**

11 24. Abed and Antoun became friends while attending boarding school together in the 1960s.
12 The two have had a long history of discussing confidential personal and work issues. Because of
13 their close personal relationship and history of sharing confidences, Antoun often communicated with
14 Abed about Genesis work issues. Antoun trusted and expected that Abed would maintain the
15 confidentiality of the information shared and not trade on the information.

16 25. In late August 2007, Antoun mentioned the merger to Abed after returning from a meeting
17 with STM in Paris. Antoun again discussed the merger with Abed on October 28, 2007, after
18 Antoun's return from a meeting with STM in Geneva. During that discussion, Antoun told Abed that
19 the deal with STM was looking more and more real. As with their prior discussions of personal and
20 work-related issues, Antoun expected that the information would be kept confidential, and Abed
21 understood this expectation.

22 26. On October 29 and November 2, 2007, Abed purchased 600 shares and 400 shares,
23 respectively, of Genesis common stock. On November 14 and November 28, 2007, Abed purchased
24 a total of 30 Genesis call option contracts. Each call option contract gave Abed the right to purchase
25 100 shares of Genesis stock at a specified price before the contracts expired. By purchasing call
26 option contracts, Abed was trading based on the expectation that Genesis' stock price would rise.

27 27. At about 7:30 p.m. on December 9, 2007, Antoun telephoned Abed and told him that the
28 deal with STM had been finalized.

1 28. On December 10, 2007, before the merger was announced publicly, Abed purchased an
2 additional 10,000 shares of Genesis common stock and 70 additional Genesis call option contracts.

3 29. After the merger announcement, Abed sold 40 of the Genesis call option contracts and
4 exercised the remainder. Abed sold 3,344 shares of Genesis stock on December 21 and 26, 2007 and
5 tendered the rest of his shares in January 2008. Abed's profits on his Genesis trades totaled
6 approximately \$51,206.

7 30. Each of Abed's purchases of Genesis stock and call option contracts from October 28,
8 2007 through December 9, 2007, was based on material nonpublic information Abed misappropriated
9 from Antoun in violation of the duties of trust and confidence Abed owed Antoun based on their
10 close personal relationship and history of sharing personal and work confidences. Abed knew, or was
11 reckless in not knowing, that the information he received from Antoun regarding the Genesis/STM
12 merger was material and nonpublic.

13 **FIRST CLAIM FOR RELIEF**

14 *(Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]*
15 *and Rule 10b-5 [17 C.F.R. § 240.10b-5] Promulgated Thereunder by Antoun and Abed)*

16 31. Paragraphs 1 through 30 are re-alleged and incorporated herein by reference.

17 32. In relation to defendants' aforementioned trading in the securities of Genesis,
18 defendants, with scienter, directly or indirectly:

- 19 a) employed devices, schemes, or artifices to defraud;
- 20 b) made untrue statements of material fact or omitted to state a material fact
21 necessary in order to make the statements made, in the light of the
22 circumstances under which they were made, not misleading; and
- 23 c) engaged in acts, practices, or courses of business which operated or would
24 operate as a fraud or deceit upon other persons

25 in connection with the purchase or sale of securities, by the use of means or instrumentalities of
26 interstate commerce, of the mails, or the facilities of a national securities exchange.

1 33. By reason of the foregoing, defendants violated, and unless restrained and enjoined will
2 continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
3 thereunder [17 C.F.R. § 240.10b-5].

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that this Court:

6 I.

7 Permanently enjoin Antoun and Abed from directly or indirectly violating Section 10(b) of
8 the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5];

9 II.

10 Order Antoun and Abed to disgorge the ill-gotten gains derived from the unlawful trading
11 alleged herein, plus prejudgment interest;

12 III.

13 Order Antoun and Abed to pay civil monetary penalties pursuant to Section 21A of the
14 Exchange Act [15 U.S.C. § 78u-1];

15 IV.

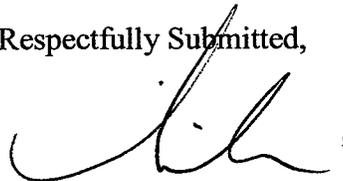
16 Retain jurisdiction of this action in accordance with the principles of equity and the Federal
17 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that
18 may be entered, or to entertain any suitable application or motion for additional relief within the
19 jurisdiction of this Court; and

20 V.

21 Grant such other relief as this Court may determine to be just and appropriate.

22
23 DATED: September 30, 2008

Respectfully Submitted,

24
25 

26 Monique C. Winkler
27 Attorney for Plaintiff
28 SECURITIES AND EXCHANGE COMMISSION