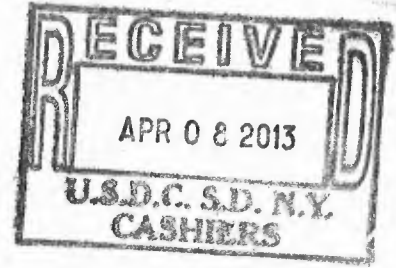


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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	12-cv-5009 (GBD)
Plaintiff,	:	
	:	AMENDED
-against-	:	<u>COMPLAINT</u>
	:	
TAI NGUYEN	:	
and	:	
THANHHA BAO,	:	
	:	
Defendants.	:	
	:	

Plaintiff Securities and Exchange Commission (“Commission”), for its Amended Complaint against defendants Tai Nguyen (“Nguyen”) and ThanhHa Bao (“Bao”) (collectively, “Defendants”), alleges as follows:

**SUMMARY**

1. This case involves insider trading by Nguyen and his hedge fund clients in the securities of Abaxis, Inc. (“Abaxis”). From 2006 through 2009, Nguyen regularly obtained material nonpublic information about Abaxis’s quarterly earnings from his sister Bao, who was an employee in Abaxis’s finance department. Based on that information, Nguyen traded Abaxis securities in his own account and reaped approximately \$145,000 in illicit trading profits.

2. In addition to trading in his own account, Nguyen, who owned Insight Research, a business that provided equity research to investment advisers, also passed Bao's information to Barai Capital Management, LP ("Barai Capital") and Sonar Capital Management, LLC ("Sonar Capital"), two hedge fund management firms that were clients of Insight Research. These hedge fund management firms caused the hedge funds they managed to trade Abaxis securities based on the material nonpublic information that Nguyen provided and reaped over \$7.2 million in illicit profits and avoided losses for those hedge funds.

### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

3. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against the Defendants, enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and disgorgement of ill-gotten gains or losses avoided from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest. The Commission also seeks civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. In addition, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], the Commission seeks an order barring defendant Bao from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]. Finally, the Commission seeks

any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

5. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York. Several of the communications described herein took place while at least one of the parties to the communication was physically located in New York, New York. In addition, Abaxis is traded on the NASDAQ Stock Exchange, which is located in New York, New York.

#### **DEFENDANTS**

6. **Nguyen**, age 50, currently resides in Oregon City, Oregon (although at all times relevant to this action, Nguyen resided in Pleasanton, California). Nguyen is the founder and owner of Insight Research, a consulting firm that analyzes publicly traded technology companies for hedge fund managers. From 2000 through 2005, Nguyen was employed as a research analyst at three separate broker-dealers and obtained his Series 7, Series 63 and Series 87 licenses in connection with those employments.

7. **Bao**, age, 57, currently resides in Fremont, California. Bao worked in the finance department of Abaxis from late 2005 until August 2012, and reported to the company's chief financial officer. She is the older sister of Nguyen.

#### **RELATED PARTIES**

8. **Abaxis** is a California corporation headquartered in Union City, California. Abaxis manufactures blood analysis systems for use by doctors and veterinarians. Abaxis's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock trades on the NASDAQ stock exchange under the symbol "ABAX."

9. **Barai Capital** was an unregistered investment adviser created in March 2008 and based in New York, New York. Barai Capital served as adviser to the Barai Capital Master Fund, an unregistered hedge fund with approximately \$100 million in assets that invested primarily in technology companies. Barai Capital was a defendant in SEC v. Mark Anthony Longoria et al., 11-cv-0753 (JSR), an insider trading case filed in this district in February 2011 ("SEC v. Longoria"). Final Judgment was entered against Barai Capital in the SEC v. Longoria on January 23, 2012 and the firm has since wound down its business.

10. **Samir Barai ("Barai")**, age 40, resides in New York, New York. Barai was the founder of Barai Capital and the portfolio manager of the Barai Capital Master Fund. Barai Capital was a client of Nguyen's research firm, Insight Research. Prior to founding Barai Capital in 2008, Barai worked as a portfolio manager at Tribeca Global Management, a hedge fund owned by Citigroup that was also a client of Insight Research. Barai was a defendant in SEC v. Longoria and a final judgment against him was entered

in that case on January 23, 2012. Barai has also pleaded guilty in a parallel criminal action in this district, U.S. v. Samir Barai, 11-cr-116 (DAB) and is awaiting sentencing.

11. **Noah Freeman**, age 36, resides in Boston, Massachusetts. Until June 2008, Freeman was a managing director at Sonar Capital. Freeman was a defendant in SEC v. Longoria and a final judgment against him was entered in that case on December 23, 2011. Freeman has also pleaded guilty in a parallel criminal action in this district, U.S. v. Noah Freeman, 11-cr-116 (DAB), and is awaiting sentencing.

12. **Insight Research** is a business entity operated as a sole proprietorship by Nguyen and through which Nguyen received payments from Barai Capital, Sonar Capital and other hedge fund clients. During the relevant period, Insight Research was based in Nguyen's home in Pleasanton, California.

13. **Sonar Capital** is an unregistered investment adviser based in Boston, Massachusetts that, during the relevant time, served as the adviser to several hedge funds, including the Sonar Overseas Fund, LTD, the Sonar Institutional Fund, LP, the Sonar ERISA Master Fund, LTD, and the Sonar Overseas ERISA Fund, LTD.

## FACTS

### **Bao Provided Material Nonpublic Information Regarding Abaxis to Nguyen, Who Then Traded on that Inside Information**

14. Bao began working at Abaxis in late 2005, and reported directly to the company's chief financial officer ("CFO") from the outset. During the relevant period, Bao's responsibilities included calculating the company's quarterly revenues.

15. After the close of each quarter, Bao participated in meetings with the CFO concerning the quarterly earnings numbers that the company would provide to the public in its quarterly earnings announcements.

16. Abaxis had a written policy forbidding its employees from sharing material nonpublic information outside the company. Bao knew of that policy and signed written acknowledgements of that policy.

17. Despite the existence of this policy and Bao's knowledge of it, Bao repeatedly shared material nonpublic information regarding the company's quarterly earnings with her brother Nguyen, with whom she has a very close relationship. During the relevant period, Bao knew that Nguyen was employed as a financial analyst.

18. On at least seven occasions between 2006 and 2009, Bao provided Nguyen with material nonpublic information concerning Abaxis's financial results before the company disclosed this information to the public in its quarterly earnings announcements.<sup>1</sup> The material nonpublic information that Bao provided to Nguyen included Abaxis's quarterly revenues, as well as its gross profit margins and earnings per share.

19. From 2006 through 2009, Nguyen traded Abaxis securities based on the information he received from Bao and reaped approximately \$145,000.

#### **Insider Trading by Nguyen in April 2007**

20. For example, on April 20, 2007 – approximately three weeks after the close of the fourth quarter of Abaxis's 2007 fiscal year, and less than a week before the company's quarterly earnings announcement, on April 26th – Nguyen telephoned Bao, and spoke to her for five minutes. Thirteen minutes after the completion of that call,

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<sup>1</sup> The seven quarterly earnings announcements at issue took place over a three-year period, on July 27, 2006; October 25, 2006; April 26, 2007; October 24, 2007; January 31, 2008; July 24, 2008; and July 30, 2009.

Nguyen sold short<sup>2</sup> 2,000 shares of Abaxis stock.

21. After the close of trading on April 26, 2007, Abaxis announced its quarterly earnings. The announcement included revenues and earnings per share that were below analyst expectations.

22. The next day, April 27, the company's share price dropped 5.8 percent and Nguyen covered the short position that he had established a week earlier, reaping \$3,733 in illicit profits.

**Insider Trading by Nguyen in October 2007**

23. Similarly, on October 24, 2007, just hours before Abaxis announced its earnings results for the second quarter of the company's 2008 fiscal year, Nguyen telephoned Bao, who provided him with material nonpublic information concerning Abaxis's upcoming earnings announcement. Minutes after this telephone call, Nguyen purchased 3,000 shares of Abaxis stock.

24. Later that same day, shortly after the close of trading, Abaxis announced its second quarter 2008 earnings results, including revenues that were six percent better than analyst expectations and earnings per share that were 25 percent better than expectations. The next day, on October 25, 2007, Abaxis stock rose more than five dollars per share, or 21 percent. Nguyen sold the Abaxis shares that he had purchased the day before and reaped \$1,887 in ill-gotten gains.

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<sup>2</sup> To "sell short" is to sell a security that one does not own, but rather has arranged to borrow from a third party, with the intention of purchasing (also called "covering") the security at a later date. A short seller stands to gain if the price of the security declines between the short sale and the purchase because the short seller has sold the security at a price that is greater than the purchase price.

**Insider Trading by Nguyen in July 2008**

25. On the evening of July 8, 2008 – eight days after the close of the first quarter of Abaxis’s 2009 fiscal year, and just over two weeks before the company’s quarterly earnings announcement, on July 24th – Nguyen telephoned Bao, and once again Bao shared material nonpublic information concerning Abaxis’s financial performance. The next morning, Nguyen sold short 2,800 shares of Abaxis stock.

26. Nguyen and Bao spoke by phone several more times over the next two weeks and Nguyen continued to short Abaxis stock, including a short sale of 1,000 shares that Nguyen executed on July 24, 2008, less than two hours after talking with Bao via telephone (and less than two hours before the company announced its quarterly results).

27. After the close of trading on July 24, 2008, Abaxis announced its quarterly results including revenues that were more than 10 percent below analyst expectations and earnings per share that were approximately 24 percent below expectations. Those disappointing results caused the stock to drop more than three dollars per share, or approximately 13 percent.

28. On the morning of July 25, 2008, Nguyen closed out his short position and reaped \$19,265 in illicit profits.

**Nguyen Tipped Bao’s Inside Information to His Hedge Fund Clients**

29. In addition to using Bao’s information to trade for his own account, Nguyen passed Bao’s inside information regarding Abaxis to clients of his equity research firm, Insight Research. At least two of those clients, Barai Capital and Sonar Capital, used the information that Nguyen provided to trade Abaxis securities on behalf of hedge funds that they managed and reaped at least \$7.2 million in illicit profits and



avoided losses.

30. In exchange for the Abaxis information and other information that Nguyen provided, Barai Capital and Sonar Capital each paid Insight Research, several thousand dollars per month in fees.

**Sonar Capital's Trading of Abaxis**

31. Between 2006 and 2009, Nguyen passed the Abaxis earnings information that he received from Bao to Sonar Capital in advance of at least six Abaxis quarterly earnings announcements.<sup>3</sup> Sonar Capital traded on the basis of this information and reaped over \$5.4 million in profits and losses avoided.

32. For example, on October 19 and 21, 2007, after the close of Abaxis's second fiscal quarter of 2008, Nguyen and Bao had several brief phone calls during which Bao communicated information concerning Abaxis's second quarter financial results. On October 22, 2007, Nguyen spoke to Sonar Capital employee Freeman by phone and several minutes later, Sonar Capital hedge funds bought 5,000 shares of Abaxis.

33. Later that day, Nguyen and Freeman spoke by phone again, and an hour after that second phone call, Sonar Capital bought an additional 5,000 shares of Abaxis.

34. Finally, after a third phone call from Nguyen to a telephone number associated with Sonar Capital, Sonar Capital hedge funds purchased 15,000 more shares of Abaxis.

35. Hedge funds managed by Sonar Capital purchased an additional 85,000

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<sup>3</sup> The six quarterly earnings announcements at issue took place over a three-year period, on July 27, 2006; October 25, 2006; April 26, 2007; October 24, 2007; January 31, 2008; and July 24, 2008.

shares of Abaxis over the next two days, October 23 and 24, 2007.

36. As alleged in paragraph 24 above, after market-close on October 24, 2007, Abaxis announced quarterly revenues and earnings per share that were better than analysts had expected, causing the share price to rise more than five dollars per share the following day.

37. On October 25, 2007, the day after this earnings announcement, Sonar Capital sold the entire Abaxis position that its hedge funds had accumulated, reaping profits of over \$386,000.

38. Similarly, in July of 2008, Sonar Capital traded Abaxis based on material nonpublic information that Nguyen obtained from Bao in advance of Abaxis's first quarter 2009 earnings announcement.

39. After receiving material nonpublic information from Bao on July 8, 2008 and selling short Abaxis stock in his own account on the morning of July 9, 2008, Nguyen called a telephone number associated with Sonar Capital. Late in the evening on July 9, 2008, Nguyen spoke to Bao again via telephone. Early the next morning, July 10, 2008, Nguyen placed another telephone call to Sonar Capital. Approximately 30 minutes after this call, Sonar Capital hedge funds began selling short Abaxis stock and established a 100,000 share short position by the close of trading. The next day, July 11, 2008, Sonar Capital hedge funds short sold an additional 98,000 shares of Abaxis stock.

40. Over the next two weeks, Nguyen continued to communicate with Sonar Capital, and Sonar Capital hedge funds added to their short position, establishing a 221,000 share Abaxis short position leading up to the company's July 24, 2008 earnings announcement.

41. As alleged in paragraph 27 above, after the close of trading on July 24, 2008, Abaxis announced worse-than-expected quarterly revenues and earnings per share, which caused the price of the stock to drop more than three dollars per share.

42. In the weeks that followed, Sonar Capital hedge funds covered the short positions that they had established prior to the Abaxis quarterly announcement and reaped ill-gotten profits of \$451,130.

**Barai Capital's Trading of Abaxis**

43. In 2008 and 2009, Nguyen passed the Abaxis earnings information that he received from Bao to Barai of Barai Capital in advance of at least two quarterly earnings announcements by Abaxis.<sup>4</sup> A hedge fund managed by Barai Capital traded on the basis of this information and reaped over \$1.7 million in profits.

44. For example, as alleged in paragraphs 25-27 above, Nguyen received material nonpublic information from Bao concerning Abaxis's disappointing first quarter 2009 performance and began short selling Abaxis stock on the morning of July 9, 2008. Later that same day, a hedge fund managed by Barai Capital – which traded almost exclusively in technology companies – began short selling shares of Abaxis.

45. Over the next two weeks or so, Nguyen communicated with Barai by text message, and Barai Capital's hedge fund continued to short sell Abaxis shares (and also purchased out-of-the-money Abaxis put options<sup>5</sup>).

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<sup>4</sup> The two quarterly earnings announcements at issue took place on July 24, 2008 and July 30, 2009.

<sup>5</sup> A put option is a financial contract between two parties that gives the buyer the right, but not the obligation, to sell an agreed quantity of stock during a specified time period at a specified price, known as the "strike price." The buyer pays a premium to purchase this

46. After Abaxis's disappointing earnings announcement on July 24, 2008, the Barai Capital hedge fund closed out its short position (and sold its put options), reaping profits of approximately \$495,000.

**CLAIMS FOR RELIEF**

**CLAIM I**

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder  
Against Defendants Nguyen and Bao**

47. The Commission realleges and incorporates by reference paragraphs 1 through 46, as though fully set forth herein.

48. The information that Bao provided to Nguyen, was, in each case, material and nonpublic. In addition, the information was, in each case, considered confidential by Abaxis, the company that was the source of the information, and Abaxis had policies protecting confidential information.

49. Bao knew, or was reckless in not knowing, that she owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

50. Bao provided the material nonpublic information to Nguyen in breach of the duty that she owed to Abaxis, and did so with the expectation of receiving a benefit.

51. Nguyen knew, recklessly disregarded, or should have known, that Bao owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

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right. A buyer of a put option generally stands to gain if the price of the stock decreases. An "out-of-the-money" put option is an option contract whose strike price is below the current market price of the reference stock.

52. Nguyen purchased and sold Abaxis securities while in possession of the material nonpublic information he received from Bao.

53. Nguyen tipped material nonpublic information concerning Abaxis to Barai Capital and Sonar Capital, with the expectation of receiving a benefit for doing so, and Nguyen knew, recklessly disregarded, or should have known, that the information was conveyed in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence.

54. Nguyen is liable for his own trading as well as the trading of Barai Capital and Sonar Capital because he directly or indirectly caused the trades in Abaxis securities that were executed for his own account and on behalf of the funds managed by Barai Capital and Sonar Capital. Bao unlawfully disclosed material nonpublic information concerning Abaxis to Nguyen, who in turn, unlawfully disclosed this material nonpublic information to Barai Capital and Sonar Capital.

55. By virtue of the foregoing, defendants Nguyen and Bao, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

56. By virtue of the foregoing, defendants Nguyen and Bao directly or indirectly, violated, and unless enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**CLAIM II**  
**Violations of Section 17(a) of the Securities Act**  
**Against Defendants Nguyen and Bao**

57. The Commission realleges and incorporates by reference paragraphs 1 through 56, as though fully set forth herein.

58. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, defendants Nguyen and Bao: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

59. By reason of the conduct described above, defendants Nguyen and Bao directly or indirectly violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**RELIEF SOUGHT**

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

**I.**

Permanently restraining and enjoining defendants Nguyen and Bao from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

**II.**

Permanently restraining and enjoining defendants Nguyen and Bao from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

**III.**

Ordering defendants Nguyen and Bao to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the conduct alleged in this Complaint, including all of Nguyen's illicit trading profits, and payments that Nguyen received from his tippees, as well as the illicit trading profits, other ill-gotten gains, and/or avoided losses of Nguyen's direct and downstream tippees;

**IV.**

Ordering defendants Nguyen and Bao to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. §§ 78u-1]; and

**V.**

Barring defendant Bao, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered pursuant to

Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

VI.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
April 8, 2013

*Sanjay Wadhwa*

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