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20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
22 **WESTERN DIVISION**

1 SECURITIES AND EXCHANGE
2 COMMISSION,

Civil Action No.
COMPLAINT

3 Plaintiff,
4 vs.

5 COURTNEY D. SMITH,
6 Defendant.

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

8 **NATURE OF THE ACTION**

9 1. This case involves an unlawful scheme to manipulate the stock price of
10 GenesisIntermedia, Inc. (“GENI”), a now defunct public company that was based
11 in Van Nuys, California, between September 1999 and September 2001, which
12 resulted in the misappropriation of more than \$130 million, the collapse of three
13 broker-dealers, and the largest Securities Investor Protection Corporation (“SIPC”)
14 bailout in history.

15 2. The scheme to manipulate GENI’s share price was orchestrated by
16 GENI’s former Chief Executive Officer, President, Chairman of the Board of
17 Directors, and majority shareholder (hereinafter “GENI’s CEO”) along with a
18 Saudi Arabian national reputed to be an international arms dealer and financier
19 (hereinafter the “Accomplice”). GENI’s CEO and the Accomplice were assisted
20 by others including Kenneth P. D’Angelo (charged previously), who was in the
21 business of facilitating stock-loan transactions, and Defendant Courtney D. Smith,
22 a well-known financial commentator who appeared on various financial television
23 networks.

24 3. GENI’s CEO and the Accomplice systematically engaged in fraudulent
25 and deceptive practices including (i) reducing the supply of GENI stock to control
the public float; (ii) promoting a short squeeze; (iii) making false and misleading

1 statements in periodic reports filed with the Commission and in press releases
2 issued by the company; (iv) making trades through nominee accounts; and (v)
3 engaging in a “free-riding” scheme.

4 4. Key to the manipulation scheme were secret payments GENI’s CEO
5 made to Defendant Smith to compensate him for touting GENI stock on CNBC,
6 Bloomberg TV, CNN and CNNfn, thereby creating demand for the stock. Overall,
7 Defendant Smith was secretly paid \$95,000 and provided with approximately \$1
8 million dollars in GENI stock to pump GENI’s stock price on television. To
9 disguise the improper compensation, GENI’s CEO funneled the payments through
10 Defendant Smith’s girlfriend and her small vitamin exporting company.

11 5. Defendant Smith touted GENI stock to investors between December
12 1999 and April 2001, without disclosing that his bullish statements about GENI
13 were bought and paid for by GENI’s CEO. During this period, Defendant Smith
14 also knowingly made a series of false and misleading statements about GENI’s
15 performance outlook in order to artificially drive up its stock price.

16 6. Through the manipulative acts of GENI’s CEO, the Accomplice,
17 D’Angelo, Defendant Smith, and others, GENI’s stock price was artificially
18 increased by approximately 1,400%, from a low of \$1.67 per share (split adjusted)
19 on September 1, 1999 to a high of \$25 per share on June 29, 2001.

20 7. Rather than sell their shares in the inflated market (which would have
21 had the effect of depressing GENI’s stock price), GENI’s CEO and the
22 Accomplice devised and employed a scheme to profit from the fraud by lending
23 their shares. Specifically, GENI’s CEO and the Accomplice loaned millions of
24 GENI shares to more than a dozen broker-dealers in exchange for approximately
25 \$130 million. GENI’s CEO and the Accomplice, with D’Angelo’s assistance,
defrauded these broker-dealers by leading them to believe that the loaned GENI
shares had come from a legitimate brokerage firm. In fact, the sources of the

1 GENI shares were GENI's CEO and Ultimate Holdings, Ltd. ("Ultimate
2 Holdings"), an offshore entity controlled by GENI's CEO and the Accomplice.

3 8. After the scheme collapsed in September 2001, GENI's stock price
4 plunged to pennies per share, causing significant harm to investors. GENI's CEO
5 and the Accomplice defaulted on approximately \$130 million in stock loans they
6 had obtained using GENI shares as collateral, causing (among other things) the
7 insolvency of at least three broker-dealers.

8 9. For his part in the scheme, Defendant Smith made over \$800,000
9 selling some of the GENI shares that he received from GENI's CEO for touting
10 GENI's stock.

11 10. By engaging in the conduct described above, Defendant Smith
12 directly or indirectly violated Sections 17(a) and 17(b) of the Securities Act of
13 1933 ("Securities Act") [15 U.S.C. § 77q(a) and § 77q(b)]; Section 10(b) of the
14 Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule
15 10b-5 [17 C.F.R. § 240.10b-5] thereunder; and Sections 206(1) and 206(2) of the
16 Investment Advisors Act of 1940 ("Advisors Act") [15 U.S.C. § 80b-6(1), (2)].

17 11. The Commission seeks a judgment from the Court: (i) enjoining
18 Defendant Smith from engaging in future violations of the above provisions of the
19 federal securities laws; (ii) requiring Defendant Smith to account for and disgorge,
20 with prejudgment interest, the illegal profits and proceeds he obtained as a result of
21 his actions alleged herein; (iii) requiring Defendant Smith to pay a civil money
22 penalty; and (iv) for such other relief as this Court deems just and appropriate.

23 **JURISDICTION**

24 12. This Court has jurisdiction of this action pursuant to Section 22 of the
25 Securities Act [15 U.S.C. § 77v] and Sections 21 and 27 of the Exchange Act [15
U.S.C. §§ 78u and 78aa].

1 13. Defendant, directly or indirectly, has made use of the means or
2 instrumentalities of interstate commerce, or of the mails, or the facilities of a
3 national securities exchange in connection with the transactions, acts, practices and
4 courses of business alleged herein.

5 14. Defendant may, unless restrained and enjoined, continue to engage in
6 the acts, practices, and courses of business alleged herein, or in transactions, acts,
7 practices, and courses of business of similar purport and object.

8 **INTRADISTRICT ASSIGNMENT**

9 15. Assignment to the Western Division is appropriate because the
10 majority of claims and certain of the transactions, acts, practices and courses of
11 business alleged below occurred within the Central District of California, including
12 Los Angeles, California.

13 **DEFENDANT**

14 16. Courtney D. Smith, age 53, resides in New York, New York. From
15 1997 to December 1999, he was the Chief Investment Officer for Orbitex
16 Management, Inc. (“Orbitex”), which manages and administers mutual funds and
17 investor portfolios. From January 2000 until December 2000, Smith was the
18 global strategist for a subsidiary of Orbitex. In addition, he has been the President
19 and Chief Investment Officer of Courtney Smith & Co., which was a registered
20 investment adviser between December 2000 and November 2001. During the
21 relevant time, Smith frequently appeared on television as a financial commentator,
22 discussing numerous public companies, including GENI.

23 **OTHER RELEVANT PARTIES**

24 17. GenesisIntermedia, Inc., ticker symbol GENI, is a Delaware
25 corporation with its principal office in Van Nuys, California. During the relevant
time, its main businesses were operating a consumer-telemarketing company,
shopping-mall kiosks and a car-rental company. The company’s common stock

1 was registered pursuant to Section 12(g) of the Exchange Act. GENI's stock
2 traded on the Nasdaq National Market System until September 25, 2001, when
3 Nasdaq halted trading to obtain additional information from the company
4 following the collapse of its stock price. Instead of responding to the inquiry, the
5 company voluntarily delisted its stock on January 29, 2002. Currently, GENI's
6 stock is quoted in the pink sheets for pennies per share.

7 18. Kenneth P. D'Angelo, age 62, is from Edison, New Jersey. During
8 the relevant time, he was President and Secretary of RBF International, Inc, whose
9 business was facilitating stock loans. In May 2004, in a related Commission
10 action, D'Angelo consented to entry of a permanent injunction prohibiting future
11 violations of the antifraud provisions of the federal securities laws in connection
12 with his role in manipulating GENI shares.

THE FRAUDULENT SCHEME

I. BACKGROUND

14 19. From its inception until June 1999, GENI was a privately-held
15 telemarketing company. On June 14, 1999, GENI went public by offering 2
16 million shares at \$2.83 per share (split adjusted). After GENI's IPO, its CEO
17 owned approximately 2.9 million restricted shares of GENI or 55% of its total
18 outstanding common stock.

19 20. GENI lost substantial amounts of money in every financial quarter
20 after its IPO for which it filed reports with the Commission. Its Forms 10-K for
21 the fiscal years ended December 31, 1999 and 2000 reported net losses of
22 \$8,296,550 and \$33,530,627 respectively. These losses continued into 2001, with
23 GENI's Form 10-Q for the quarter ended September 30 reporting a nine-month
24 loss of approximately \$119 million. Before the collapse of the GENI stock scheme
25 in September 2001, the CEO and the Accomplice (through Ultimate Holdings)
kept GENI afloat by lending the company approximately \$49 million.

1 II. THE MECHANISM OF THE STOCK-LENDING SCHEME

2 A. The Stock-Lending Scheme

3 21. The manipulation of GENI's stock price began shortly after the
4 company's June 1999 public offering. To benefit from the manipulation, GENI's
5 CEO developed a stock-lending scheme. Instead of selling GENI shares in the
6 open market, which would have depressed the stock's price and reduced his
7 profits, he and Ultimate Holdings loaned millions of GENI shares to unsuspecting
8 broker-dealers. The loans generated cash proceeds for the full market value of the
9 GENI shares and assured that the CEO would benefit from future price increases.

10 22. In their typical stock-loan transaction, Ultimate Holdings and GENI's
11 CEO loaned stock to a broker-dealer and received the current market value of the
12 stock in cash. As GENI's stock price fluctuated, the loaned stock was marked-to-
13 market by the broker-dealer. In a hypothetical example, if Ultimate Holdings
14 loaned a broker-dealer 1,000 shares of stock valued at \$5.00 per share, Ultimate
15 Holdings would get \$5,000 from the broker-dealer and the broker-dealer would
16 take possession of the stock. If the price of the stock subsequently rose to \$6.00
17 per share, Ultimate Holdings would get another \$1,000 from the broker-dealer. If
18 the stock then dropped to \$4.00 per share, Ultimate Holdings would be obligated to
19 return \$2,000 to the broker-dealer. Ultimate Holdings received additional cash
20 when GENI's price increased, and was obligated to return cash when the stock
21 price dropped.

22 23. By lending the shares in this manner (rather than selling them),
23 Ultimate Holdings and GENI's CEO: (i) raised substantial sums of money without
24 giving up control of his stock or depressing the market; (ii) generated funds used,
25 in part, to buy more GENI shares and drive up the market price; and (iii) prevented
the shares from being used for short sales.

1 24. Between September 1999 and September 2001, GENI's CEO and the
2 Accomplice (through Ultimate Holdings) obtained more than \$130 million in cash
3 by loaning approximately 15 million shares of GENI stock (about 65% of the float)
4 to various broker-dealers.

5
6 B. GENI's CEO Hired D'Angelo to Arrange
7 the Stock-Loan Transactions

8 25. In the summer of 1999, GENI's CEO retained D'Angelo (acting
9 through his company, RBF International) to facilitate loans of GENI stock to
10 broker-dealers.

11 26. Shortly thereafter, D'Angelo solicited the assistance of a former RBF
12 employee to broker GENI stock loans with the former employee's current firm,
13 Toronto-based Deutsche Bank Securities Limited ("Deutsche Bank Canada"). At
14 the time, the former RBF employee was the head of Deutsche Bank Canada's
15 securities-lending department.

16 27. The former RBF employee agreed to borrow GENI stock on behalf of
17 Deutsche Bank Canada from GENI's CEO and Ultimate Holdings. However, the
18 former RBF employee would not accept their GENI stock directly because they
19 were not broker-dealers. The former employee would only borrow stock from a
20 creditworthy broker-dealer. To fulfill these conditions, D'Angelo interposed a
21 New Jersey-based broker-dealer, Native Nations Securities, and later other broker-
22 dealers, between Deutsche Bank Canada and Ultimate Holdings/GENI's CEO.

23 28. Between October 1999 and September 2001, D'Angelo facilitated
24 loans totaling millions of shares of GENI stock from Ultimate Holdings/GENI's
25 CEO to Deutsche Bank Canada. During that time, the value of the loans grew due
to the fact that more shares were being loaned and the fact that GENI's stock price
was increasing dramatically.

1 29. Once the stock loan scheme was in place, GENI's CEO, the
2 Accomplice and D'Angelo engaged in a variety of actions designed and intended
3 to manipulate GENI's stock price.

4 III. THE MANIPULATION SCHEME

5 A. GENI's CEO Hired Defendant Smith
6 to Tout GENI on Television

7 30. On or about December 15, 1999, GENI's CEO was introduced to
8 Defendant Smith by a mutual friend.

9 31. On or about December 20, 1999, Defendant Smith agreed to tout
10 GENI on television in exchange for substantial compensation from GENI's CEO
11 that would not be disclosed to the investing public.

12 32. Defendant Smith began touting GENI on December 21, 1999 on
13 Bloomberg TV, calling the company "a very hot, speculative pick" and stating that
14 its core business of producing infomercials was "extremely profitable." He also
15 stated that GENI's management expected the company to become profitable in the
16 second or third quarter of 2000. After Defendant Smith's "buy" recommendation,
17 GENI's stock price rose approximately 69% from a closing price of \$4.00 per
18 share on December 20, to a closing price of \$6.75 per share on December 22, on
19 higher than average trading volume. The price increased 150% to a high of \$10.00
20 per share on December 23. The trading volume on both December 22 and 23 was
21 approximately 40 times the trading volume on December 20.

22 33. On January 4, 2000, Defendant Smith again recommended GENI on
23 Bloomberg TV, reiterating that GENI's core business was "extremely profitable"
24 and emphasizing that the company had a "PE [ratio] of somewhere between 5 and
25 10 to 1." In his appearance, Defendant Smith also described GENI's Internet kiosk
business as a "very exciting program." After Defendant Smith's "buy"

1 recommendation, GENI's stock price rose approximately 18% from \$5.50 per
2 share on January 4, to \$6.50 per share on January 5, on higher than average trading
3 volume.

4 34. During a February 8, 2000 appearance on Bloomberg TV, Defendant
5 Smith stated GENI was "exploding in revenues" and that its share price would rise
6 between three- and five-fold. Defendant Smith further stated the stock was likely
7 to go from "\$6 or \$7 a share" to "\$20 or \$30 [per share] over the subsequent year."
8 Defendant Smith also stated that GENI was using the Internet in an "innovate way"
9 and that there was going to be "a big pop" for the company. After Defendant
10 Smith's "buy" recommendation, GENI's stock price rose approximately 77% from
11 \$6.625 per share on February 8, to \$11.75 per share on February 9, on higher than
12 average trading volume. In fact, the trading volume on February 9 was more than
13 100 times the trading volume on February 8.

14 35. On February 17, 2000, Defendant Smith again recommended GENI
15 on Bloomberg TV stating that the company was creating "a whole sequence of
16 good news." Citing GENI's building of Internet kiosks in shopping malls, he
17 stated the company was "expanding rapidly," and would "create significant
18 profits" in the second half of the year. After Defendant Smith's "buy"
19 recommendation, GENI's stock price rose approximately 9% from \$15.22 per
20 share on February 17, to \$16.56 per share on February 18. On the next trading
21 day, February 22, GENI's price peaked at \$18.50, approximately a 22% increase
22 from the stock's closing price on February 17.

23 36. On February 25, 2000, Defendant Smith recommended GENI on
24 CNBC, making the company his "Double Your Money Pick." After Defendant
25 Smith's recommendation, GENI's stock price rose approximately 70% from
\$16.44 per share on February 24, to \$28 per share on February 25. GENI's stock

1 price jumped to a high of \$35 on February 25. The trading volume on that day was
2 more than 28 times the volume of the previous day.

3 1. Defendant Smith was Secretly Paid \$95,000
4 to Tout GENI

5 37. Shortly after his February 25, 2000 appearance on CNBC, Defendant
6 Smith received the first of two secret payments from GENI as compensation for
7 touting GENI stock. The payment was disguised using Defendant Smith's then
8 girlfriend as an intermediary.

9 38. The first payment was made on February 28, 2000, when one of
10 GENI's subsidiaries wired \$100,000 to the girlfriend's personal bank account. The
11 next day, the girlfriend transferred \$95,000 to a company wholly owned by
12 Defendant Smith.

13 39. To document the \$100,000 payment to the girlfriend, GENI, at the
14 direction of its CEO, entered into a written agreement, dated March 1, 2000, with a
15 small vitamin-exporting company owned by Defendant Smith's girlfriend, to
16 purchase the vitamin company's customer list. In fact, the list belonged to
17 Defendant Smith and consisted of the names of some 30,000 people interested in
18 commodities trading.

19 40. Aside from the sale to GENI, Defendant Smith never sold that
20 customer list for more than \$6,700. GENI never obtained an appraisal or
21 independent valuation to justify the \$100,000 price paid to Defendant Smith's
22 girlfriend for the customer list and GENI never sold any products or generated any
23 revenue from it.

24 41. After being paid \$95,000 by GENI, Defendant Smith continued to tout
25 GENI's stock on television without disclosing his receipt of the payment.

1 42. For example, on March 14, 2000, he recommended GENI on
2 Bloomberg TV. During his appearance, Defendant Smith did not disclose his
3 receipt of \$95,000 from GENI. GENI's stock price rose to a high of \$25 on March
4 14, approximately a 14% increase over the \$22 close on March 13.
5

6 43. On March 28, 2000, Defendant Smith recommended GENI on
7 Bloomberg TV stating the company appeared to be on the verge of announcing
8 tens of millions of dollars in new financing and signaled GENI's "transformation
9 from a marketing powerhouse to an Internet powerhouse." During this
10 appearance, Defendant Smith did not disclose his receipt of \$95,000 from GENI.
11 GENI's stock price rose approximately 14% from \$18.13 per share on March 27,
12 to \$20.63 per share on March 28.
13

14 44. The very next day, on March 29, 2000, GENI made a second payment
15 to Defendant Smith in GENI stock with a market value of approximately \$1
16 million. Again, this payment was to compensate Defendant Smith for touting
17 GENI stock.
18

19 2. Defendant Smith was Secretly Paid \$1 Million
20 in Stock to Tout GENI

21 45. To conceal the payment, the transaction was structured as follows: a
22 company wholly owned by Defendant Smith entered into a contract to sell
23 Dowbsites.com, a website owned by Defendant Smith, to his girlfriend's vitamin
24 company for 69,000 shares of GENI stock. Simultaneously, GENI entered into a
25 contract with the vitamin company to purchase the website for 72,000 GENI

1 shares. At the time, 69,000 shares of GENI were worth approximately \$1 million
2 and the 72,000 shares of GENI were worth approximately \$1.2 million.

3 46. GENI issued 72,000 shares to the vitamin company on May 24, 2000
4 pursuant to the terms of the March 29 contract. Three months later, the shares
5 were reissued, and 69,000 shares were issued directly to Defendant Smith's
6 company and 3,000 shares were issued to his girlfriend's vitamin company.

7 47. GENI never obtained an appraisal or independent valuation to justify
8 the purchase price of Defendant Smith's website. At the time, the website had no
9 revenue, no working model, no product, no customers and no employees.

10 48. After receiving approximately \$1.1 million from GENI (\$95,000 in
11 cash and \$1 million in stock), Defendant Smith continued to tout GENI's stock on
12 television without disclosing the payments from GENI or his relationship with the
13 company and its CEO.

14 49. On April 11, 2000, Defendant Smith discussed GENI on Bloomberg
15 TV stating that the company was transforming itself from a marketing company to
16 an Internet "incubator." In the interview, Smith stated that he had a big chunk of
17 the stock and that he thought it was worth twice the current market price. Smith's
18 comment misled investors to believe that he invested his own funds in securing a
19 stake in GENI when, in fact, his holdings were compensation for touting the stock.
20 Defendant Smith did not, however, disclose the compensation he had received
21 from GENI.

22 50. Defendant Smith appeared on CNBC on May 22, 2000 and
23 recommended GENI, again making the company his "Double Your Money Pick."
24 During his appearance on CNBC, Defendant Smith did not disclose the payments
25 he received from GENI. Following Defendant Smith's recommendation, GENI's
stock price rose approximately 5% from \$15.50 per share on May 19, to \$16.25 per
share on May 23, on higher than average trading volume. The stock price

1 increased to a high of \$19.44 on May 22, an approximately 25% increase over the
2 close of \$15.50 on the previous trading day, May 19.

3 51. On June 30, 2000, Defendant Smith discussed GENI on CNN's
4 "Ahead of the Curve" program. He later emailed GENI's CEO stating that: "I got
5 a short mention of GENI on CNN this morning at 5:20. I think that it created a
6 little pop.... How are we doing on reissuing my shares?" During his appearance
7 on CNN, Defendant Smith did not disclose the payments he received from GENI.
8 After Defendant Smith's "buy" recommendation, GENI's stock price closed at
9 \$16.06 on June 30, the same closing price as the previous day. However, trading
10 volume on June 30 was more than double that of June 29 and there was a small rise
11 of approximately 2% to an intra-day high of \$16.36 on June 30.

12 52. On July 7, 2000, Defendant Smith recommended GENI on CNNfn's
13 "Street Sweep" program and stated it would be the next CMGI in the Internet
14 space. At the time, CMGI was a diversified Internet operating and development
15 company that was traded on the Nasdaq National Market System. During his
16 appearance on CNNfn, Defendant Smith did not disclose the payments he received
17 from GENI.

18 53. During a November 1, 2000 appearance on Bloomberg TV, Defendant
19 Smith again recommended GENI to investors. Defendant Smith stated that
20 GENI's core business of market services was "really rocketing and doing very
21 well," and that the company was "expanding, expanding, expanding." Defendant
22 Smith also stated that GENI's revenue would increase "about 80% this year and
23 maybe even double next year [2001]." During this appearance, Defendant Smith
24 did not disclose the payments he received from GENI. Following Defendant
25 Smith's recommendation, GENI's stock price rose slightly from \$16 per share on
October 31, to \$16.25 per share on November 2, on higher than average trading
volume.

1 54. On November 8, 2000, Defendant Smith touted GENI on CNBC,
2 describing the company as “exploding” with revenues and likely to “almost double
3 this year and over-double next year.” Smith also stated that GENI was “starting to
4 get to the sweet spot” where increased revenues would “kick in.” During this
5 appearance, Defendant Smith did not disclose the payments he received from
6 GENI.

7 55. On December 30, 2000, Defendant Smith again recommended GENI
8 on CNN’s Moneyline program. During this appearance, like the others, Defendant
9 Smith did not disclose the payments he received from GENI.

10 56. On March 1, 2001, Smith emailed GENI’s CEO stating that “we just
11 have to get the market cap up a little higher and I can recommend GENI to my
12 26,000 newsletter subscribers. We have to have a \$150 million market cap. I
13 already have the Hot list subscribers in.”

14 57. On March 2, 2001, Smith received an email from a Courtney Smith &
15 Co. analyst informing him that none of the GENI’s businesses were profitable.
16 Although Defendant Smith had been touting GENI for over a year, making claims
17 about its exploding revenues and the profitability of its core business, his email
18 reply was “Are you sure?” Defendant Smith then touted GENI on CNN (on the
19 program “Moneyline Weekend”) on March 10 and again on CNBC on April 4.

20 58. Between December 1999 and April 2001, Defendant Smith made
21 representations regarding GENI on CNBC, CNN, CNNfn, and Bloomberg TV that
22 he knew or was reckless in not knowing were false, misleading and/or lacked a
23 reasonable basis.

24 59. During the relevant time, Defendant Smith worked as an investor
25 adviser. After receiving compensation from GENI, he recommended GENI stock
to certain of his clients and purchased GENI shares in some accounts under his

1 management without disclosing he was compensated to tout GENI's stock and that
2 he had a conflict of interest.

3 60. In a May 23, 2001 article published by Bloomberg, Defendant Smith
4 admitted selling his Dowbsites.com website to GENI and acknowledged he was
5 compensated by GENI to tout its stock. Defendant Smith further conceded in the
6 article that the stock he received could be viewed as a reward from GENI for
7 promoting the stock on television: "[i]t's quite possible that's what was going
8 through their mind. If GENI was trying to do that, that's OK because everyone
9 made money on this thing." He also stated: "[i]t didn't have much of anything
10 when we sold it," adding that no other buyers were sought.

11 61. In August and September 2001, Defendant Smith sold 50,000 of his
12 69,000 GENI shares (split adjusted) for proceeds of \$826,817.

13 C. The Manipulative Trading

14 62. During the course of the scheme, GENI's CEO, the Accomplice and
15 D'Angelo extensively engaged in manipulative trading practices. GENI's CEO
16 (trading in his personal account and the accounts of a certain nominee and Ultimate
17 Holdings), his Accomplice (trading in the account of Ultimate Holdings), and
18 D'Angelo dominated the monthly trading volume of GENI stock. The chart below
19 illustrates their trading activity as a percent of the monthly-trading volume, as
20 publicly reported by Dow Jones, for the period January 2000 to September 2001.

21 **Percent of Monthly Trading Volume**

	Ultimate Holdings	GENI's CEO	D'Angelo	CEO's Nominee Account	Total
22 Jan-2000	2%				2%

1	Feb-2000	1%				1%
2	Mar-2000	0.1%				0.1%
3	Apr-2000	22%	4%			26%
4	May-					
5	2000	17%				17%
6	Jun-2000	18%	6%			24%
7	Jul-2000	22%	1%			23%
8	Aug-2000	31%	0.1%		0.4%	32%
9	Sep-2000	16%			10%	26%
10	Oct-2000	24%	8%		16%	48%
11	Nov-2000	7%				7%
12	Dec-2000	28%				28%
13	Jan-2001	10%	2%		3%	16%
14	Feb-2001	12%			8%	20%
15	Mar-2001	18%				18%
16	Apr-2001	5%		0.3%	0.2%	6%
17	May-					
18	2001	7%		1%		8%
19	Jun-2001	10%		16%		26%
20	Jul-2001	14%		23%		37%
21	Aug-2001	3%	9%	10%		22%
22	Sep-2001	13%	3%	10%		26%

23 63. Among other things, the combined holdings of GENI's CEO, the
24 Accomplice and D'Angelo enabled them to drive up GENI's stock price by
25 limiting the supply of GENI stock and controlling its float.

1 64. While GENI's CEO, the Accomplice and D'Angelo manipulated
2 GENI's stock price, Defendant Smith applauded their efforts in a January 18, 2001
3 email to GENI's CEO: "[g]ood going on the price of GENI! I love it." GENI's
4 stock price had increased nearly 15% since the beginning of the month.

5 D. GENI's Stock Price Collapsed
6 and the Stock Loans Were Not Repaid

7 65. On September 10, 2001, GENI's stock price closed at \$17.03 per
8 share. After the terrorist attacks of September 11th, GENI's CEO and his
9 Accomplice stopped supporting GENI's stock price. As a result, on September 17,
10 2001, the first trading day after the terrorist attacks, GENI's stock price began to
11 fall precipitously. On September 25, 2001, GENI closed at \$5.90 and Nasdaq
12 halted trading to obtain additional information from the company. GENI did not
13 respond to the inquiry and voluntarily delisted its stock.

14 66. When GENI's stock price dropped in September, GENI's CEO and
15 Ultimate Holdings became obligated under the terms of their stock loans to return
16 the cash that they had received from their immediate counterparty, the New Jersey-
17 based broker-dealer Native Nations Securities, so that Native Nations could pay
18 the money to the downstream broker-dealers to whom it has loaned GENI shares.
19 GENI's CEO, the Accomplice and Ultimate Holdings failed to repay any money.
20 As a result of its obligations to the downstream broker-dealers, Native Nations
21 quickly exhausted its net capital and was forced out of business. One of its
22 counterparties, MJK Clearing, Inc., a registered broker-dealer located in
23 Minneapolis, Minnesota, was also forced out of business because it could not repay
24 downstream broker-dealers to which it had loaned GENI shares. In addition,
25 Adolph Komorsky Investments, a registered broker-dealer located in Tarrytown,
New York, was forced out of business because of losses caused by the stock

1 manipulation scheme. Numerous other broker-dealers suffered losses in the tens of
2 million of dollars as a result of the stock-loan scheme.

3 67. Although Deutsche Bank Canada was the ultimate recipient of the
4 now worthless stock loaned by GENI's CEO and Ultimate Holdings, it was able to
5 collect much of the cash that it had advanced to the broker-dealers that D'Angelo
6 interposed between it and GENI's CEO and Ultimate Holdings. As a result,
7 Deutsche Bank Canada suffered only minimal losses.

8 68. The \$130 million obtained by GENI's CEO, his Accomplice and
9 Ultimate Holdings through the stock-lending scheme was used to purchase GENI
10 stock, finance GENI's operations and enrich GENI's CEO and the Accomplice.

11 **FIRST CLAIM**

12 **Violations of Section 17(a) of the Securities Act and** 13 **Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

14 69. Paragraphs 1 through 68 above are realleged and incorporated herein
15 by reference.

16 70. Defendant Smith knowingly or recklessly made false and misleading
17 statements about GENI's revenues, profitability and stock price on television with
18 the intent and purpose of driving up the market price of GENI's stock for his
19 unlawful benefit and the unlawful benefit of GENI's CEO and those working with
20 him.

21 71. By reason of the foregoing, Defendant Smith violated Section 17(a) of
22 the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15
23 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

24 **SECOND CLAIM**

25 **Violation of Section 17(b) of the Securities Act**

1 17(b) of the Securities Act [15 U.S.C. § 77q(b)]; and Sections 206(1)
2 and 206(2) of the Advisors Act [15 U.S.C. § 80b-6(1), (2)];

- 3 2. ordering him to produce to the Commission a written, specific, sworn
4 accounting of the disposition and present location of all the money he
5 obtained from the conduct alleged herein;
6
7 3. ordering him to disgorge the profits and proceeds he obtained as a
8 result of his actions alleged herein and to pay prejudgment interest
9 thereon;
10
11 4. ordering him to pay civil penalties pursuant to Section 20(d) of the
12 Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the
13 Exchange Act [15 U.S.C. § 78u(d)(3)]; and
14
15 5. Granting such other relief as this Court deems just and proper.

16 Dated: February____, 2005

17 Respectfully submitted,

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19
20 _____
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22 California Bar No. 166441
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