

1 GARY Y. LEUNG (Cal. Bar. No. 302928)

Email: leungg@sec.gov

2 DONALD W. SEARLES (Cal. Bar. No. 135705)

Email: searlesd@sec.gov

3 SARA D. KALIN (Cal. Bar No. 212156)

Email: kalins@sec.gov

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
6 Michele Wein Layne, Regional Director
7 Lorraine Echavarria, Associate Regional Director
8 John W. Berry, Regional Trial Counsel
9 444 S. Flower Street, Ste. 900
10 Los Angeles, California 90071
11 Telephone: (323) 965-3998
12 Facsimile: (213) 443-1904

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **WESTERN DIVISION**

16 **SECURITIES AND EXCHANGE
17 COMMISSION,**

18 Plaintiff,

19 vs.

20 **RICHARD CONDON and
21 JONATHAN ROSS,**

22 Defendants, and

23 **ALI SAGHEB,**

24 Relief Defendant.

Case No.

COMPLAINT

25 Plaintiff Securities and Exchange Commission (the “SEC”) alleges:

26 **JURISDICTION AND VENUE**

27 1. The Court has jurisdiction over this action pursuant to Sections 21(d)(1),
28 21(d)(3)(A), 21(e) and 27(a) of the Securities Exchange Act of 1934 (“Exchange
Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a).

2. Venue is proper in this district under Section 27(a) of the Exchange Act,

1 15 U.S.C. § 78aa(a), because the defendants and relief defendant reside in this
2 judicial district and because certain of the transactions, acts, practices and courses of
3 conduct constituting violations of the federal securities laws occurred within this
4 district.

5 **SUMMARY**

6 3. This enforcement action concerns insider trading by Defendants Richard
7 Condon and Jonathan Ross in the securities of P.F. Chang's China Bistro, Inc. ("PF
8 Chang's"). Condon is a "life coach" who worked as an executive coaching
9 consultant for Panda Restaurant Group ("Panda"). While consulting for Panda
10 between the fall of 2011 and the spring of 2012, Condon learned that Panda was
11 working to acquire PF Chang's, an effort Panda internally referred to as "Project
12 Potsticker." Condon repeatedly shared material nonpublic information about the
13 potential acquisition of PF Chang's with his close friends, Ross and Howard Schultz,
14 in violation of the strict confidentiality obligations and duty of trust and confidence
15 that Condon owed to his client, Panda.

16 4. Although a deal to acquire PF Chang's initially fell through in fall 2011,
17 Project Potsticker was resuscitated in the spring of 2012, when a PF Chang's
18 financial advisor approached Panda and invited it to participate in a bidding process
19 for the company. The financial advisor told Panda that PF Chang's had already
20 received an acquisition offer from another company which "started with a five." At
21 the time, PF Chang's stock was trading at around \$40 per share. As Panda prepared
22 and submitted a competing bid, Condon tipped Ross and Schultz about the potential
23 acquisition of PF Chang's. Both Ross and Schultz then bought risky, short-term, and
24 out-of-the-money PF Chang's call options with a \$45 per share strike price. Once PF
25 Chang's announced on May 1, 2012 that a third party would be making a tender offer
26 at \$51.50 per share (Panda's bid was ultimately unsuccessful), its stock price jumped
27 25%. Immediately following that announcement, Ross and Schultz sold their PF
28 Chang's call options and realized about \$58,281 and \$231,447 in illicit trading

1 profits, respectively. Meanwhile, Ross also shared the material, nonpublic
2 information concerning PF Chang’s potential acquisition with his friend, Ali Sagheb,
3 and caused Sagheb to trade in parallel with him. Sagheb consequently realized
4 trading profits of \$17,994.

5 5. Following their trading in PF Chang’s securities, Condon and Ross took
6 steps to conceal their illegal conduct. Months later, in response to a FINRA inquiry
7 into potential insider trading, Condon lied to Panda when asked if he knew a trader
8 identified as “Schultz, H.” Condon did so only after placing urgent phone calls to
9 both Ross and Schultz the night before. For their part, Ross and Sagheb agreed that
10 they should not talk about their trading in PF Chang’s with anyone else.

11 6. By engaging in this conduct, Defendants Condon and Ross violated
12 Sections 10(b) and 14(e) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78n(e), and Rules
13 10b-5 and 14e-3 thereunder, 17 C.F.R. §§ 240.10b-5, 240.14e-3. Further, Relief
14 Defendant Sagheb has no legitimate claim to his trading profits and was unjustly
15 enriched.

16 7. With this complaint, the SEC seeks permanent injunctions prohibiting
17 future violations of the federal securities laws, disgorgement of ill-gotten gains
18 together with prejudgment interest, and civil penalties from Defendants Condon and
19 Ross; and disgorgement of trading profits together with prejudgment interest from
20 Relief Defendant Sagheb.

21 **PARTIES AND RELATED ENTITIES**

22 8. Richard G. Condon, age 66, resides in Los Angeles, California. Condon
23 worked for 21 years at Landmark Worldwide, a personal training and development
24 company, and is an experienced “life coach.” From 2011 through 2014, Condon
25 acted as an independent consultant for Panda, providing executive coaching services
26 to Panda’s top management executives.

27 9. Jonathan Ross, age 53, resides in Venice, California. Ross and Condon
28 are close friends. Ross believes Condon to be a benevolent presence in his life and in

1 his correspondence with Condon, Ross has expressed love and affection for him. In
2 2011, Condon and Ross discussed the possibility of opening a bicycle exchange
3 business together. They also worked together to find potential investors in another
4 side business owned by Ross. Between fall 2011 and spring 2012, Ross provided
5 copy-editing services for Condon's executive coaching business, for no apparent fee.
6 He also assisted Condon's business by looking for new consulting work that Condon
7 could perform.

8 10. Ali Sagheb, age 43, resides in Culver City, California. Sagheb is self-
9 employed and owns book-keeping, technical support, and landscaping businesses.
10 Sagheb and Ross are close friends and share an interest in the stock market.

11 11. Howard P. Schultz was a producer of unscripted television. Condon and
12 Schultz were close friends for over 30 years. They first met through their
13 involvement in a predecessor of Landmark Worldwide. In the course of their long
14 friendship, Schultz invested in two of Condon's businesses, a restaurant venture and a
15 company called Botanicx. Schultz's investment in Condon's company, Botanicx – in
16 an amount exceeding \$100,000 – occurred after the trading in PF Chang's securities
17 alleged herein. Schultz died on December 29, 2014.

18 12. PF Chang's is a Delaware corporation headquartered in Scottsdale,
19 Arizona. PF Chang's owns and operates upscale bistro restaurants that serve
20 Chinese-inspired cuisine. Its common stock was formerly registered with the SEC
21 pursuant to Section 12(b) of the Exchange Act, and was formerly traded on the New
22 York Stock Exchange. The company's options primarily traded on the Chicago
23 Board Options Exchange, International Securities Exchange, and NASDAQ OMX
24 PHLX. In July 2012, subsequent to Defendants' illegal conduct alleged herein, PF
25 Chang's was taken private and voluntarily deregistered its shares.

26 13. Panda is a private California corporation headquartered in Rosemead,
27 California. Panda offers gourmet Chinese food in three different types of restaurants,
28 the most popular being Panda Express, a "fast casual" restaurant with over 1,500

1 locations nationwide.

2 **COMMONLY-USED TRADING TERMS**

3 14. A stock option, commonly referred to as an “option,” gives its
4 purchaser-holder the option to buy or sell shares of an underlying stock at a specified
5 price (called the “strike” price), prior to the option’s expiration date.

6 15. A “call option” gives its purchaser-holder the right, but not the
7 obligation, to purchase a security at a specified strike price within a specific time
8 period. In general, the buyer of a call option anticipates that the price of the
9 underlying security will rise above the specific strike price before the option expires,
10 thereby resulting in a profit when the call option is exercised.

11 16. A “put option” gives its purchaser-holder the right, but not the
12 obligation, to sell a security at a specified strike price within a specific period of time.
13 Put options are most commonly used in the stock market to protect against the decline
14 of the price of stock below a specified price.

15 17. A call option with a strike price that is higher than the market price for
16 the security, or a put option with a strike price that is lower than the market price for
17 the security, is called, “out of the money.” Out-of-the-money call or put options are
18 significantly cheaper than “in the money” or “at the money options,” but generally
19 carry far greater investment risk because the option trader’s views as to what may
20 happen in the future as to a security’s stock price may prove to be wrong.

21 **FACTS**

22 **A. Condon’s Consulting Agreement With Panda**

23 18. In July 2011, Condon and Panda entered into a consulting agreement.

24 19. That consulting agreement required Condon to provide executive
25 coaching to Panda’s co-chief executive officers, senior management team, zone vice-
26 presidents of operations, and other employees with respect to certain projects and
27 educational courses.

28 20. Under the agreement, Panda paid Condon \$10,000 a month for his

1 executive coaching services.

2 21. The consulting agreement also contained a section entitled “Confidential
3 Information,” which prohibited Condon from “disclos[ing] Panda’s Confidential
4 Information to any third party, without the advanced written consent of Panda.” The
5 consulting agreement defined “Confidential Information” as “any and all proprietary
6 information of any nature or kind,” including “business information.”

7 22. No later than August 8, 2011, Condon began attending Panda’s weekly
8 senior team meetings where the company’s top executives discussed confidential
9 matters significant to Panda’s business.

10 23. Separately, Condon conducted individual coaching sessions with both of
11 Panda’s co-CEOs, each of whom placed a great deal of trust in Condon.

12 **B. Project Potsticker: August 2011 Discussions**

13 24. In July 2011, Panda’s executives began discussing a possible acquisition
14 of PF Chang’s, which Panda management code-named “Project Potsticker.”

15 25. On August 8, 2011, Condon attended a Panda senior team meeting
16 during which Project Potsticker was discussed in detail.

17 26. At that August 8, 2011 senior team meeting, attendees – including
18 Condon – were cautioned to keep discussions concerning the potential acquisition of
19 PF Chang’s on a “need-to-know” basis, and to use the “Project Potsticker” code name
20 at all times in both oral and written communications.

21 27. During that meeting, Panda’s in-house attorney also educated the team
22 about securities laws and regulations prohibiting insider trading, and instructed them
23 not to talk to anyone about Panda’s interest in acquiring PF Chang’s.

24 28. On August 22, 2011, Condon attended another Panda senior team
25 meeting during which Project Potsticker was again discussed in detail.

26 29. At that August 22, 2011 senior team meeting, Panda executives made a
27 PowerPoint presentation on Project Potsticker. In the course of that presentation,
28 attendees – Condon included – learned that:

- 1 i. Panda had begun purchasing PF Chang's stock and owned 2% of the
- 2 company as of August 19, 2011;
- 3 ii. Panda had discussed the potential transaction with Bank of America
- 4 Merrill Lynch ("BOAML") and a private individual, both of whom
- 5 would provide the necessary financing for the transaction; and
- 6 iii. an additional strategy meeting with BOAML and Panda's private
- 7 funding source was scheduled for early September 2011.

8 30. During the August 22, 2011 senior team meeting, attendees were
9 cautioned, yet again, to keep Project Potsticker confidential and advised of the federal
10 securities laws' prohibition on insider trading.

11 **C. Defendants' Fall 2011 Trading In Anticipation of An Acquisition**
12 **Announcement**

13 31. In early September 2011, Condon and Panda executives worked together
14 in preparation for a Panda operations leadership conference set to take place from
15 September 7-9, 2011.

16 32. Condon personally attended the operations leadership conference, was
17 heavily involved in meetings held during the September 7-9 conference, and was in
18 frequent contact during that time with other Panda senior team members, including its
19 co-CEOs and CFO.

20 33. On information and belief and as detailed below, the sequence of
21 contacts and trading by Ross, Schultz, and Sagheb in fall 2011 demonstrates that
22 Condon tipped Ross and Schultz material nonpublic information about the potential
23 acquisition of PF Chang's, that Ross and Schultz both traded on the basis of that
24 information, and that Ross caused Sagheb to trade in parallel with him.

25 34. In tipping Ross and Schultz material non-public information about the
26 potential acquisition of PF Chang's, Condon breached his fiduciary duties of trust and
27 confidence he owed to Panda, and disclosed that information for a personal benefit.

28 35. In trading on the basis of that material nonpublic information, Ross and

1 Schultz knew or should have known that Condon had disclosed that information to
2 them for a personal benefit in breach of the fiduciary duties of trust and confidence he
3 owed to Panda.

4 **1. Ross and Sagheb's fall 2011 trading**

5 36. During the week of Panda's operations leadership conference, Condon
6 had multiple communications with Ross in the form of text messages and phone calls.

7 37. Ross, in turn, had multiple communications with his friend, Sagheb, in
8 the form of text messages and phone calls.

9 38. On Monday, September 5, 2011, Condon spoke with Ross by phone at
10 6:45 p.m. PST for nine minutes.

11 39. The very next day, on Tuesday, September 6, 2011 at 7:52 a.m. PST,
12 Ross bought stock in PF Chang's.

13 40. On Thursday, September 8, 2011, Ross called Sagheb at 12:01 p.m. PST
14 and spoke with him for seven minutes.

15 41. After hanging up with Sagheb, Ross immediately phoned Condon at
16 12:08 p.m. PST, and talked with him for a minute.

17 42. Once done speaking with Condon, Ross called Sagheb three times over
18 the next 40 minutes, beginning at 12:12 p.m. PST. Ross and Sagheb talked for a total
19 of 18 minutes.

20 43. In the middle of their conversation, Ross and Sagheb simultaneously
21 bought the same series of PF Chang's call options at 12:16 p.m. PST.

22 44. Later that Thursday afternoon, at 1:34 p.m. PST, Condon sent Ross a
23 text message.

24 45. The following morning, at 9:25 a.m. PST on Friday, September 9, 2011,
25 Ross bought even more PF Chang's stock.

26 46. Ross then spoke with Condon that evening, at 5:28 p.m. PST on the final
27 day of Panda's operations leadership conference, for another 13 minutes.

28 47. Right after his call with Condon, Ross called Sagheb at 5:41 p.m. PST

1 and the two men spoke for 37 minutes.

2 48. On Sunday, September 11, 2011, Condon and Ross continued their close
3 communications, exchanging at least 9 text messages, meeting in person around
4 noon, and finally speaking by phone at 5:46 p.m. PST for two minutes.

5 49. Following his evening phone call with Condon, Ross immediately called
6 Sagheb at 5:48 p.m. PST, and talked with him for two minutes.

7 50. Early the next morning, on Monday, September 12, 2011, Ross called
8 Sagheb at 7:51 a.m. PST. While on the phone, Ross and Sagheb both made another
9 purchase of PF Chang's call options, investing in the same series of call options as
10 one another.

11 51. Later in the afternoon, Condon attended another senior team meeting
12 during which Project Potsticker was discussed by Panda's executive management.

13 52. The evening of Monday, September 12, 2011, at 7:20 p.m. PST, Condon
14 and Ross spoke yet again by phone for 24 minutes.

15 53. After hanging up with Condon, Ross immediately called Sagheb at 7:45
16 p.m. PST, and talked with him for 26 minutes.

17 **2. Schultz's fall 2011 trading**

18 54. Condon separately called Schultz, and the two decided to meet for lunch
19 on Monday, September 12, 2011.

20 55. At 1:59 p.m. PST, after having lunch with Condon, Schultz called and
21 left a message with his stock broker. Schultz's broker called him back at 2:15 p.m.
22 PST, after the market close for the day.

23 56. The following morning at 6:33 a.m. PST on Tuesday, September 13,
24 2011, Schultz bought PF Chang's stock in one of his largest securities trades of the
25 year.

26 **D. October 2011: Project Potsticker Stalls**

27 57. On or around September 23, 2011, Panda scheduled an in-person
28 meeting with PF Chang's, which occurred on October 5, 2011, in Scottsdale,

1 Arizona.

2 58. During the Scottsdale meeting, Panda executives communicated their
3 interest in acquiring PF Chang's.

4 59. On October 19, 2011, however, PF Chang's notified Panda that it had
5 decided not to be acquired and would instead move forward with its own strategic
6 plan.

7 60. Beginning two days later, on October 21 and October 22, Condon
8 contacted Ross through multiple text messages and phone calls.

9 61. On Monday, October 24, 2011 and Wednesday, October 26, 2011, Ross
10 and Sagheb sold out of their unexpired positions in PF Chang's stock.

11 62. The next morning, Thursday, October 27, 2011, PF Chang's publicly
12 announced, prior to the opening of the market, that its earnings were lower than
13 expected, and stated during its earnings call that it was not interested in being
14 acquired.

15 63. Immediately following those announcements, PF Chang's stock price
16 fell by 5% from the prior day's closing price, a drop that Ross and Sagheb avoided
17 when they sold their PF Chang's securities days earlier.

18 64. Schultz sold his PF Chang's stock in December 2011 and January 2012.

19 65. In their fall 2011 trading, Schultz and Ross each made small investment
20 gains, while Sagheb sustained a small loss.

21 66. After their frenzy of trading in fall 2011, Ross, Sagheb and Schultz did
22 not execute a single trade in the securities of PF Chang's until the following spring.

23 **E. Spring 2012: Renewed Discussions of a Potential PF Chang's**
24 **Acquisition**

25 67. On March 27, 2012, PF Chang's financial advisory firm approached
26 Panda to gauge Panda's interest in participating in a bidding process for PF Chang's.

27 68. The financial advisor informed Panda that PF Chang's had already
28 received a formal written offer from another bidder, and that the offer was for a per

1 share acquisition price with two digits, which “started with a five.”

2 69. Around that time, PF Chang’s stock was trading at approximately \$40
3 per share.

4 70. The financial advisor also told Panda that PF Chang’s would be reaching
5 out to several other companies who had shown a prior interest in acquiring PF
6 Chang’s, to invite them to make a competing offer.

7 71. At an April 2, 2012 senior team meeting, Panda’s CFO updated the
8 group on the new offer that PF Chang’s had received which “started with a five,” and
9 on the fact that PF Chang’s would likely be acquired by someone, whether or not it
10 was Panda.

11 72. Condon attended the April 2, 2012 Panda senior team meeting and was
12 briefed on the resumed acquisition discussions.

13 **F. Defendants’ Spring 2012 Trading In Anticipation of An Acquisition**
14 **Announcement**

15 73. On information and belief and as detailed below, the sequence of
16 contacts and trading by Ross, Schultz, and Sagheb in spring 2012 demonstrates that
17 Condon tipped Ross and Schultz material nonpublic information about the potential
18 acquisition of PF Chang’s, including the bidding process for PF Chang’s and the
19 acquisition offer that PF Chang’s had already received from a third-party; that Ross
20 and Schultz both traded on the basis of that information; and that Ross caused Sagheb
21 to trade in parallel with him.

22 74. In tipping Ross and Schultz material non-public information about the
23 potential acquisition of PF Chang’s, the bidding process for PF Chang’s, and the
24 acquisition offer that PF Chang’s had already received from a third-party, Condon
25 repeatedly breached the fiduciary duties of trust and confidence he owed to Panda,
26 and disclosed that information for a personal benefit.

27 75. In trading on the basis of that material, nonpublic information, Ross and
28 Schultz knew or should have known that Condon had disclosed that information to

1 them for a personal benefit in breach of the fiduciary duties of trust and confidence he
2 owed to Panda.

3 **1. Schultz's spring 2012 trading**

4 76. On April 5, 2012, Panda and PF Chang's signed a confidentiality
5 agreement governing Panda's participation in the bidding process, and PF Chang's
6 provided Panda with due diligence materials for its review.

7 77. Condon was physically present at Panda's corporate headquarters on
8 April 5, 2012.

9 78. Soon after leaving Panda's headquarters on April 5, 2012, Condon
10 placed a phone call to Schultz.

11 79. On April 10, 2012, Panda and PF Chang's executives participated in a
12 conference call in connection with Panda's potential bid for PF Chang's.

13 80. From April 11-14, 2012, Condon and Schultz traveled to Colorado for a
14 conference with other Landmark Worldwide alumni, where they spent time with each
15 other.

16 81. The following Monday, on April 16, 2012, Condon was at Panda's
17 corporate headquarters from about 12:30 p.m. PST to 6:00 p.m. PST, and participated
18 in a Panda senior team meeting.

19 82. During the April 16, 2012 senior team meeting, Panda's CFO provided
20 an update to attendees on the status of Project Potsticker, including that Panda already
21 had, or was about to make, an offer to PF Chang's.

22 83. On Monday, April 16, 2012, Panda and its financing partner made a
23 formal written offer of \$50 per share to PF Chang's.

24 84. At 6:06 p.m. PST on April 16, only a few minutes after leaving Panda's
25 corporate offices, Condon called Schultz at two different numbers, and spoke with
26 him for 13 minutes.

27 85. Right after finishing his initial call with Schultz, Condon phoned the
28 executive assistant to one of Panda's co-CEOs, spoke for one minute, and then

1 immediately called Schultz back at 6:23 p.m. PST.

2 86. The next morning, on Tuesday, April 17, 2012, Schultz called his broker
3 at 6:22 a.m. PST and purchased risky, out-of-the-money PF Chang's call options at
4 6:34 a.m. PST, shortly after the markets opened.

5 87. Specifically, Schultz paid \$17,000 to buy 200 "July \$45" call options –
6 call options with a strike price of \$45 and an expiration date of July 21, 2012.

7 Because PF Chang's stock was trading at just below \$40 per share at the time, an
8 investor in this series of options was essentially betting \$17,000 that Panda's stock
9 price would rise by more than 10% – past the strike price of \$45 – within three
10 months' time, even though PF Chang's had not traded above \$45 in more than nine
11 months.

12 88. That morning, Schultz also bought an even riskier series of PF Chang's
13 call options. He paid \$2,500 for 100 "May \$45" call options – call options with a
14 strike price of \$45, but an even shorter expiration date of May 19, 2012. An investor
15 in this series of options was not only betting on the same 10% price increase in PF
16 Chang's, but also that this rise in stock price would occur within just one month's
17 time.

18 89. Two weeks later, on April 30, 2012, Schultz made another purchase of
19 the same risky PF Chang's call options, paying \$7,500 for 100 "July \$45" call
20 options.

21 **2. Ross and Sagheb's spring 2012 trading**

22 90. On April 19, 2012, Ross returned to the United States from work
23 overseas.

24 91. By then, Condon had participated in multiple Panda senior team
25 meetings at which Panda's participation in the spring 2012 bidding process for PF
26 Chang's had been discussed.

27 92. One day after Ross's return, on Friday, April 20, Condon called him at
28 3:52 p.m. PST, and the two spoke for eight minutes.

1 93. On Sunday, April 22, Ross called Sagheb at 1:27 p.m. PST, and spoke
2 with Sagheb for a total of 81 minutes.

3 94. Because Condon's and Ross' phone call occurred after the close of the
4 market on Friday, April 20, Ross could not trade in the securities of PF Chang's until
5 the following Monday, April 23.

6 95. On Monday, April 23, 2012 at 8:26 a.m. PST, Ross purchased the same
7 two series of risky, out-of-the-money PF Chang's call options as Schultz, making the
8 same bets that the stock would rise by more than 10% in a short period of time. He
9 spent about \$3,000 in the aggregate, buying 20 "May \$45" call options and 40 "July
10 \$45" call options.

11 96. That evening, at 5:10 p.m. PST, Ross and Sagheb talked by phone for 36
12 minutes.

13 97. The following morning, on Tuesday, April 24, 2012 at 7:20 a.m. PST,
14 Sagheb purchased a similar series of out-of-the-money PF Chang's call options,
15 spending about \$1,500 to purchase 30 call options with a strike price of \$45 and an
16 expiration of June 16, 2012. On the same morning, Ross bought another 40 "July
17 \$45" call options for just under \$3,700.

18 98. Two days after Ross and Sagheb completed their PF Chang's option
19 trades, Ross wrote the following email to Sagheb, with the subject line, "peanut butter
20 & jelly":

21 *you know, i was just thinking about a bug in the ointment:*

22 *what if they announce, but the price is lower than we think.*

23 *what if they say buyout at 45, or 40?*

24 *i guess that's the risk reward.*

25 *jon [sic]*

26 **G. PF Chang's Announces Acquisition**

27 99. From April 26 to April 30, Condon continued to exchange phone calls
28 and text messages with Schultz and Ross.

1 100. Early in the morning on May 1, 2012, PF Chang's announced that a
2 third-party would be commencing a tender offer for its shares at \$51.50 per share.

3 101. PF Chang's stock price jumped by approximately 25% on the news.

4 102. Schultz sold his PF Chang's call options on May 1, 2012 and realized
5 approximately \$231,000 in trading profits.

6 103. Ross sold his PF Chang's call options on May 1, 2012 and realized
7 approximately \$58,000 in trading profits.

8 104. Sagheb sold his PF Chang's call options on May 1, 2012 and realized
9 \$17,993.88 in trading profits.

10 **H. Condon's and Ross' Efforts To Conceal Their Fraud**

11 105. On May 2, 2012, Ross wrote an email to Sagheb with the following
12 instruction:

13 *...I don't think we should tell anyone what happened yesterday.*
14 *you know what I mean.*

15 106. In response, Sagheb wrote, "I told [my good friend and wife] but that's
16 it."

17 107. Later that summer, in August 2012, Panda received a FINRA inquiry on
18 trading in the securities of PF Chang's.

19 108. FINRA sought information about who at Panda knew of its potential
20 acquisition of PF Chang's, and when those individuals learned that information.

21 109. As part of its inquiry, FINRA sent Panda a list of names, called a "name
22 recognition list," and asked Panda to report back on whether those at Panda who had
23 been aware of the potential PF Chang's acquisition knew anyone on the name
24 recognition list.

25 110. On September 7, 2012, at 5:40 p.m. PST, Panda's legal counsel sent an
26 email to Condon informing him of FINRA's request for information, and asking
27 Condon to review the name recognition list and identify whether he knew any of the
28 listed individuals.

1 111. The name recognition list included the entry, “Schultz, H. and/or T,”
2 located in Pasadena, California.

3 112. Schultz’s wife was named Tana. At the time of the FINRA inquiry,
4 Schultz and his wife lived in Pasadena, California.

5 113. Beginning at 9:15 p.m. PST, Condon and Schultz called one another
6 eight times in the next 90 minutes.

7 114. In between calls with Schultz, Condon also telephoned Ross, at 9:25
8 p.m. PST. When Ross returned his call at 9:44 p.m. PST, he and Condon spoke for
9 20 minutes.

10 115. The following morning, on September 8, 2012, Condon phoned Ross
11 again and spoke with him for 20 minutes, beginning at 9:02 a.m. PST.

12 116. At 10:13 a.m. PST, Condon responded to Panda’s email and falsely
13 stated that he did not know anyone on FINRA’s name recognition list.

14 117. Ten minutes later, at 10:23 a.m. PST – and having just lied to Panda
15 about not knowing a trader identified as “Schultz, H.” – Condon called Schultz and
16 spoke with him for three minutes.

17 118. At 11:25 a.m. PST, Condon then called Ross, who later returned his call
18 at 12:50 p.m. Condon and Ross spoke for twelve minutes.

19 119. Condon never corrected his false statement to Panda in which he claimed
20 to have no knowledge of any of the individuals listed on the FINRA name recognition
21 list.

22 **I. Condon’s Breach of His Fiduciary Duties To Panda**

23 120. Condon owed a fiduciary duty of trust and confidence to Panda. Under
24 the terms of his consulting agreement with Panda, Condon was obligated to keep
25 Panda’s proprietary information, including information about its business,
26 confidential and he was obligated to not misappropriate that information for his own
27 personal benefit. As a result of this fiduciary relationship, Condon had a duty to
28 abstain from trading on the material non-public information he obtained concerning

1 the potential acquisition of PF Chang's, or from giving such information to outsiders
2 with the intent to benefit them.

3 121. Condon tipped Ross and Schultz material non-public information, on
4 multiple occasions, which Ross and Schultz then used to trade in their own accounts.
5 By tipping Ross and Schultz with material non-public information misappropriated
6 from Panda with the intent to benefit them, Condon breached a duty of trust and
7 confidence he owed to Panda.

8 **J. Materiality of the Non-Public Information Condon Provided To**
9 **Ross and Schultz**

10 122. In each of the instances described above where Condon misappropriated
11 confidential and non-public information about the potential acquisition of PF
12 Chang's and tipped that information to Ross and Schultz, a reasonable investor
13 would have viewed that information, and each component thereof, as being
14 important to his or her investment decision. There is a substantial likelihood that the
15 public disclosure of the information misappropriated by Condon and on which Ross
16 and Schultz traded would have been viewed by a reasonable investor as having
17 significantly altered the total mix of information available to investors. For example,
18 when PF Chang's eventual acquisition was publicly announced in spring 2012, its
19 stock price rose approximately 25%.

20 **K. Condon's, Ross' and Schultz's Invocation of their Fifth Amendment**
21 **Right Against Self-Incrimination**

22 123. During the SEC's investigation, the SEC staff issued administrative
23 subpoenas to Condon, Ross and Schultz requiring them to testify, under oath, about
24 their trading in PF Chang's securities.

25 124. During each of their testimonies, in response to all substantive questions
26 put to them by the SEC staff regarding the facts and circumstances surrounding their
27 trading in PF Chang's securities, Condon, Ross and Schultz all invoked their right
28 against self-incrimination under the Fifth Amendment to the U.S. Constitution and

1 refused to answer the staff's questions.

2 **FIRST CLAIM FOR RELIEF**

3 **Fraud in Connection With The Purchase Or Sale Of Securities**

4 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
5 **(Against Defendants Condon and Ross)**

6 125. The SEC realleges and incorporates by reference paragraphs 1 through
7 124 above.

8 126. Condon knew, or was reckless in not knowing, that the information he
9 possessed concerning the potential acquisition of PF Chang's was material nonpublic
10 information.

11 127. Condon also knew, or was reckless in not knowing, that he owed Panda
12 a duty of trust or confidence to keep the material, nonpublic information he possessed
13 concerning the potential acquisition of PF Chang's confidential.

14 128. By disclosing that material, nonpublic information concerning PF
15 Chang's securities to Ross and Schultz, Condon misappropriated confidential
16 information belonging to Panda for securities trading purposes, in breach of a duty of
17 trust or confidence he owed to Panda.

18 129. Condon tipped Ross and Schultz with material nonpublic information
19 concerning the potential acquisition of PF Chang's with the intent to benefit his close
20 friends, Ross and Schultz.

21 130. Condon knew or recklessly disregarded that Ross and Schultz would
22 trade on the basis of that material nonpublic information and/or tip the information to
23 others who could also be expected to trade on the basis of that information.

24 131. Condon, directly or indirectly, personally benefited from disclosing that
25 material, nonpublic information to his close friends.

26 132. At the time he traded in the securities of PF Chang's, Ross knew or was
27 reckless in not knowing that he was in possession of material nonpublic information
28 concerning PF Chang's securities.

1 133. At the time he traded in the securities of PF Chang's, Ross knew or
2 should have known that the material, nonpublic information about PF Chang's that
3 Condon had disclosed to him was disclosed or misappropriated by Condon in breach
4 of a fiduciary duty, or similar relationship of trust and confidence.

5 134. At the time he traded in the securities of PF Chang's Ross knew or
6 should have known that Condon had tipped him material nonpublic information about
7 PF Chang's with the intent to benefit Ross.

8 135. By engaging in the conduct described above, Defendants Condon and
9 Ross, directly or indirectly, in connection with the purchase or sale of securities, by
10 use of the means or instrumentalities of interstate commerce, or the mails, or the
11 facilities of a national securities exchange:

12 (a) employed devices, schemes or artifices to defraud;

13 (b) made untrue statements of material facts or omitted to state
14 material facts necessary in order to make the statements made, in
15 light of the circumstances under which they were made, not
16 misleading; and/or

17 (c) engaged in acts, practices, or courses of business which operated
18 or would operate as a fraud or deceit upon any person in
19 connection with the purchase or sale of any security.

20 136. By engaging in the foregoing conduct, Condon and Ross violated, and
21 unless enjoined will continue to violate, Section 10(b) of the Exchange Act, 15
22 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

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SECOND CLAIM FOR RELIEF

Fraud In Connection With a Tender Offer

**Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder
(Against Defendants Condon and Ross)**

137. The SEC realleges and incorporates by reference paragraphs 1 through 124 above.

138. By the time of Defendants' trading in PF Chang's securities in the fall of 2011, substantial steps had been taken by Panda to complete a tender offer to acquire PF Chang's securities. Specifically, in the fall of 2011, Panda began acquiring PF Chang's common stock in anticipation of acquiring the company, and owned just under five percent of PF Chang's securities by March 2012.

139. In addition, by the time of Defendants' trading in PF Chang's securities in the spring of 2012, additional substantial steps had been taken by Panda to complete a tender offer to acquire PF Chang's securities. Specifically, on April 5, 2012, Panda and PF Chang's signed a confidentiality agreement, and thereafter conducted continued due diligence; and on April 16, 2012, Panda made a non-binding offer to PF Chang's of \$50 per share. All of these actions constituted substantial steps by Panda to complete a tender offer.

140. Condon was in possession of material information relating to such tender offer which information he knew or had reason to know was nonpublic and which he knew or had reason to know he had acquired, directly or indirectly, from the offering person, and/or its officers, directors, partners, employees, or other persons acting on behalf of the offering person. Condon was required to refrain from communicating that information to third-parties, including Ross and Schultz, under circumstances in which it was reasonably foreseeable that such communications were likely to result in the trading of PF Chang's securities.

141. By communicating that material nonpublic information concerning such tender offer to Ross and Schultz, for the purpose of benefiting them and with the

1 expectation that Ross and Schultz would trade in PF Chang's securities on the basis
2 of that information, Condon caused Ross and Schultz to purchase and sell PF Chang's
3 securities.

4 142. At the time he traded in PF Chang's securities, as alleged herein, Ross
5 was in possession of material information regarding such tender offer that he knew or
6 had reason to know was nonpublic and had been acquired, directly or indirectly, by
7 Condon, acting on behalf of Panda, from the offering person.

8 143. By engaging in the foregoing conduct, Condon and Ross violated, and
9 unless enjoined will continue to violate, Section 14(e) of the Exchange Act, 15 U.S.C.
10 § 78n(e), and Rule 14e-3 thereunder, 17 C.F.R. § 240.14e-3.

11 **THIRD CLAIM FOR RELIEF**

12 **Unjust Enrichment**

13 **(Against Relief Defendant Sagheb)**

14 144. The SEC realleges and incorporates by reference paragraphs 1 through
15 124 above.

16 145. Sagheb received ill-gotten gains from trades based on material nonpublic
17 information, over which he has no legitimate claim.

18 146. Sagheb obtained the ill-gotten gains described above as part of the
19 securities law violations alleged above, under circumstances in which it is not just,
20 equitable, or conscionable for him to retain the funds.

21 147. By engaging in the foregoing conduct, Sagheb has been unjustly
22 enriched and must disgorge his ill-gotten gains.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, the SEC respectfully requests that the Court:

25 **I.**

26 Issue findings of fact and conclusions of law that Condon and Ross committed
27 the alleged violations.

1 **II.**

2 Issue judgements, in a form consistent with Fed. R. Civ. P. 65(d), permanently
3 enjoining Defendants Condon and Ross and their agents, servants, employees,
4 attorneys and those persons in active concert or participation with them, who receive
5 actual notice of the order by personal service or otherwise, from violating Sections
6 10(b) and 14(e) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78n(e), and Rules 10b-5
7 and 14e-3 thereunder, 17 C.F.R. §§ 240.10b-5, 240.14e-3.

8 **III.**

9 Order Condon to jointly and severally disgorge the illegal trading profits
10 described herein, plus prejudgment interest.

11 **IV.**

12 Order Ross to disgorge his illegal trading profits described herein, plus
13 prejudgment interest.

14 **V.**

15 Order Condon and Ross to pay civil penalties under Section 21A of the
16 Exchange Act, 15 U.S.C. § 78u-1.

17 **VI.**

18 Order Sagheb to disgorge all trading profits and other ill-gotten gains to which
19 he does not have a legitimate claim that he received as a result of the conduct alleged
20 in this Complaint, plus prejudgment interest.

21 **VII.**

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

26 **VIII.**

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

1 Dated: September 23, 2015

2 /s/ Gary Y. Leung

3 GARY Y. LEUNG

4 DONALD W. SEARLES

5 SARA D. KALIN

6 Attorneys for Plaintiff

7 Securities and Exchange Commission

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