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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BILL TSAI,

Defendant.

1:19-cv-07501-GHW

**FINAL JUDGMENT AS TO DEFENDANT BILL TSAI**

The Securities and Exchange Commission having filed a Complaint and Defendant Bill Tsai (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$98,750.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,837.32. In the event that Defendant is subject to an order of forfeiture as part of his sentence in the criminal case before the United States District Court for the Southern District of New York, United States v. Tsai, Crim. No. 19-cr-00675-VM (S.D.N.Y.) (the "Criminal Case"), then Defendant's monetary obligations under the Final Judgment, including all outstanding pre and post judgment interest, will be deemed satisfied, dollar-for-dollar, by the amount of the forfeiture order. The monetary obligations ordered by this Final Judgment shall become due sixty (60) days after entry of the Judgment of Conviction in the Criminal Case, or twelve (12) months from the date of the entry of this Final Judgment, whichever comes first.

Defendant may transmit payment electronically to the Commission, which will provide

detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Bill Tsai as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after thirty (30) days following the due date of Defendant's monetary obligations under this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

### III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant

shall comply with all of the undertakings and agreements set forth therein.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment. The Clerk of Court is directed to close this case.

Dated: December 16, 2019

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

1:19-cv-07501-GHW

BILL TSAI,

Defendant.

**CONSENT OF DEFENDANT BILL TSAI**

1. Defendant Bill Tsai (“Defendant”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in United States v. Tsai, No. 19-cr-00675-VM (S.D.N.Y.) (the “Criminal Case”), Defendant pleaded guilty to violations of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2. In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in the Criminal Case.

3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”)[15

U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

- (b) orders Defendant to pay disgorgement in the amount of \$98,750, plus prejudgment interest thereon in the amount of \$ 1,837.32, for a total of \$100,587.32; and
- (c) orders that in the event that Defendant is subject to an order of forfeiture as part of his sentence in the Criminal Case, then Defendant's monetary obligations under the Final Judgment, including all outstanding pre and post judgment interest, will be deemed satisfied, dollar-for-dollar, by the amount of the forfeiture order.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final

Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the

allegations in the complaint or order for proceedings.” As part of Defendant’s agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding; is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney’s fees or other fees,



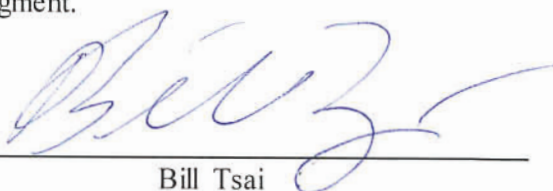
expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees to waive all objections, including but not limited to, constitutional, timeliness, and procedural objections, to the administrative proceeding that will be instituted when the judgment is entered.


14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

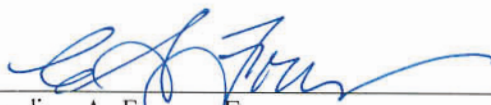
Dated: October 29<sup>th</sup>

  
Bill Tsai

On October 29, 2019, Bill Tsai, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
Notary Public  
Commission expires: May 9, 2021

Approved as to form:

  
Carolina A. Fornos, Esq.  
Partner, Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street, New York, NY 10019  
(212) 858-1558  
Attorney for Defendant

Antonina D'Andrea  
NOTARY PUBLIC, State of New York  
No. 01DA6126478  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires May 09, 2021

## EXHIBIT A

J9J5tsaP plea

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 675 (VM) (OTW)

5 BILL TSAI,

6 Plaintiff.

7 -----x

8 September 19, 2019  
9 11:20 a.m.

10 Before:

11 HON. ONA T. WANG,

12 Magistrate Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 United States Attorney for the  
17 Southern District of New York  
18 BY: ROBERT L. BOONE  
19 GINA M. CASTELLANO  
20 Assistant United States Attorneys

21 PILLSBURY WINTHROP SHAW PITTMAN, LLP  
22 Attorneys for Defendant  
23 BY: CAROLINA A. FORNOS  
24 BY: MARK R. HELLERER

25 ALSO PRESENT: TODD KANESHIRO, Special Agent, FBI

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plea

1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name.

3 MR. BOONE: Good morning, your Honor. Robert Boone  
4 for the government. Here with me at counsel's table are AUSA  
5 Gina Castellano, and Special Agent from the Federal Bureau of  
6 Investigation Todd Kaneshiro.

7 MS. CASTELLANO: Good morning.

8 AGENT KANESHIRO: Good morning.

9 MS. FORNOS: Good morning, your Honor. Carolina  
10 Fornos and Mark Hellerer of Pillsbury Winthrop on behalf of  
11 Bill Tsai.

12 THE COURT: Good morning, Mr. Tsai. Please, be  
13 seated. I am Magistrate Judge Wang. Mr. Tsai, you can speak  
14 and understand English, right?

15 THE DEFENDANT: Correct. Yes.

16 THE COURT: You can stay seated. Just make sure that  
17 you speak up so that the court reporter can hear you. Okay?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I have before me a Consent to Proceed  
20 Before a United States Magistrate Judge on a Felony Plea  
21 Allocution that you have signed. What this form says is that  
22 knowing that you have the right to have this plea taken by a  
23 United States district judge, you are agreeing to have your  
24 plea taken by a United States magistrate judge. Let me make  
25 sure I have the form, I saw it.

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plea

1           As a magistrate judge, I have the authority to take  
2 your plea with your consent and you will still be entitled to  
3 all of the same rights and protections as if you were before a  
4 district judge. Among other things, if you are found guilty,  
5 you will be sentenced by a district judge.

6           Did you sign this consent to proceed before a United  
7 States magistrate judge voluntarily?

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: And, before you signed the form, did your  
10 lawyer explain it to you?

11          THE DEFENDANT: Yes, your Honor.

12          THE COURT: And do you wish to proceed with your plea  
13 before a United States magistrate judge?

14          THE DEFENDANT: Yes, your Honor.

15          THE COURT: Your consent is accepted.

16          The purpose of this proceeding is to make sure that  
17 you understand your rights, to decide whether you are pleading  
18 guilty of your own free will, and to make sure you are pleading  
19 guilty because you are guilty and not for some other reason.

20          Do you understand that?

21          THE DEFENDANT: Yes, your Honor.

22          THE COURT: If at any time you don't understand any of  
23 my questions or if you want to consult with your attorneys,  
24 just say so, because it is important that you understand every  
25 question before you answer.

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plea

1           Before I take your plea I must ask you a series of  
2 questions and I therefore need to place you under oath.  
3 Please, raise your right hand.

4           (Defendant sworn)

5           THE COURT: Do you understand that any statements you  
6 make here today, under oath, may be used against you in a  
7 prosecution for perjury or for making false statements if you  
8 do not tell the truth?

9           THE DEFENDANT: Yes, your Honor.

10          THE COURT: I have before me a waiver of indictment.  
11 Did you sign this waiver of indictment?

12          THE DEFENDANT: Yes, your Honor.

13          THE COURT: Before you signed it, did you discuss it  
14 with your attorneys?

15          THE DEFENDANT: Yes, your Honor.

16          THE COURT: Do you understand what you are doing?

17          THE DEFENDANT: Yes, your Honor.

18          THE COURT: Do you understand that you are under no  
19 obligation to waive indictment?

20          THE DEFENDANT: Yes, your Honor.

21          THE COURT: Do you understand that if you do not waive  
22 indictment, if the government wants to prosecute you, they  
23 would have to present this case to a grand jury which may or  
24 may not indict you?

25          THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And, do you realize that by signing this  
2 waiver of indictment you have given up your right to have this  
3 case presented to a grand jury?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand what a grand jury is?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you seen a copy of the information?

8 THE DEFENDANT: Yes, I have, your Honor.

9 THE COURT: Do you waive its public reading?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: How do you plead to the information;  
12 guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Please tell me your full name.

15 THE DEFENDANT: Bill Tsai.

16 THE COURT: And what is your age?

17 THE DEFENDANT: 23.

18 THE COURT: Are you a citizen of the United States?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Are you able to read and write in English?

21 THE DEFENDANT: Yes, I am.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: Graduated from college.

24 THE COURT: Are you now or have you recently been  
25 under the care of a doctor or psychiatrist for any reason?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: Have you been treated recently for any  
3 mental illness or addiction to narcotic drugs of any kind?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: As you sit here today, are you under the  
6 influence of any mind-altering drug or any alcoholic drink?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Are you on any medication?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Have you been able to understand  
11 everything that I have said to you so far?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you feel all right today?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And, you have seen a copy of the  
16 information in this case, right?

17 THE DEFENDANT: Yes, I have, your Honor.

18 THE COURT: Have you read it?

19 THE DEFENDANT: Yes, I have, your Honor.

20 THE COURT: Do you understand what it says that you  
21 did?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: Have you had a chance to discuss the  
24 charge and how you wish to plead with your attorney?

25 THE DEFENDANT: Yes, I have, your Honor.



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1 THE COURT: You are you satisfied with your attorney's  
2 representation of you?

3 THE DEFENDANT: Yes, I am, your Honor.

4 THE COURT: Have you had a full opportunity to discuss  
5 this case with them?

6 THE DEFENDANT: Yes, I have, your Honor.

7 THE COURT: And have they told you the consequence of  
8 pleading guilty?

9 THE DEFENDANT: Yes, they have, your Honor.

10 THE COURT: Are you ready to enter a plea?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Count One of the information charges you  
13 with securities fraud in connection with an insider trading  
14 scheme in violation of 15, United States Code, 78b and 78ff, 17  
15 CFR, 240.10b-5 and 18 U.S.C. 2.

16 How do you wish to plead; guilty or not guilty?

17 THE DEFENDANT: Guilty, your Honor.

18 THE COURT: With regard to the count charging you with  
19 securities fraud in connection with insider trading, I want you  
20 to understand that the maximum penalty is a prison term of 20  
21 years, a maximum term of supervised release of three years, and  
22 a maximum fine of the greater of \$5 million or twice what was  
23 made by the criminal activity or twice what someone other than  
24 yourself lost because of the criminal activity, and a mandatory  
25 special assessment of \$100. In addition, the Court must order

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1 you to pay restitution to any victims.

2 Do you understand these maximum penalties that I have  
3 just described to you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand also that the plea  
6 agreement states that you will admit the forfeiture allegations  
7 and that you have agreed to certain stipulated amounts of  
8 forfeiture?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you also understand that if, as part of  
11 your sentence, you are placed on a term of supervised release  
12 and you then violated any of the conditions of that release,  
13 you could face an additional term of imprisonment?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: That means that the district judge can  
16 revoke the term of release previously imposed and return you to  
17 prison without giving you any credit for time previously served  
18 on post-release supervision. If you are not a United States  
19 citizen, do you understand that your guilty plea may result in  
20 your being removed from the United States, denied citizenship,  
21 and denied admission to the United States in the future?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that you would be bound  
24 by your guilty plea regardless of the immigration consequences  
25 of your plea and regardless of any advice you have received

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1 from your counsel or others regarding those consequences?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you had an opportunity to discuss the  
4 immigration consequences with your attorneys?

5 THE DEFENDANT: Yes, I have, your Honor.

6 THE COURT: I am now going to explain certain  
7 constitutional rights that you have. These are rights that you  
8 will be giving up if you enter a guilty plea. Please listen  
9 carefully to what I am about to say and if you do not  
10 understand something, stop me, and your attorney and I can  
11 explain the issue more fully.

12 Do you understand that you have a right to plead not  
13 guilty, or having already pleaded not guilty, to persist in  
14 that plea and that you have a right to a speedy and public jury  
15 trial, if you wish?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that if you plead not  
18 guilty and go to trial, you would be presumed innocent and the  
19 burden would be on the government to prove your guilt beyond a  
20 reasonable doubt?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: That means you would not have to prove you  
23 were innocent and you could not be convicted unless a jury of  
24 12 people unanimously agreed that you are guilty beyond a  
25 reasonable doubt.

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that you would be  
3 entitled to be represented by an attorney at all stages at  
4 trial and at every other stage of the proceedings, and if you  
5 could not afford to hire one, the Court would provide an  
6 attorney to you for free?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that at such a trial you  
9 would be entitled to confront and cross-examine any witnesses  
10 called by the government to testify against you, that you would  
11 be entitled to testify on your own behalf, that you could call  
12 witnesses and present evidence, and that the Court would issue  
13 subpoenas, at your request, to compel witnesses to appear and  
14 testify in your defense even if they didn't want to come?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that at a trial you  
17 would not be required to testify against yourself?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And, if you chose not to testify, that  
20 could not be used against you.

21 Do you understand that if you were convicted at a  
22 trial you would have a right to appeal that verdict to a higher  
23 court?

24 THE DEFENDANT: Yes, I do, your Honor.

25 THE COURT: And, do you understand that if you enter a

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1 guilty plea you would give up all of these rights including  
2 your right to a trial, that you will not be able to withdraw  
3 this plea, and that the only remaining step in this case will  
4 be the sentencing?

5 THE DEFENDANT: Yes, I do, your Honor.

6 THE COURT: And, do you understand that the decision  
7 as to the appropriate sentence in your case will be entirely up  
8 to the sentencing judge and that he or she will be limited only  
9 by what the law requires?

10 THE DEFENDANT: Yes, I do, your Honor.

11 THE COURT: And, do you understand that even if you  
12 are surprised or disappointed by your sentence, you will still  
13 be bound by your guilty plea?

14 THE DEFENDANT: Yes, I do, your Honor.

15 THE COURT: And, finally, if you do plead guilty, you  
16 are also giving up the right not to incriminate yourself and I  
17 will ask you questions about what you did in order to satisfy  
18 myself that you are actually guilty. By pleading guilty you  
19 will be admitting your factual, as well as legal, guilt.

20 Do you understand that?

21 THE DEFENDANT: Yes, I do, your Honor.

22 THE COURT: Knowing all of this, do you still wish to  
23 plead guilty to Count One of the information?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: Have any force or threats been used,

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1 either direct or indirect, to influence how you plead today?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: I have before me a letter dated September  
4 11th, 2019 from the U.S. Attorney to your attorney containing a  
5 plea agreement. Have you read this letter?

6 THE DEFENDANT: Yes, I have, your Honor.

7 THE COURT: And did you sign it on the last page?

8 THE DEFENDANT: Yes, I have, your Honor.

9 THE COURT: And before you signed it, did you discuss  
10 it with your attorneys?

11 THE DEFENDANT: Yes, I have, your Honor.

12 THE COURT: And did they explain to you all of its  
13 terms and conditions?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Apart from what is contained in this  
16 letter, have any promises been made to you in order to get you  
17 to plead guilty?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: In reviewing the plea agreement I note  
20 that it contains an analysis of how part of our law of  
21 sentencing known as the sentencing guidelines may impact on any  
22 prison term in your case. Based on that analysis, the  
23 agreement states that the guidelines sentencing range can be  
24 expected to be from 18 to 24 months.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that the sentencing  
3 judge is not bound by the calculation in the letter and that  
4 they will be free do their own calculation which may result in  
5 a guideline range that is different from the one in the letter?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that no matter what the  
8 sentencing range is that the sentencing judge believes is  
9 called for by the guidelines, that range is one of many factors  
10 that the Judge will consider in determining your sentence and  
11 that the Judge has the discretion to give you a prison sentence  
12 below or above that range anywhere up to the maximum sentence  
13 of imprisonment of 20 years?

14 THE DEFENDANT: Yes, I do, your Honor.

15 THE COURT: Do you also understand that under the  
16 terms of this plea agreement, if the Judge sentences you to a  
17 prison term that is 24 months or less, you are giving up your  
18 right to appeal that sentence or to challenge it in any other  
19 way such as through a writ of habeas corpus?

20 THE DEFENDANT: Yes, I do, your Honor.

21 THE COURT: Also, do you understand that the plea  
22 agreement says that you cannot appeal any fine of \$5 million or  
23 less and that you cannot appeal any lawful sentence of  
24 supervised release?

25 THE DEFENDANT: Yes, I do, your Honor.

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1 THE COURT: Do you also understand that in this letter  
2 you are giving up your right to complain if the government  
3 withheld evidence from your attorney that would have been  
4 helpful to you?

5 THE DEFENDANT: Yes, I do, your Honor.

6 THE COURT: Is your plea voluntary, that is, made of  
7 your own free will?

8 THE DEFENDANT: Yes, it is, your Honor.

9 THE COURT: Have any threats been made to influence  
10 how you plead today?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Did you in fact commit the offense that is  
13 charged in Count One of the information?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Before I ask you to tell me what you did I  
16 will ask the government to summarize the elements of the  
17 offense and, if they wish, tell me any evidence that they would  
18 proffer at trial.

19 MR. BOONE: Your Honor, to establish the violation of  
20 securities fraud the government must prove, beyond a reasonable  
21 doubt, three elements.

22 First, that in connection with the purchase or sale of  
23 securities of the identified company, here that company being  
24 EFI, the defendant employed a device, scheme or artifice to  
25 defraud; second, that when the defendant engaged in this



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1 scheme, he acted knowingly, willfully, and with an intent to  
2 defraud EFI and its shareholders or the source of the  
3 information; and third, that the mail, interstate communication  
4 facility or facility of a national securities exchange was used  
5 in furtherance of the scheme. To establish that defendant  
6 engaged in an insider trading scheme in particular the  
7 government must prove, one, that the defendant owed a duty of  
8 trust and confidence, here to RBC, defendant's employer; and  
9 two, that the defendant violated that duty of trust and  
10 confidence by using material non-public information that he  
11 obtained by virtue of his relationship with RBC to trade EFI  
12 securities for his personal benefit.

13 THE COURT: Can you tell me what evidence that you  
14 would have offered at trial?

15 MR. BOONE: At trial, the government would have  
16 offered both documentary evidence and testimonial evidence. In  
17 terms of documentary evidence it would have included evidence  
18 regarding the defendant's trades in an EFI brokerage account in  
19 his name in which that trading occurred. It would also include  
20 communications that the defendant received as a result of his  
21 employment with RBC concerning a deal RBC was working on  
22 involving EFI. It would also include documents from RBC  
23 explaining the policies and procedures in terms of how to  
24 handle such confidential information, as well as testimony from  
25 individuals from RBC further explaining that and confirming

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1 that defendant was informed of his duties to the employer in  
2 that regard.

3 THE COURT: Thank you.

4 Mr. Tsai, please tell me in your own words what you  
5 did that makes you guilty of the charge against you.

6 THE DEFENDANT: Between approximately March and April  
7 2019, I obtained material non-public information through my  
8 employment at an investment bank in Manhattan. I used that  
9 information to trade in the securities of Electronics Form  
10 Imaging, EFI. By using this confidential information to  
11 purchase securities, I breached my duties to my employer. At  
12 the time I did it I knew it was wrong. I am very sorry for the  
13 crime that I committed and I agree to forfeit my profits.

14 THE COURT: And I notice that you have been reading  
15 from a statement and that's entirely appropriate. I am sure  
16 that you and your attorney wanted to make sure that the  
17 statements were exact and correct but I want to ask you if you  
18 really did those things you told me about.

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I just wanted to ask the government, is  
21 the third element of the securities fraud, the use of means or  
22 instruments of transportation or communication in interstate  
23 commerce or use of the mails, has that been satisfied by the  
24 allocution, or not?

25 MR. BOONE: We actually have another follow up and

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1 maybe we can roll this all into one.

2 THE COURT: Okay.

3 MR. BOONE: One is the defendant could discuss where  
4 he was located physically when he placed the trades,  
5 particularly if that was in the Southern District of New York;  
6 and on what exchange were these trades taking place.

7 Maybe that will solve your issue.

8 THE COURT: Thank you.

9 All right, Mr. Tsai. You heard the government's  
10 request for some follow up, one is where did the activity take  
11 place and on what exchange were the trades made.

12 THE DEFENDANT: The trades were made in Manhattan and  
13 through the New York Stock Exchange.

14 THE COURT: Through the New York Stock Exchange.

15 Anything else on that?

16 MR. BOONE: No, your Honor.

17 THE COURT: Does the government represent that it has  
18 sufficient evidence to establish Mr. Tsai's guilt beyond a  
19 reasonable doubt?

20 MR. BOONE: Yes, your Honor.

21 THE COURT: Defense counsel, do you know of any  
22 defense that would prevail at trial or any other reason why  
23 your client should not be permitted to plead guilty?

24 MS. FORNOS: No, your Honor.

25 THE COURT: Does counsel have any doubt as to the

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1 defendant's competence to plead at this time?

2 MS. FORNOS: No doubt, your Honor.

3 THE COURT: Mr. Tsai, again, you knew that what you  
4 were doing was against the law?

5 THE DEFENDANT: Correct, your Honor. Yes.

6 THE COURT: Are there any further questions either  
7 side wants me to ask?

8 MR. BOONE: No, your Honor.

9 THE COURT: Ms. Fornos?

10 MS. FORNOS: No, your Honor.

11 THE COURT: Is there any reason why I should not  
12 recommend that the district judge accept this plea?

13 MR. BOONE: No, your Honor.

14 MS. FORNOS: No, your Honor.

15 THE COURT: One of the things I typically do when I  
16 take a felony plea, because the district judge usually has not  
17 had a chance to see the defendant, is to ask if there is any  
18 family or friends in support of either side. So, if there is  
19 anything you would like to say at this time, this is your time.

20 MS. FORNOS: Yes, your Honor.

21 We would like to say that Mr. Tsai's mother is in the  
22 courtroom. As you can imagine, this has been a very tough  
23 situation for the family and we thank the Court for that  
24 opportunity.

25 THE COURT: Thank you; and I see you, Mrs. Tsai.

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1           On the basis of the defendant's responses to my  
2 questions and my observation of his demeanor, I find that he is  
3 fully competent to enter an informed plea at this time. I also  
4 conclude that he understands the nature of the charge and the  
5 consequences of the plea. And, finally, I am satisfied that  
6 his plea is voluntary and that there is a factual basis for it.  
7 Accordingly, I recommend that the proffered plea to Count One  
8 of the information be accepted. I assume the government will  
9 order a copy of the transcript and will submit it to the  
10 district judge, together with any additional paperwork so that  
11 they may ask on my recommendation. A presentence report is  
12 ordered.

13           I understand we don't have a sentencing date yet,  
14 right?

15           MR. BOONE: That's correct, your Honor.

16           THE COURT: So, should I set a control date?

17           MR. BOONE: I think that's fine.

18           THE COURT: How much time do we need for the control  
19 date?

20           MR. BOONE: I think 90 days will give enough time for  
21 a PSR report to be written.

22           THE COURT: So, 90 days puts us at December 18. Let  
23 me make sure that's not on the weekend; 90 days is December  
24 18th.

25           The prosecution case summary, for the purposes of the

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1 presentence report, is to be delivered to the Probation  
2 Department no later than 14 days from today. Defense counsel,  
3 you had should make yourself available to be interviewed by the  
4 Probation Department with your client no later than 14 days  
5 from today.

6 Anything further on this matter from either side?

7 MR. BOONE: Not from the government, your Honor.

8 MS. FORNOS: No, your Honor; not from the defense.

9 THE COURT: Okay. All right. Thank you. We are  
10 adjourned.

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**United States District Court  
Southern District of New York**

Ruby J. Krajick  
*Clerk of Court*

Dear Litigant:

Enclosed is a copy of the judgment entered in your case. If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

You must file your notice of appeal in this Court within 30 days after the judgment or order that you wish to appeal is entered on the Court's docket, or, if the United States or its officer or agency is a party, within 60 days after entry of the judgment or order. If you are unable to file your notice of appeal within the required time, you may make a motion for extension of time, but you must do so within 60 days from the date of entry of the judgment, or within 90 days if the United States or its officer or agency is a party, and you must show excusable neglect or good cause for your inability to file the notice of appeal by the deadline.

Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

The filing fee for a notice of appeal is \$505 payable in cash, by bank check, certified check, or money order, to "Clerk of Court, S.D.N.Y." *No personal checks are accepted.* If you are unable to pay the \$505 filing fee, complete the "Motion to Proceed *in Forma Pauperis* on Appeal" form and submit it with your notice of appeal to the Pro Se Intake Unit. If the district court denies your motion to proceed *in forma pauperis* on appeal, or has certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith, you may file a motion in the Court of Appeals for leave to appeal *in forma pauperis*, but you must do so within 30 days after service of the district court order that stated that you could not proceed *in forma pauperis* on appeal.

For additional issues regarding the time for filing a notice of appeal, see Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the rules of the Second Circuit Court of Appeals and the Federal Rules of Appellate Procedure. For more information, visit the Second Circuit Court of Appeals website at <http://www.ca2.uscourts.gov/>.

**THE DANIEL PATRICK MOYNIHAN  
UNITED STATES COURTHOUSE  
500 PEARL STREET  
NEW YORK, NY 10007-1312**

**THE CHARLES L. BRIEANT, JR.  
UNITED STATES COURTHOUSE  
300 QUARROPAS STREET  
WHITE PLAINS, NY 10601-4150**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the plaintiff(s)/petitioner(s).)

\_\_\_\_ CV \_\_\_\_\_ ( ) ( )

-against-

**NOTICE OF APPEAL**

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: \_\_\_\_\_

\_\_\_\_\_  
(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the  judgment  order entered on: \_\_\_\_\_  
(date that judgment or order was entered on docket)

that:  
\_\_\_\_\_

\_\_\_\_\_  
(If the appeal is from an order, provide a brief description above of the decision in the order.)

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Name (Last, First, MI)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
E-mail Address (if available)

\* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the plaintiff(s)/petitioner(s).)

\_\_\_\_ CV \_\_\_\_\_ ( ) ( )

-against-

**MOTION FOR EXTENSION  
OF TIME TO FILE NOTICE  
OF APPEAL**

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the defendant(s)/respondent(s).)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on \_\_\_\_\_ but did not file a notice of appeal within the required date time period because:

\_\_\_\_\_  
\_\_\_\_\_

(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Last, First, MI)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
E-mail Address (if available)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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(List the full name(s) of the plaintiff(s)/petitioner(s).)

\_\_\_\_CV\_\_\_\_ ( ) ( )

-against-

**MOTION FOR LEAVE TO  
PROCEED IN FORMA  
PAUPERIS ON APPEAL**

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(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

---

Dated

---

Signature

---

Name (Last, First, MI)

---

Address City State Zip Code

---

Telephone Number

---

E-mail Address (if available)

## Application to Appeal In Forma Pauperis

\_\_\_\_\_ v. \_\_\_\_\_ Appeal No. \_\_\_\_\_  
 District Court or Agency No. \_\_\_\_\_

<p><b>Affidavit in Support of Motion</b></p> <p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: _____</p>	<p><b>Instructions</b></p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>
---	---

My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	<u>Spouse</u>	You	<u>Spouse</u>
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$

Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
<b>Total monthly income:</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

<b>Employer</b>	<b>Address</b>	<b>Dates of employment</b>	<b>Gross monthly pay</b>
			\$
			\$
			\$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

<b>Employer</b>	<b>Address</b>	<b>Dates of employment</b>	<b>Gross monthly pay</b>
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ \_\_\_\_\_

*Below, state any money you or your spouse have in bank accounts or in any other financial institution.*

<b>Financial Institution</b>	<b>Type of Account</b>	<b>Amount you have</b>	<b>Amount your spouse has</b>
		\$	\$
		\$	\$
		\$	\$

*If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.*

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<b>Home</b>	<b>Other real estate</b>	<b>Motor vehicle #1</b>
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

<b>Motor vehicle #2</b>	<b>Other assets</b>	<b>Other assets</b>
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [ ] Yes [ ] No Is property insurance included? [ ] Yes [ ] No	\$	\$
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$	\$
Home maintenance (repairs and upkeep)	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$

Transportation (not including motor vehicle payments)	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
<b>Total monthly expenses:</b>	<b>\$</b>	<b>\$</b>

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

Yes       No      If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?*  Yes  No

*If yes, how much?* \$ \_\_\_\_\_

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *Identify the city and state of your legal residence.*

City \_\_\_\_\_ State \_\_\_\_\_

Your daytime phone number: \_\_\_\_\_

Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_

Last four digits of your social-security number: \_\_\_\_\_