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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE COMMISSION,

Case No. 3:10-CV-02514-L-WMC

11 Plaintiff,

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

12 vs.

13 BRETT A. COHEN; DAVID V. MYERS; AARON  
14 J. SCALIA; AND STEPHEN J. SCALIA,

15 Defendants.  
16

17 Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

18 **SUMMARY**

19 1. This case involves unlawful insider trading in the securities of two molecular  
20 diagnostics companies, Sequenom, Inc. (“Sequenom”) and Exact Sciences Corporation  
21 (“EXAS”). Aaron J. Scalia (“A. Scalia”), a patent agent formerly employed by Sequenom,  
22 learned material nonpublic information about the development of one of Sequenom’s diagnostic  
23 products, and separately about Sequenom’s proposed acquisition of EXAS, and illegally tipped  
24 his brother, Stephen J. Scalia (“S. Scalia”). S. Scalia in turn tipped defendant Brett A. Cohen  
25 (“Cohen”), his fraternity brother, who tipped defendant David V. Myers (“Myers”), Cohen’s  
26 uncle. Myers traded on the basis of A. Scalia’s material nonpublic information and realized  
27 illicit profits of approximately \$607,640 on the purchase and sale of EXAS securities, and the  
28 purchase and sale of put options on Sequenom, and unrealized profits on 1,000 shares of EXAS

1 stock.

2 2. By engaging in the conduct alleged in this Complaint, the defendants violated the  
3 antifraud provisions of the federal securities laws. The Commission requests that the Court  
4 permanently enjoin each of the defendants from further violations of these laws, impose a civil  
5 penalty on each defendant, and require the defendants to disgorge all profits realized from their  
6 unlawful tipping and trading, plus prejudgment interest on those amounts.

7 **JURISDICTION AND VENUE**

8 3. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e),  
9 21A, and 27 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),  
10 78u(e), 78u-1, and 78aa. Defendants, directly or indirectly, made use of the means or  
11 instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities  
12 exchange in connection with the transactions, acts, practices and courses of business alleged in  
13 this Complaint.

14 4. Venue is proper pursuant to Sections 21(d), 21A, and 27 of the Exchange Act, 15  
15 U.S.C. §§ 78u(d), 78u-1, and 78aa, because certain of the transactions, acts, practices, and  
16 courses of business constituting violations of the federal securities laws occurred within this  
17 district.

18 **THE DEFENDANTS**

19 5. Brett A. Cohen (“Cohen”), age 39, resides in Baltimore, Maryland, and is the owner  
20 of BAC Consulting LLC, a business consulting company. Cohen is Myers’ nephew and a fraternity  
21 brother of S. Scalia.

22 6. David V. Myers (“Myers”), age 54, resides in Cleveland, Ohio. Myers is the  
23 executive vice president at I.SO Italia USA Inc., a tanning bed sales company. Myers is Cohen’s  
24 uncle.

25 7. Aaron J. Scalia (“A. Scalia”), age 35, resides in San Diego, California. A. Scalia was  
26 employed as a patent agent for Sequenom between 2002 and 2010. A. Scalia is S. Scalia’s younger  
27 brother.

28 8. Stephen J. Scalia (“S. Scalia”), age 38, resides in Baltimore, Maryland. S. Scalia

owns and operates Old Glory Harley-Davidson/Buell, a motorcycle company. S. Scalia is A. Scalia's older brother and a fraternity brother and friend of Cohen.

**RELATED ENTITIES**

9. Sequenom is a Delaware corporation located in San Diego, California. Sequenom is a diagnostic testing and genetics analysis company. Sequenom's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its shares trade on The Nasdaq Global Market under the symbol "SQNM." Sequenom's options trade on multiple exchanges, including the Chicago Board Options Exchange.

10. EXAS is a Delaware corporation located in Madison, Wisconsin. EXAS is a molecular diagnostics company that focuses on the early detection and prevention of colorectal cancer. EXAS' common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its shares are traded on The Nasdaq Capital Market under the symbol "EXAS."

**THE DEFENDANTS' FRAUDULENT CONDUCT**

**I. A. Scalia's Duty of Confidentiality to Sequenom**

11. A. Scalia was a patent agent at Sequenom between 2002 and 2010, and worked in the company's legal department on intellectual property matters. As an employee of Sequenom, A. Scalia had a duty not to disclose any confidential information he learned in the course of his employment and not to use the information for his benefit or the benefit of others. At all times during his employment at Sequenom, A. Scalia was aware of this duty of confidentiality.

12. In 2002, at the time A. Scalia was hired by Sequenom, he signed an "Acknowledgment of Receipt of Employee Handbook," in which he agreed to familiarize himself with the information in the Handbook and to observe the policies set forth in it, including Sequenom's Insider Trading Policy.

13. Sequenom made available to employees its Insider Trading Policy on its internal internet site and periodically required employees to acknowledge in writing their knowledge and awareness of the Insider Trading Policy. The Policy explicitly warned that "[f]ailure to comply with these procedures could result in a serious violation of the securities laws by you and/or

1 Sequenom and can involve both civil and criminal penalties.” The Policy defined the term  
2 “insider”: “An ‘insider’ is a person who possesses, or has access to, material information  
3 concerning Sequenom that has not been fully disclosed to the public.” The Policy explained that  
4 a “person can be an insider for a limited time with respect to certain material information even  
5 though he or she is not an officer or director. For example, a secretary who knows that a large  
6 contract has just been received or that an acquisition is about to occur may be an insider with  
7 respect to that information until the news has been fully disclosed to the public.” The Policy  
8 states that “information should be regarded as material if there is a likelihood that it would be  
9 considered important by an investor in making a decision regarding the purchase or sale of  
10 Sequenom stock.”

11 14. Sequenom’s 2008 Code of Business Conduct and Ethics reiterated the duty of  
12 confidentiality owed by employees and the restrictions on use of material nonpublic information  
13 by Sequenom employees. The 2008 Code explicitly stated, with regard to Insider Trading:  
14 “Employees who have access to confidential (or ‘inside’) information are not permitted to use or  
15 share that information for stock trading purposes, or for any other purpose except to conduct  
16 Company-related business.” It further stated: “To use material non-public information in  
17 connection with the buying or selling of securities, including ‘tipping’ others who might make an  
18 investment decision on the basis of this information, is not only unethical, it is illegal.”

19 15. From time to time throughout his employment, A. Scalia received written copies  
20 of these policies and/or was required to review them on Sequenom’s internal internet site, and A.  
21 Scalia acknowledged his obligation to comply with these policies and maintain the  
22 confidentiality of Sequenom’s confidential information, which included information regarding  
23 proposed acquisitions and new project or product announcements.

## 24 **II. The Insider Tipping and Trading**

### 25 **A. Insider Tipping and Trading in EXAS Securities**

26 16. In mid 2008, Sequenom explored the acquisition of EXAS. In late September  
27 2008, Sequenom executives flew to EXAS’ headquarters to conduct due diligence. Around the  
28 same time, A. Scalia began conducting due diligence on EXAS’ intellectual property. Other than

1 Sequenom's directors and executive officers, A. Scalia was one of the few Sequenom employees  
2 aware of the potential acquisition due to his position as a patent agent and his assignment to  
3 conduct due diligence on EXAS' intellectual property. A. Scalia knew that the subject of the  
4 proposed acquisition was confidential. Internal Sequenom documents regarding the potential  
5 acquisition were marked "CONFIDENTIAL," and the EXAS acquisition was given a code name  
6 to maintain its confidentiality.

7 17. In or about October 2008, Cohen had a telephone conversation with S. Scalia.  
8 During this conversation, S. Scalia recommended EXAS as a good investment. In a later  
9 conversation, S. Scalia told Cohen that this recommendation came from S. Scalia's brother, A.  
10 Scalia, who resided in San Diego and worked for a biotechnology company. Cohen told S.  
11 Scalia that he intended to tell his uncle, Myers, about the EXAS stock tip, and S. Scalia did not  
12 oppose Cohen's plan to pass along this information.

13 18. On October 22, 2008, at approximately 4:41 p.m.,<sup>1</sup> Sequenom's general counsel  
14 sent EXAS a letter of intent expressing Sequenom's interest in acquiring EXAS which included  
15 pricing and other acquisition terms. Earlier the same day, A. Scalia had provided the general  
16 counsel with a list of EXAS intellectual property to attach to the letter of intent.

17 19. Also on October 22, 2008, at approximately 11:40 a.m., A. Scalia sent an email to  
18 his brother S. Scalia, asking him to call A. Scalia at his home telephone number. At 11:58 a.m.,  
19 A. Scalia placed a two minute call to his brother S. Scalia. At 12:05 p.m., S. Scalia made a one  
20 minute call to Cohen, followed immediately afterwards by another call to A. Scalia at 12:06 p.m.  
21 At 1:17 p.m., Cohen called Myers. Shortly after the call from Cohen, Myers transferred \$50,000  
22 from his bank account to his brokerage account.

23 20. On the next day, October 23, 2008, Cohen called A. Scalia at 10:47 a.m., and the  
24 two talked for approximately seven minutes. A few hours after the call, at 2:29 p.m., S. Scalia e-  
25 mailed Cohen and wrote, "[a]ny word related to Blu H@rsesh0e? La Jolla says the times are  
26 ripe." Cohen understood "Blu H@rsesh0e" to be a coded reference to the insider trading activity  
27

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28 <sup>1</sup> All times are EST unless otherwise indicated.

1 depicted in the movie, *Wall Street*, and that “La Jolla” referred to A. Scalia, who lived and  
2 worked near La Jolla, California. Around the time of this e-mail, Cohen spoke to Myers again  
3 about EXAS, and asked whether Myers had acted on the stock tip.

4 21. Between October 23 and 26, 2008, there were at least 12 telephone calls between  
5 and among A. Scalia, S. Scalia, Cohen, and Myers.

6 22. On October 27, 2008, Myers made his first-ever purchase of EXAS securities.  
7 Myers bought 15,000 shares of EXAS at prices between \$0.69 and \$0.74 per share, at a total cost  
8 for the 15,000 shares of \$11,025.90, including commissions. This was Myers’ first stock  
9 purchase in his brokerage account since at least January 2007.

10 23. Between October 28 and October 31, 2008, the defendants exchanged multiple  
11 phone calls, including no less than nine phone calls on October 30 within a two-hour time span.  
12 On October 30, 2008, at 3:40 p.m. A. Scalia made a one-minute phone call to S. Scalia, followed  
13 immediately by a one-minute phone call from S. Scalia to Cohen at 3:41 p.m., which was then  
14 followed by multiple phone calls between A. Scalia, S. Scalia, and Cohen over the next 15  
15 minutes. At 3:56 p.m., Cohen placed a 14-minute call to Myers. After the defendants exchanged  
16 additional calls on the evening of October 30 and the morning of October 31, 2008, Myers  
17 purchased another 5,000 shares of EXAS on October 31, 2008, at a price of \$0.50 per share, for a  
18 total cost of \$2,512.95, including commissions.

19 24. Between November 1 and November 11, multiple calls were made between and  
20 among the defendants. On November 12, 2008, at 11:27 a.m., Cohen and Myers had a 25-  
21 minute telephone conversation. At 11:53 a.m., immediately after the call between Cohen and  
22 Myers, S. Scalia called Cohen and they talked for 10 minutes. As soon as Cohen was off the  
23 phone with S. Scalia, he made two calls to Myers: a two-minute call at 12:02 p.m., and a six-  
24 minute call at 12:09 p.m. Shortly thereafter, at 12:17 p.m. on November 12, Myers purchased  
25 another 15,000 shares of EXAS stock, at prices of \$0.49 and \$0.50 per share, for a total cost of  
26 \$7,492.95, including commissions.

27 25. On January 9, 2009, after the markets closed, Sequenom publicly announced that  
28 it planned to acquire EXAS. On January 10, 2009, EXAS’ stock price rose 50% by the close of

1 the markets on increased trading volume of 466%. On January 12, 2009, EXAS announced that  
2 it had rejected Sequenom's offer. When Myers learned that EXAS had rejected Sequenom's  
3 offer, he called Cohen and asked if S. Scalia had any insight into whether there would be higher  
4 bids for EXAS from Sequenom or other companies. Cohen called S. Scalia, and S. Scalia  
5 advised that he did not have any additional information regarding EXAS. Cohen then called  
6 Myers to inform him that S. Scalia had no additional information regarding EXAS.

7 26. After learning this information, at 1:28 p.m. on January 13, Myers sold 15,000  
8 shares of EXAS for gross proceeds of \$24,910.66, and net proceeds after commissions of  
9 \$24,687.55. On January 29, Myers sold another 15,000 shares of EXAS for gross proceeds of  
10 \$23,672.32, and net proceeds after commissions of \$23,455.33. On February 3, Myers sold  
11 another 1,000 shares of EXAS for gross proceeds of \$1,510, and net proceeds after commissions  
12 of \$1,497.04. On February 4, Myers sold 800 shares of EXAS for gross proceeds of \$1,200, and  
13 net proceeds after commissions of \$1,187.04. On February 12, Myers sold 2,200 EXAS shares  
14 for gross proceeds of \$3,300, and net proceeds after commissions of \$3,271.05.

15 27. Myers made an illegal profit of approximately \$34,102.99 on the purchase and  
16 sale of 34,000 shares of EXAS stock, and retained 1,000 shares of EXAS stock purchased while  
17 in possession of material nonpublic information, which was worth at least \$1,500.00 as of  
18 February 12, 2009. Myers' total illegal profit on the purchase and sale of EXAS stock is in  
19 excess of \$35,100.00.

20 28. In or about February 2009, Myers told Cohen that he would be sending a gift to  
21 Cohen to be delivered to S. Scalia, in order to thank S. Scalia for giving Myers the EXAS stock  
22 tip. Soon after this conversation Cohen received from Myers approximately \$4,000 in cash in a  
23 package delivered by interstate commercial carrier from Ohio to Maryland. After receiving the  
24 package, Cohen delivered the \$4,000 in cash to S. Scalia as payment for the EXAS stock tip.

25 29. On March 25, 2009, defendants again exchanged multiple phone calls within the  
26 span of a few hours. On March 27, 2009, two separate money orders totaling \$1,900 addressed  
27 to A. Scalia were purchased from a post office in the same zip code as S. Scalia's Harley-  
28 Davidson dealership. The memo section of one of the money orders read, "H-D Rules." The

1 “From” section of the money orders did not include any information about the identity of the  
2 purchaser. A. Scalia eventually deposited one money order into his bank account in April 2009,  
3 and deposited the second one in May 2009.

4 **B. Insider Tipping and Trading in Sequenom Securities**

5 30. In April 2009, Sequenom’s most promising product was a diagnostic screening  
6 test which could detect whether a fetus had Down syndrome using only a maternal blood draw  
7 (the “Down Syndrome Test,” or the “Test”). Sequenom had made a series of public  
8 announcements beginning in June 2008, indicating that the Test was close to 100% accurate, and  
9 that the company planned to launch the Test in June 2009. In response to the announcements,  
10 Sequenom’s stock price had increased dramatically over the course of several months.

11 31. In April 2009, as the company was preparing for the June 2009 Down Syndrome  
12 Test launch, certain Sequenom employees discovered that the Test did not perform as well as had  
13 been publicly reported. Sequenom’s board of directors launched a formal investigation into the  
14 matter on Sunday, April 26, 2009, and the scientists who had worked on the Test (the  
15 “Scientists”) were put on administrative leave on the same day. The company did not make a  
16 public announcement regarding problems with the Test until after the markets had closed on  
17 April 29, 2009, and only a handful of Sequenom employees were aware of the problems with the  
18 Test prior to the company’s public announcement.

19 32. A. Scalia was the patent agent working on the Down Syndrome Test. On  
20 Monday, April 27, 2009, A. Scalia was directed by Sequenom’s general counsel to collect and  
21 account for all of the Scientists’ lab notebooks. When the Scientists were put on administrative  
22 leave, Sequenom disabled the Scientists’ e-mail accounts, and as a result, an error message was  
23 generated in response to any e-mail sent to the Scientists’ e-mail accounts. On April 28, 2009,  
24 A. Scalia had additional conversations with Sequenom’s general counsel, as well as the vice  
25 president of quality control and regulation regarding the lab notebooks.

26 33. On the evening of April 27, 2009, A. Scalia made two one-minute calls to S.  
27 Scalia, followed by another one-minute call on the morning of April 28. The two exchanged  
28 one-minute calls during the afternoon of April 28, 2009, and A. Scalia and S. Scalia had a nine-

1 minute call at 3:37 p.m. Shortly after that call ended, S. Scalia had a four-minute call with  
2 Cohen beginning at 3:50 p.m.

3 34. Very early on the morning of April 29, 2009, Cohen and Myers exchanged eight  
4 text messages between 6:11 and 6:36 a.m. At 12:31 p.m. on April 29, Sequenom sent an e-mail  
5 to all employees regarding a mandatory meeting that would occur that afternoon at 4:30 p.m.  
6 Shortly thereafter, at 12:54 p.m., A. Scalia sent S. Scalia an e-mail the subject of which was  
7 “Swine flu.” In the e-mail, A. Scalia informs S. Scalia that he will “act quickly at the first signs  
8 of any symptoms... .”

9 35. Less than two hours later on April 29, beginning at approximately 2:15 p.m., A.  
10 Scalia made a series of one-minute phone calls to S. Scalia from A. Scalia’s home phone. After  
11 A. Scalia called S. Scalia at least five times, S. Scalia called A. Scalia at 3:25 p.m., then  
12 immediately called Cohen at 3:27 p.m. During the call between S. Scalia and Cohen, S. Scalia  
13 told Cohen that his brother, A. Scalia, had notified him that, in essence, “the sky was falling” at a  
14 company with the ticker symbol SQNM, that employees at the company were acting like they  
15 were losing jobs, and that very bad news about this company would soon become public.  
16 Immediately following this call, at 3:33 p.m., Cohen used his father-in-law’s cellular phone to  
17 call Myers and convey the stock tip regarding Sequenom.

18 36. Less than ten minutes after completing the call with Cohen, at 3:49 p.m. on April  
19 29, 2009, Myers began buying put options on Sequenom. A “put option” is an option contract  
20 that gives the holder the right to sell a certain quantity of an underlying security to the option  
21 writer at a specified price (the “strike price”) up to a specified date (the “expiration date”). As  
22 the price of the underlying security decreases relative to the strike price, the value of the put  
23 option increases. Sequenom stock was trading above \$14 per share on April 29, 2009, and  
24 closed that day at \$14.90 per share. In the 12 minutes before the market closed on April 29,  
25 2009, Myers purchased a total of 650 short-term, risky, out-of-the-money put option contracts on  
26 Sequenom. Myers purchased 350 May 14 Sequenom put options, which expired in May and had  
27 a strike price of \$14 per share. Myers purchased 100 May 11 Sequenom put options, which  
28 expired in May and had a strike price of \$11 per share. Myers purchased 200 May 12.50

1 Sequenom put options, which expired in May and had a strike price of \$12.50 per share. In total,  
2 in the last 12 minutes that the market was open on April 29, 2009, Myers spent \$39,960.00  
3 (40,474.35, including commissions), to purchase 650 put option contracts that would pay off if  
4 the price of Sequenom stock decreased before the options expired in May.

5 37. On April 29, as Myers was purchasing risky, short-term put options on  
6 Sequenom, Cohen called Myers twice from a pay phone down the street from Cohen's office:  
7 first at 3:54 p.m., and again at 4:05 p.m. Finally, at 4:29 p.m., Cohen called S. Scalia. At  
8 approximately 4:30 p.m., after the markets had closed, Sequenom announced that the Test would  
9 not be launched in June 2009 due to "mishandling" of Test data.

10 38. Later that night, at 10:37 p.m., S. Scalia responded to A. Scalia's "Swine flu" e-  
11 mail with the following message:

12 "Yeah, [my wife] and I were worried too. Our original plan was to fly to Florida for  
13 \$100,00. [sic] But, we decided the best we can do is drive. The price is only 75,00 [sic]  
14 – but at least we will be there for sure and it is worth avoiding the germ-spreading  
airplanes. Hope that is okay. Oink oink."

15 39. On April 30, 2009, in response to Sequenom's announcement regarding the  
16 mishandling of Test data, the company's stock price dropped approximately 76% compared to  
17 the prior day's closing price, on increased trading volume of 619%. By 9:45 a.m. on April 30,  
18 Myers had sold all of his put options in Sequenom for gross proceeds of \$612,500.00. Myers  
19 made illegal profits of approximately \$572,540 on his sale of Sequenom put options.

20 40. On April 30, 2009, after Myers sold his Sequenom options, the defendants  
21 exchanged at least six additional calls, including an additional call from a payphone made from  
22 Cohen to Myers.

23 41. On or about June 6, 2009, Myers flew from Cleveland, Ohio, to Baltimore,  
24 Maryland, and visited with Cohen. On or about June 7, 2009, Myers and Cohen traveled  
25 together to S. Scalia's motorcycle dealership in Maryland. While at the motorcycle dealership,  
26 Myers handed S. Scalia an envelope containing \$10,000 in cash, and told S. Scalia that this  
27 payment was for the stock tip S. Scalia had given Myers several weeks earlier. S. Scalia  
28 accepted the envelope, and also thanked Myers for the earlier payment delivered through Cohen.

**CLAIM FOR RELIEF**

**FRAUD IN CONNECTION WITH THE  
PURCHASE OR SALE OF SECURITIES**

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

42. The Commission realleges and incorporates by reference paragraphs 1 through 41 above.

43. Each of the defendants, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements 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; or
- c. engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons.

44. Defendant A. Scalia learned material nonpublic information concerning at least two corporate announcements described above in the course of his employment at Sequenom. As a Sequenom employee, A. Scalia owed a fiduciary duty to Sequenom's shareholders, as well as a duty of trust or confidence to Sequenom as his employer, to maintain such information in confidence until it was publicly disseminated.

45. A. Scalia breached his fiduciary duty to Sequenom's shareholders when he tipped defendant S. Scalia with material nonpublic information just prior to Sequenom's April 29, 2009 announcement regarding the Test. Similarly, A. Scalia breached his duty of trust or confidence to Sequenom when he tipped S. Scalia and defendant Cohen with inside information regarding the potential acquisition of EXAS.

46. S. Scalia knew or should have known that the information regarding EXAS and

1 Sequenom had been communicated to him in breach of A. Scalia's duty to Sequenom.

2 47. S. Scalia tipped Cohen, who knew or should have known that the information  
3 regarding EXAS and Sequenom had been communicated to him in breach of a fiduciary duty.

4 48. Cohen tipped defendant Myers, who knew or should have known that the  
5 information regarding EXAS and Sequenom had been communicated to him in breach of a  
6 fiduciary duty, and Myers wrongfully purchased securities while in possession of such  
7 information.

8 49. Either directly or indirectly, A. Scalia gained, or expected to gain, a personal  
9 benefit by tipping S. Scalia and Cohen with inside information.

10 50. Either directly or indirectly, S. Scalia gained, or expected to gain, a personal  
11 benefit by tipping Cohen with the inside information provided by A. Scalia.

12 51. Either directly or indirectly, Cohen gained, or expected to gain, a personal benefit  
13 by tipping Myers with the inside information.

14 52. Defendants A. Scalia, S. Scalia, Cohen, and Myers acted with scienter.

15 53. By engaging in the conduct described above, each of the defendants violated, and  
16 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15  
17 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, the Commission respectfully requests that the Court:

20 **I.**

21 Issue findings of fact and conclusions of law that the defendants committed the alleged  
22 violations.

23 **II.**

24 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining  
25 defendants and their officers, agents, servants, employees, and attorneys, and those persons in  
26 active concert or participation with any of them, who receive actual notice of the judgment by  
27 personal service or otherwise, and each of them, from violating Section 10(b) of the Exchange  
28 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

1 **III.**

2 Order each defendant to disgorge, with prejudgment interest, illicit trading profits or  
3 other ill-gotten gains received as a result of the conduct alleged in this complaint, including, as to  
4 each defendant, their own illegal trading profits or other ill-gotten gains, and, as to each tipper,  
5 the illicit trading profits or other ill-gotten gains of their direct and indirect tippees.

6 **IV.**

7 Order each defendant to pay civil penalties under Section 21(A) of the Exchange Act, 15  
8 U.S.C. § 78u-1.

9 **V.**

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

14 **VI.**

15 Grant such other and further relief as this Court may determine to be just and necessary.

16  
17 DATED: February 15, 2011

s/ Sara D. Kalin \_\_\_\_\_  
Attorney for Plaintiff  
Securities and Exchange Commission  
E-mail: kalins@sec.gov

**PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On February 15, 2011, I caused to be served the document entitled **FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** on all the parties to this action addressed as stated on the attached service list:

**OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

**PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

**EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

**HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

**UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

**ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

**E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

**FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: February 15, 2011

/s/ Sara D. Kalin  
Sara D. Kalin

