

1 HELANE L. MORRISON (Cal. Bar No. 127752)
JAMES A. HOWELL (Cal. Bar No. 92721)
2 ROBERT L. TASHJIAN (Cal. Bar No. 191007)

3 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
4 44 Montgomery Street, Suite 1100
San Francisco, California 94104
5 Telephone: (415) 705-2500
Facsimile: (415) 705-2501
6

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 SECURITIES AND EXCHANGE COMMISSION,
12 Plaintiff,
13 vs.
14 HERSHEY MOSS,
15 Defendant.

Case No.
COMPLAINT

16
17
18 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

19 **SUMMARY OF THE ACTION**

20 1. Defendant Hershey Moss lied to the Commission, the National Association of
21 Securities Dealers (“NASD”) and the public about National Pizza Corporation, a company he
22 founded and ran, in order to make a quick profit in its sale. Within months of starting National Pizza,
23 despite the fact that it had no operations, Moss filed with the Commission to take the company
24 public. In documents filed with the Commission, Moss presented National Pizza as a start-up
25 company that intended to operate a national chain of pizza distributors.

26 2. When the Commission reviewed National Pizza’s filing, the Commission questioned
27 whether Moss intended to operate a pizza business, as he claimed, or whether he sought to sell
28 National Pizza in a merger with another company. In response to the Commission’s questions, Moss

1 filed new documents, insisting that he intended to run a pizza business and adding detail to the
2 business plan. He also said that the company did “not have any plans to pursue a business
3 combination with another entity in the near future.”

4 3. During the time when the Commission was reviewing Moss’s new documents,
5 however, Moss began negotiating to merge National Pizza with a travel company, FS2 Limited, and
6 sell his shares. Moss did not disclose to the Commission his negotiations to merge the company. By
7 disguising his intentions, Moss avoided regulatory scrutiny of National Pizza’s business plan and the
8 additional protections afforded to the investing public through such review. Moss was thus able to
9 convert National Pizza into a valuable public company and sell his shares in the subsequent merger
10 that he had negotiated.

11 4. The National Pizza merger resulted in BSP Onelink, Inc. (now known as One Link 4
12 Travel, Inc.), a San Francisco-based financial services company in the travel industry. After the
13 merger, BSP Onelink applied to the NASD to list its common stock on NASD’s OTC Bulletin Board.
14 Sensing that the Commission had been misled, NASD asked about the timing of the merger. In
15 response, Moss falsely told the NASD that the merger discussions between National Pizza and FS2
16 had begun only after National Pizza had become a public company. Following Moss’s
17 misrepresentation, the NASD allowed BSP Onelink shares to be listed on the Bulletin Board. Moss
18 then sold a portion of his BSP Onelink stock on the open market for approximately \$120,000.

19 5. Moss’s misrepresentations and omissions regarding his intended sale of National Pizza
20 as a shell corporation violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933
21 (“Securities Act”) [15 U.S.C. §§ 77q(a)(1) and 77q(a)(3)]. His subsequent false and misleading
22 statements to the NASD about when he began negotiating the sale of the company violated Section
23 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5
24 [17 C.F.R. § 240.10b-5] thereunder. The Commission seeks an injunction against future conduct that
25 violates the securities laws, requests disgorgement of Moss’s ill-gotten gains and a civil penalty, and
26 an order barring Moss from future service as an officer or director of a public company.

27
28

1 **JURISDICTION**

2 6. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of
3 the Securities Act [15 U.S.C. §§ 77t(d)(1) and 77v(a)] and Sections 21(d)(3), 21(e) and 27 of the
4 Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(e) and 78aa]. Defendant, directly or indirectly, has made
5 use of the means and instrumentalities of interstate commerce or of the mails in connection with the
6 acts, transactions, practices and courses of business alleged in this Complaint.

7 7. Venue in this District is proper pursuant to Section 22(a) of the Securities Act
8 [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], because one or more
9 acts or transactions constituting violations of the federal securities laws and an offer and sale of the
10 subject securities occurred within the Northern District of California.

11 **INTRADISTRICT ASSIGNMENT**

12 8. Assignment to the San Francisco Division is proper pursuant to Civil Local Rule
13 3-2(c) because one or more acts or transactions constituting violations of the federal securities laws
14 and an offer and sale of the subject securities arose in the counties comprising this Division.

15 **AUTHORITY TO BRING THIS ACTION**

16 9. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
17 Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15
18 U.S.C. §§ 78u(d) and 78u(e)].

19 **DEFENDANT**

20 10. Defendant Hershey Moss, age 64, is a resident of Town and Country, Missouri, a
21 suburb of St. Louis. Moss was convicted on federal mail fraud charges in 1976, serving nearly seven
22 years in prison.

23 **NATIONAL PIZZA'S INTITIAL PUBLIC OFFERING**

24 11. Moss founded National Pizza Corporation in 2001. National Pizza's sole office was
25 located in Moss's suburban St. Louis home. From the company's inception, Moss was the
26 controlling shareholder of the company, and was the company's president and chief executive officer.
27 Other than Moss and a consultant who was retained only to help to draft the company's business
28 plan, National Pizza had no employees and conducted no business.

1 12. In 2001, Moss took preliminary steps to make National Pizza a publicly traded
2 company. As the first step towards that goal, National Pizza offered shares of its stock privately to a
3 limited number of investors. National Pizza's offering was presented in a written prospectus, which
4 described the company's business plan to build a national network of distributors to sell frozen pizzas
5 and small ovens to bars, bowling alleys and similar businesses. The plan of operations described in
6 the prospectus was based on the written business plan that Moss commissioned from the consultant.
7 Moss reviewed and revised drafts of the prospectus, and authorized the version distributed to
8 potential investors.

9 13. Between October and December 2001, Moss circulated the National Pizza prospectus
10 to his friends and family. The private offering attracted 33 investors who purchased approximately
11 two million shares for an aggregate amount of approximately \$203,000. Moss, who owned
12 approximately four million shares, remained the controlling shareholder after the offering was
13 completed.

14 14. Even after the private offering, National Pizza's business plan remained an idea on
15 paper. At the beginning of 2002, the company was still run out of Moss's home, had no employees,
16 and conducted no business.

17 15. On February 1, 2002, National Pizza took the next step in the process of becoming a
18 public company by filing a registration statement with the Commission to distribute the company's
19 stock in an initial public offering. Moss reviewed and signed the registration statement and all
20 subsequent amendments. Through the filing, National Pizza sought to register approximately 2.3
21 million of its shares for sale to the public at \$0.10 per share. Like the prospectus used in the private
22 offering, the registration statement described the company's purported plan to develop a network of
23 pizza distributors.

24 16. The Commission is authorized to review registration statements to ensure meaningful
25 and accurate disclosure with respect to securities offered to the public. The Commission has a staff
26 devoted to the review of such filings. One of the many issues addressed in the Commission's review
27 of registration statements is whether the company has given meaningful and accurate disclosure of its
28 management, financial structure and business plan. Certain companies, so-called "shell" or "blank

1 check” companies, attempt registration of securities without firm business plans or with a plan to
2 combine with some other entity in the future. In some instances, shell or blank check companies
3 have been used to evade regulatory scrutiny and mislead potential investors. The Commission has
4 adopted regulations and review practices to address some of these abuses.

5 17. The Commission staff reviewed National Pizza’s initial registration statement and sent
6 a letter commenting on the filing to Moss and National Pizza’s attorney. In its letter, the Commission
7 staff asked for more details about the National Pizza’s business plan and specifically inquired
8 whether the company had any plans to seek a merger.

9 18. Moss reviewed the comments of the Commission’s staff. On March 11, 2002, Moss
10 caused National Pizza to file an amended registration statement with the Commission. The amended
11 registration statement added requested details about National Pizza’s purported plan of operations
12 and flatly declared “We do not have any plans to pursue a business combination with another entity
13 in the near future.” Moss reviewed and signed the amended registration statement filed with the
14 Commission.

15 19. Between March and June 2002, in response to further comments from the
16 Commission’s staff, Moss caused National Pizza to file four subsequent amendments to its
17 registration statement. Each amended registration statement described the company’s purported
18 business plan and stated that the company had no merger plans. Moss signed each amended
19 registration statement.

20 20. On May 28, 2002, while the company’s registration statement was still under review
21 by the Commission, Moss entered into negotiations for the merger of National Pizza with FS2
22 Limited, a private British company. While conducting the negotiations with FS2, Moss repurchased
23 all of the shares of National Pizza stock that had been sold to his friends and family in the private
24 offering. On June 7, 2002, Moss and FS2 agreed in principle to merge National Pizza and FS2.
25 Pursuant to their agreement, Moss would sell all of his National Pizza shares to FS2. No changes
26 were made to the company’s registration statement to disclose Moss’s repurchase of National Pizza
27 stock or the FS2 merger agreement in principle.

28

1 21. On June 20, 2002, Moss signed and caused National Pizza to file its fifth amended
2 registration statement. The registration statement included the declaration that the company had no
3 plans to pursue a business combination. The amended registration statement did not disclose Moss's
4 stock repurchase or the agreement in principle to sell the company. As in previous amendments, the
5 registration statement detailed the company's purported pizza business plan. As of the date of the
6 filing, however, Moss had done little to advance the business as it was described in the company's
7 registration statement. The company was still run out of Moss's home, had no employees, and
8 conducted no business.

9 22. On June 24, 2002, the Commission declared the company's registration statement
10 effective, thus making the company's stock available for sale to the general public. At the time it
11 became effective, and afterward, the registration statement did not disclose the contemplated merger
12 between National Pizza and FS2, the company's proposed business plan following the merger, or any
13 contemplated changes in ownership or control of the company.

14 **COMPLETION OF THE MERGER**

15 23. On August 19, 2002, National Pizza first disclosed its merger plans in a quarterly
16 report filed with the Commission. National Pizza did not, however, amend its prior registration
17 statement to disclose this fact or to disclose any contemplated changes to the company's business
18 plan, management or control.

19 24. The merger between National Pizza and FS2 closed on September 12, 2002. In
20 consideration for the FS2 merger agreement, Moss received approximately \$500,000 cash and
21 approximately 440,000 shares of stock in the successor company, BSP Onelink.

22 25. After the merger, BSP Onelink pursued a plan to become a provider of financial
23 services to the travel industry.

24 **LISTING OF BSP ONELINK STOCK**

25 26. In the fall of 2002, BSP Onelink, headquartered in San Francisco, filed an application
26 with the NASD to list shares of its common stock on the OTC Bulletin Board. The NASD, in
27 reviewing the BSP Onelink application, expressed concern that National Pizza had misled the
28 Commission in connection with its registration statement. The NASD specifically inquired about the

1 timing of the merger in light of National Pizza's assertion in its registration statement that it had no
2 plans to seek a business combination. "Please explain," the NASD wrote, why National Pizza should
3 not be considered "a shell company that is being used [as] a vehicle [for] merger and acquisitions."

4 27. On December 11, 2002, Moss wrote a letter to the NASD in support of BSP Onelink's
5 application. In that letter, Moss denied that National Pizza misled the Commission. Moss stated that
6 he had always intended to develop the company's pizza distribution plan, and only changed his mind
7 in the "summer" of 2002 when he decided to sell the company. In a subsequent letter to the NASD,
8 dated February 5, 2003, Moss asserted that he did not decide to sell National Pizza until "August"
9 2002. Moss did not inform the NASD that, in fact, he began negotiations to sell the National Pizza in
10 May 2002 and reached an agreement in principle more than three weeks before the effective date of
11 the company's registration statement.

12 28. Shortly after receiving Moss's submissions, the NASD approved BSP Onelink's
13 listing application and permitted the company's stock to be listed on the OTC Bulletin Board. After
14 the listing, Moss sold a portion of his BSP Onelink stock on the open market, netting approximately
15 \$120,000 in trading proceeds.

16 **FIRST CAUSE OF ACTION**

17 *Violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act*

18 29. The Commission hereby incorporates paragraphs 1 through 28 by reference.

19 30. Defendant Moss has, by engaging in the conduct set forth above, directly or indirectly,
20 in the offer or sale of securities, by the use of means or instruments of transportation or
21 communication in interstate commerce, or of the mails: (a) with scienter, employed devices, schemes
22 or artifices to defraud; and (b) engaged in transactions, practices or courses of business which
23 operated or would operate as a fraud or deceit upon the purchasers of such securities.

24 31. By reason of the foregoing, defendant Moss has directly or indirectly violated Sections
25 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and 77q(a)(3)] and unless
26 enjoined will continue to violate Sections 17(a)(1) and 17(a)(3) of the Securities Act.

27
28

1 **SECOND CAUSE OF ACTION**

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

3 32. The Commission hereby incorporates Paragraphs 1 through 28 by reference.

4 33. Defendant Moss has, by engaging in the conduct set forth above, directly or indirectly,
5 by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a
6 national security exchange, with scienter: (a) employed devices, schemes or artifices to defraud;
7 (b) made untrue statements of material fact or omitted to state material facts necessary in order to
8 make the statements made, in light of the circumstances under which they were made, not
9 misleading; and (c) engaged in acts, practices or courses of business which operated or would operate
10 as a fraud or deceit upon other persons, in connection with the purchase or sale of securities.

11 34. By reason of the foregoing, defendant Moss, directly or indirectly, violated Section
12 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] and unless
13 enjoined will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Commission respectfully requests that the Court:

16 I.

17 Enjoin defendant Moss from, directly or indirectly, engaging in conduct in violation of
18 Sections 17(a)(1) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and 77q(a)(3)] and
19 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R.
20 § 240.10b-5].

21 II.

22 Order defendant Moss to disgorge his ill-gotten gains in an amount according to proof, plus
23 prejudgment interest thereon.

24 III.

25 Order defendant Moss to pay civil money penalties pursuant to Section 20(d)(1) of the
26 Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21A of the Exchange Act [15 U.S.C. § 78u-1].
27
28

1 IV.

2 Bar defendant Moss from serving as an officer or director of any entity having a class of
3 securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C.
4 § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C.
5 § 78o(d)].

6 V.

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

11 VI.

12 Grant such other and further relief as this Court may deem just, equitable, and necessary.

13 Dated: July 2, 2004

14 Respectfully submitted:

15
16
17 By: _____
18 Helane L. Morrison
19 James A. Howell
20 Robert L. Tashjian

21 Attorneys for Plaintiff
22 SECURITIES AND EXCHANGE COMMISSION
23
24
25
26
27
28