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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

**JEFFREY AUERBACH,
JARED MITCHELL, and
RICHARD BROWN,**

Defendants.

COMPLAINT

19 Civ. ____ ()

JURY TRIAL DEMANDED

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendants Jeffrey Auerbach (“Auerbach”), Jared Mitchell (“Mitchell”), and Richard Brown (“Brown”) (collectively, “Defendants”), alleges as follows:

SUMMARY OF THE ALLEGATIONS

1. From approximately July 2014 through October 2015 (the “Relevant Period”), Auerbach, a former registered representative (*i.e.*, a stockbroker) and purported investor-relations professional; Mitchell, a purported investor-relations professional recently imprisoned for a previous securities fraud conviction; Richard Brown, a then-registered stockbroker; and Gino M.

Pereira (“Pereira”), the then-CEO of Nxt-ID, Inc. (“NXTD”), a “security technology” company and public issuer with common stock traded on the Nasdaq Capital Market, defrauded investors by knowingly or recklessly engaging in a stockbroker bribery scheme.

2. During the Relevant Period, Pereira caused NXTD to enter into purported “consulting agreements” with investor-relations companies owned by Auerbach and Mitchell to provide a pretense through which he could funnel bribes to Brown. That is, Pereira wired monies out of NXTD’s bank account to the entities’ bank accounts under the guise that the wires were payments for legitimate investor-relations services, when Pereira, Mitchell, and Auerbach knew that Mitchell and Auerbach would use at least some portion of the funds to bribe Brown to buy NXTD stock in his customers’ accounts.

3. In sum, Pereira sent Mitchell and Auerbach at least \$136,000, and Mitchell and Auerbach paid Brown at least \$20,000 in cash bribes, in exchange for Brown recommending and buying more than \$750,000 worth of NXTD common stock in his customers’ accounts, without disclosing the fact or amount of the bribes he received to those customers.

VIOLATIONS

4. By virtue of the foregoing conduct and as alleged further herein, Defendants violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and (c) thereunder [17 C.F.R. §§ 240.10b-5(a) and (c)].

5. Unless Defendants are restrained and enjoined, they will engage in the acts, practices, transactions, and courses of business set forth in this Complaint or in acts, practices, transactions, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

6. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

7. The Commission seeks a final judgment: (a) permanently enjoining each defendant from engaging in the acts, practices, and courses of business alleged here against him and from committing future violations of the provisions of the federal securities laws he is alleged to have violated; (b) ordering Defendants to disgorge the ill-gotten gains they received as a result of the violations alleged here and to pay prejudgment interest thereon; (c) ordering Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; (d) permanently prohibiting Mitchell and Brown from participating in any offering of a penny stock, pursuant to Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)]; and (e) ordering any other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

9. Defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce or of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

10. Venue lies in this District under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within the Eastern District of New York. Among other things, Brown communicated with the Defendants, communicated with his customers, and bought

NXTD stock in his customers' accounts while working in his offices on Staten Island and Long Island in the Eastern District of New York.

DEFENDANTS

11. **Auerbach**, age 49, resides in New York, New York. During the Relevant Period, Auerbach purported to provide investor-relations services to NXTD through two entities: Excelsior Global Advisors ("Excelsior"), an entity for which he and Mitchell served as principals, and World Wide Holdings LLC, an entity for which he served as the lone principal. From approximately September 1993 to November 2013, Auerbach was a registered representative associated with a series of broker-dealers registered with the Commission. On July 15, 2015, Auerbach consented to findings by the Financial Industry Regulatory Authority ("FINRA") that he had violated FINRA Rule 2010 by engaging in undisclosed private securities transactions while working as a registered representative in 2008 and 2009. Auerbach was fined \$15,000 and suspended from associating with any FINRA member firm for 90 days. While working as a registered representative, Auerbach was the subject of multiple customer complaints alleging, among other things, unsuitability and breach of fiduciary duty.

12. **Mitchell**, age 37, was recently incarcerated at the U.S. Penitentiary in Lewisburg, Pennsylvania. Mitchell purported to provide investor-relations services to NXTD prior to the Relevant Period while employed at another investor-relations firm and then during the Relevant Period through Excelsior and Mitchell & Sullivan Holdings, LLC ("M&S Holdings"), an entity for which he served as a principal. In 2016, the Commission sued Mitchell and Brown, and a grand jury in the Eastern District of New York indicted Mitchell and Brown, for their roles in another fraudulent broker bribery scheme relating to the securities of ForceField Energy Inc. Mitchell pleaded guilty in the criminal action and consented to a final judgment against him in

the Commission's action. *See United States v. Mitchell et al.*, 16 Cr. 234 (E.D.N.Y.) (Docket Entry # 94) (hereinafter, "*U.S. v. Mitchell*") and *SEC v. St. Julien et al.*, 16-cv-2193 (E.D.N.Y.) (Docket Entry # 46) (hereinafter, "*SEC v. St. Julien*").

13. **Brown**, age 40, resides in North Bellmore, New York. During the Relevant Period, he was a registered representative associated with a Staten Island-based broker-dealer ("Broker-Dealer-1") who worked out of Broker-Dealer-1's Long Island Office. From approximately November 1999 to May 2016, Brown was a registered representative associated with a series of broker-dealers registered with the Commission. Brown was the subject of multiple customer complaints alleging, among other things, unsuitability and excessive trading. In 2016, Brown was sued by the Commission in *SEC v. St. Julien* and indicted by a grand jury in the Eastern District of New York in *U.S. v. Mitchell*.

FACTS

I. THE FORCEFIELD ENERGY INC. CHARGES

14. On May 13, 2016, the Commission filed a civil injunctive action in this court against Mitchell, Brown, and others for their roles in a broker bribery scheme relating to the securities of ForceField Energy Inc. *See SEC v. St. Julien*. Brown and Mitchell were arrested the same day and indicted by a grand jury in the Eastern District of New York for substantially the same conduct alleged in the Commission's complaint. *See U.S. v. Mitchell*. Mitchell pled guilty to the criminal charges and consented to a final judgment against him in the Commission's action. *See U.S. v. Mitchell* (Docket Entry # 94); *SEC v. St. Julien* (Docket Entry # 46).

II. AUERBACH AND MITCHELL ACTED AS INTERMEDIARIES TO FUNNEL BRIBES FROM PEREIRA TO BROWN TO PURCHASE NXTD STOCK

15. During the Relevant Period, Pereira retained firms run by Auerbach and/or Mitchell for the purported purpose of providing investor-relations services to NXTD, with the

understanding that Auerbach and Mitchell would use at least some portion of the fees that they received to pay bribes to Brown to purchase NXTD stock in his customers' accounts.

16. In sum, Pereira sent Mitchell and Auerbach at least \$136,000, and Mitchell and Auerbach paid Brown at least \$20,000 in cash bribes, in exchange for Brown recommending and buying more than \$750,000 worth of NXTD common stock in his customers' accounts. Brown's customers were harmed because unbeknownst to them, Brown's decision to invest their money in NXTD was based on the fact that he was being bribed, rather than his view that the investment was in their best interests. Brown's customers suffered losses of more than \$100,000 as a result of his purchases of NXTD's stock in their accounts.

17. Auerbach, Mitchell, and Pereira frequently communicated about their scheme via Wickr, an end-to-end encrypted and content-expiring messaging application, to conceal and destroy their communications concerning the scheme.

A. From July 2014 to November 2014, Pereira Paid Mitchell Approximately \$74,000, at Least in Part to Bribe Brown to Buy NXTD Stock in His Customers' Accounts

18. In or about July 2014, Mitchell introduced Pereira to Brown. After the meeting, Mitchell told Pereira that Brown was interested in purchasing NXTD stock in his customers' accounts at his employer, Broker-Dealer-1, a Staten Island-based registered broker dealer, but needed a "financial incentive" to do so.

19. On July 8, 2014, Pereira caused NXTD to enter into a two-month "consulting agreement" with M&S Holdings ("Purported M&S Consulting Agreement"), which Mitchell controlled. Under the terms of that agreement, NXTD agreed to pay M&S Holdings a total of \$42,000 in exchange for "investor relations services" that included "advising NXT[D]'s management concerning marketing ideas, investor profile information, methods of expanding

NXT[D]’s investor support and increasing investor awareness of NXT[D].” Mitchell and Pereira knew, however, that the true purpose of the agreement was to provide a guise through which NXTD could pay bribes to Brown through M&S Holdings.

20. On July 9, 2014, Brown began purchasing NXTD stock for his customers.

21. Shortly thereafter, Pereira visited Broker-Dealer-1’s office on Long Island where Brown worked to talk to Brown and other brokers about NXTD. Following the meeting, Brown began purchasing more NXTD stock in his customers’ accounts.

22. From July 15, 2014 to September 3, 2014, Pereira caused NXTD to send four wire transfers totaling \$44,000 to M&S Holdings’ bank account, from which Mitchell knowingly withdrew cash to pay Brown. In accordance with Pereira and Mitchell’s agreement concerning the Purported M&S Consulting Agreement, Mitchell used those funds to pay Brown a cash bribe of at least \$5,000.

23. On September 9, 2014, NXTD announced that it had closed on an underwritten public offering of its common stock and warrants, which caused its stock price to drop. Brown complained about this development to Mitchell, who arranged a meeting with Pereira on September 13, 2014.

24. At the meeting, Brown and Pereira formally agreed that, going forward, Pereira would pay Brown, in cash and through Mitchell, 10% of the value of NXTD stock that Brown purchased in his customers’ accounts.

25. Accordingly, from September 24, 2014 to November 20, 2014, Pereira caused NXTD to send M&S Holdings three additional wires totaling \$30,000, and Mitchell withdrew cash from the account to pay Brown. For example, in or about October 2014, Brown again met with Mitchell in Manhattan, where Mitchell paid him a \$10,000 cash bribe on behalf of Pereira.

26. In sum, between July 2014 and November 2014, Pereira paid Mitchell approximately \$74,000, and Mitchell paid Brown at least \$15,000 in cash bribes.

27. From July 9, 2014 to December 1, 2014, Brown purchased a total of 231,253 shares of NXTD in his customers' accounts at a gross cost of more than \$566,079. Brown knowingly or recklessly failed to tell any of his customers that he was buying NXTD stock in their accounts because he was being paid bribes by Pereira through Mitchell.

B. In 2015, Pereira Paid Auerbach and Mitchell Over \$62,000, at Least in Part to Bribe Brown to Buy NXTD Stock in His Customers' Accounts

28. On January 15, 2015, Pereira caused NXTD to enter into a "Consulting Agreement" with Excelsior similar to the agreement NXTD had entered into with M&S Holdings ("Purported Excelsior Consulting Agreement").

29. Under the terms of this agreement, Excelsior, the investor-relations firm run by Mitchell and Auerbach, agreed to "[a]ssist [NXTD] in introductions to investor relations companies, media outlets, analysts or broker dealers" and "conduct meetings in person or by telephone, with prospective brokers or the investment public." In exchange, NXTD agreed to pay Excelsior a monthly fee of \$5,000 and 5,000 shares of common stock. The agreement also provided that NXTD would reimburse Excelsior for any expenses that NXTD incurred. Like the Purported M&S Consulting Agreement, the Purported Excelsior Consulting Agreement provided a guise through which Pereira could pay Auerbach and Mitchell to funnel bribes to Brown.

30. On March 3, 2015, Pereira emailed Auerbach asking, "Can we get some support today?," indicating that he wanted Auerbach to drive up the volume and price of NXTD stock, including through paying Brown to purchase the stock in his customers' accounts. That day, Brown purchased 14,000 shares of NXTD stock in two customer accounts, with the trades

executing at 3:56:21 p.m. and 3:59:28 p.m. The next day Brown purchased 4,500 shares of NXTD for a third customer, with the trade executing at 3:51:19 p.m.

31. On September 17, 2015, Mitchell emailed Pereira an invoice addressed to NXTD and in the amount of \$12,000 for a purported “Investor Relations event for brokers and investors.” Pursuant to the Purported Excelsior Consulting Agreement, NXTD was obligated to reimburse Excelsior for the expense.

32. The September 17, 2015 invoice was, in reality and as Mitchell knew, not for an “Investor Relations event for brokers and investors.” Rather, Mitchell knew the invoice was being used to disguise the payment of a cash bribe from Pereira to Brown that would be paid through Mitchell or Auerbach.

33. On September 24, 2015, Pereira caused NXTD to wire \$12,000 to a bank account in the name of Excelsior that Mitchell and Auerbach controlled.

34. Auerbach and Mitchell did not withdraw cash from the Excelsior account to pay a cash bribe to Brown because they were concerned that a large cash withdrawal might draw scrutiny from the bank.

35. Instead, Auerbach pawned a Rolex watch he owned, and paid Brown with the cash he received for the watch. On September 28, 2015, Auerbach left \$5,000 in cash—the proceeds from the sale of the watch—in an envelope with the doorman at Auerbach’s Manhattan apartment building.

36. Brown drove to Manhattan that day and picked up the envelope.

37. Brown then texted Auerbach, “Thank you.”

38. Auerbach replied to Brown by text message, saying, “All good. [The pawn shop employee] says thanks for the watch.”

39. Auerbach knew or was reckless in not knowing that he made this payment to Brown in exchange for Brown's purchases of NXTD stock in his customers' accounts.

40. On September 29, 2015, Mitchell disbursed the \$12,000 that Pereira had sent to Excelsior's bank account five days earlier by issuing a \$3,000 check to himself and a \$9,000 check to Auerbach.

41. These payments represented compensation for Auerbach's and Mitchell's roles in arranging the bribes to Brown, and in the case of Auerbach, additional compensation to reimburse him for the value of his Rolex watch.

42. In sum, between January 2015 and October 2015, Pereira caused NXTD to wire Excelsior a total of \$62,689.00, and Auerbach and Mitchell paid Brown at least \$5,000 in cash bribes.

43. During this time period, Brown, operating out of Broker-Dealer-1's Long Island office, bought a total of 107,640 additional shares of NXTD stock for his customers at a gross cost of \$235,584. Brown knowingly or recklessly failed to tell any of his customers that he was buying NXTD stock in their accounts because he was being paid cash bribes by Pereira through Mitchell and Auerbach.

CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) Thereunder (Against All Defendants)

44. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 43.

45. Defendants, by use of the means or instruments of interstate commerce, or of the mails, or the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness, (1) employed devices, schemes, and artifices to

defraud; and/or (2) engaged in acts, practices, or courses of business which operates or would operate as a fraud or deceit upon any person.

46. By reason of the foregoing, Defendants, directly or indirectly, singly or in concert, have violated and, unless enjoined, will again violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and (c) thereunder [17 C.F.R. §§ 240.10b-5(a) and (c)].

PRAYER FOR RELIEF

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

I.

Permanently enjoining Defendants and their agents, servants, employees, and attorneys and all persons in active concert or participation with any of them from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and (c) thereunder [17 C.F.R. §§ 240.10b-5(a) and (c)];

II.

Ordering Defendants to disgorge all ill-gotten gains they received directly or indirectly, with pre-judgment interest thereon, as a result of the alleged violations;

III.

Ordering Defendants to pay civil monetary penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];


IV.

Permanently prohibiting Mitchell and Brown from participating in any offering of a penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock, under Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)]; and

V.

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

Dated: New York, New York
October 4, 2019



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JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Securities and Exchange Commission</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p>Marc P. Berger, Regional Director, New York Regional Office, S.E.C., 200 Vesey St., Suite 400, New York, NY 10281 (212-336-1100)</p>	<p>DEFENDANTS</p> <p>Jeffrey Auerbach, Jared Mitchell, and Richard Brown</p> <p>County of Residence of First Listed Defendant New York, NY <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:20%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:50%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation


VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
15 U.S.C. § 78j(b)

Brief description of cause:
Securities fraud

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE Judge DeArcy Hall DOCKET NUMBER 2:19-cv-05527

DATE 10/04/2019 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Marc P. Berger, counsel for Securities and Exchange Comm'n, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Securities and Exchange Commission

Plaintiff(s)

v.

Jeffrey Auerbach et al.

Defendant(s)

Civil Action No. 1:19-cv-5631

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jeffrey Auerbach
360 E. 88th St., Apt. 2A
New York, NY 10128-4982

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Tejal D. Shah, Esq.
Securities and Exchange Commission
200 Vesey St., Suite 400
New York, NY 10281-1022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 10/04/2019

Signature of Clerk or Deputy Clerk

Civil Action No. 1:19-cv-5631

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Securities and Exchange Commission

Plaintiff(s)

v.

Jeffrey Auerbach et al.

Defendant(s)

Civil Action No. 1:19-cv-5631

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Richard Brown
917 E. Meadow Ave.
North Bellmore, NY 11710-1609

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Tejal D. Shah, Esq.
Securities and Exchange Commission
200 Vesey St., Suite 400
New York, NY 10281-1022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 10/04/2019

Signature of Clerk or Deputy Clerk

Civil Action No. 1:19-cv-5631

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Securities and Exchange Commission

Plaintiff(s)

v.

Jeffrey Auerbach et al.

Defendant(s)

Civil Action No. 1:19-cv-5631

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jared Mitchell
100 Jay St., Apt. 8B
Brooklyn, NY 11201-1564

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Tejal D. Shah, Esq.
Securities and Exchange Commission
200 Vesey St., Suite 400
New York, NY 10281-1022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 10/04/2019

Signature of Clerk or Deputy Clerk

Civil Action No. 1:19-cv-5631

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on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: