

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
NEW HAVEN, CT.

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CHAD C. McGINNIS and
SERGEY PUGACH,

Defendants, and

BELLA PUGACH,

Relief Defendant.

Civil Action No.

3:13-cv-1047 AVC

COMPLAINT

JURY TRIAL DEMANDED

FILED UNDER SEAL

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendants Chad C. McGinnis (“McGinnis”) and Sergey Pugach (“Pugach”) (collectively “Defendants”), and Relief Defendant Bella Pugach (“B. Pugach”), alleges as follows:

SUMMARY

1. This case involves a nefarious insider-trading scheme executed by Defendants. McGinnis used his position as a corporate insider at Green Mountain Coffee Roasters, Inc. (“GMCR”) to obtain material, nonpublic information ahead of earnings announcements. Using this information, McGinnis purchased GMCR securities – usually out-of-the-money options – shortly before the earnings announcements were made public, then sold them after the announcements. McGinnis also tipped his long-time friend and business associate Pugach with

this same information. Pugach in turn made similar trades. Together, McGinnis and Pugach profited by well over \$7 million between 2010 and 2013 from these illegal trades.

2. Because of their inside information, McGinnis and Pugach's trades were consistently and exceptionally successful. For 12 out of 13 quarters of earnings announcements, they made profitable trades based on high-risk bets of immediate and sharp stock price movement. They communicated frequently around earnings announcements – but infrequently otherwise – and traded in both of their brokerage accounts from the same location. McGinnis and Pugach exploited McGinnis's access to material, nonpublic information to conduct their insider-trading scheme to the detriment of GMCR and its shareholders.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

3. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78u(d)]. The Commission seeks preliminary and permanent injunctions against Defendants, enjoining them from engaging the transactions, acts, practices and courses of business alleged in this Complaint, disgorgement of all ill-gotten gains from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest, and civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. 78u-1]. The Commission seeks any other relief that the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. 78u(d)(5)].

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78aa].

5. Venue lies in this Court pursuant to Section 21(d), 21A and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u-1 and 78aa]. Certain of the acts, practices and transactions and

courses of business alleged in this Complaint occurred within the District of Connecticut and elsewhere, and were effected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. During the time of the conduct at issue, shares of GMCR were traded on the NASDAQ stock market. Defendant Pugach resides in Connecticut.

DEFENDANTS AND RELIEF DEFENDANT

6. **Chad C. McGinnis:** McGinnis, 35, lives in Morrisville, Vermont and is a System Administrator for GMCR. McGinnis traded ahead of 10 GMCR earnings releases and has made well over \$2 million in profits on those trades. McGinnis and Pugach are friends and business associates who both attended Fairfield University and previously worked together at another company in Connecticut.

7. **Sergey Pugach:** Pugach, 34, lives in Hamden, Connecticut and is an Application Architect with Aetna Inc. in Hartford, Connecticut. Pugach traded ahead of 12 GMCR earnings releases and has made well over \$5 million in profits on those trades.

8. **Bella Pugach:** B. Pugach, 57, lives in Brooklyn, New York and is a Home Attendant for Home Attendant Services of Hyde Park. B. Pugach is Pugach's mother. Trades were made in her account ahead of the May 2012 GMCR earnings announcement making almost \$40,000 in profit.

OTHER RELEVANT ENTITY

9. **Green Mountain Coffee Roasters, Inc.** GMCR is a Delaware corporation with its headquarters in Waterbury, Vermont. GMCR produces and sells coffees, teas and other specialty beverages. Its common stock is listed on the NASDAQ exchange under the symbol "GMCR."

FACTS

McGinnis had access to material, nonpublic information at GMCR

10. At all times relevant to this Complaint, McGinnis has worked in GMCR's Information Science and Technology Department and was in charge of administrating GMCR's Microsoft SharePoint software, a document and file management system that allows for a group of employees to work collaboratively on a single set of documents. The SharePoint software includes documents used to create the content for GMCR's periodic filings with the SEC, which include earnings information. By virtue of his position as System Administrator for the SharePoint software, McGinnis had access to material, nonpublic information about GMCR's upcoming earnings announcements days before the information was released to the public.

11. Additionally, by virtue of his role as System Administrator, McGinnis had access to other employees' e-mail accounts; and McGinnis had access to the information on GMCR's Investor Relations shared folder on GMCR's server, where the drafts of pending press releases (including earnings releases) are stored. Both of these sources also provided McGinnis with access to material, nonpublic information about GMCR's upcoming earnings announcements days before the information was released to the public.

GMCR maintained an insider trading policy, which McGinnis received

12. GMCR maintained an Insider Trading Policy (the "Policy") at all times during McGinnis's employment. The Policy applies to "all employees" with respect to "the trading of the Company's securities, as well as securities not issued by the Company but that are related to or bound with the Company's securities (such as exchange traded options)..." The Policy precludes employees and others from trading on the basis of material, nonpublic information as well as tipping others when an employee is aware of material, nonpublic information. "Material

information” is defined to include “[p]rojections of future earnings or losses or other earnings guidance.” McGinnis was provided with a copy of the Policy.

McGinnis and Pugach have longstanding and numerous connections

13. McGinnis and Pugach have numerous connections. Both lived in the New Haven, Connecticut area from 2005 to 2007. During that time, both attended Fairfield University. Both also worked at the company Unilever in Trumbull, Connecticut in 2005 and 2006, McGinnis as a “Desktop Architect” and Pugach as a “Programmer.” McGinnis and Pugach are friends.

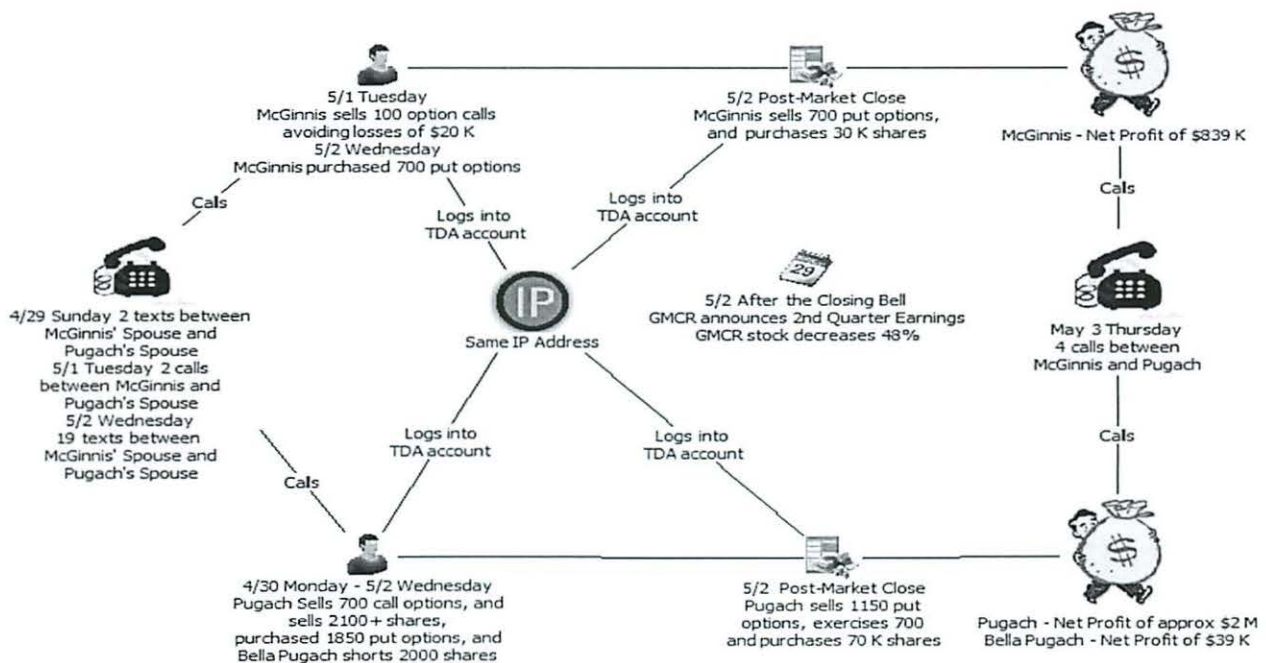
McGinnis and Pugach regularly communicated around their illegal trades and sometimes traded from the same location

14. McGinnis and Pugach communicated frequently in the time period around GMCR’s earnings announcements, and infrequently otherwise. Phone records obtained by the Commission indicate that McGinnis and Pugach communicated via phone call or text message 116 times between January 24, 2010 and March 1, 2013. Of those communications, 90 occurred within two days (25 before and 65 after) of the public release of a GMCR earnings announcement. Beginning in July 2011, McGinnis and Pugach also communicated using the phone numbers of McGinnis’s spouse and Pugach’s spouse. Of the communications between McGinnis and Pugach’s spouse’s phone, 18 of 22 occurred in the week prior to GMCR’s earnings announcements. In addition, there were at least another 137 communications – by phone call or text message – between McGinnis’s spouse’s phone and Pugach’s spouse’s phone in the week prior to, or the day of, GMCR’s earnings announcements.

15. Brokerage accounts for both McGinnis and Pugach were accessed from the same physical location for the purpose of placing trades according to brokerage records obtained by the Commission. There are two IP addresses from which brokerage accounts belonging to McGinnis, Pugach and B. Pugach were accessed on the same day. This indicates that these

accounts were accessed from the same internet connection and, therefore, the same physical location. McGinnis and Pugach made trades from these IP addresses, both assigned to Morrisville, Vermont, where McGinnis resides, around GMCR's February 2, 2012, May 2, 2012 (B. Pugach also traded from the same IP address on this date), August 1, 2012, November 27, 2012, and February 6, 2013 earnings announcements.

16. For example and by way of visualization, Defendants' communications and illegal trades surrounding GMCR's May 2, 2012 earnings announcement proceeded as follows, with McGinnis and Pugach communicating before earnings releases, trading from the same location, and profiting substantially based on material, nonpublic information:



McGinnis tipped Pugach with material, nonpublic information

17. McGinnis tipped Pugach with material, nonpublic information via communications prior to GMCR's earnings announcements. McGinnis knew, recklessly disregarded, or should have known that he owed a fiduciary duty or similar obligation of trust and confidence to GMCR and its shareholders to keep the material, nonpublic information

confidential. Pugach knew, recklessly disregarded, or should have known that information tipped by McGinnis was material, nonpublic information disclosed in violation of a relationship of trust between McGinnis and GMCR or GMCR's shareholders, given Defendants' relationship and repeated communications. At all times Pugach knew, recklessly disregarded, or should have known that McGinnis was a corporate insider at GMCR. McGinnis benefited from tipping Pugach by, among other things, conferring a gift of confidential information on his friend Pugach and receiving a reputational benefit. Thus, by engaging in their insider-trading scheme, McGinnis and Pugach acted with scienter.

McGinnis and Pugach illegally traded around GMCR's earnings announcements

18. With one exception, McGinnis, Pugach, and/or B. Pugach have successfully traded in GMCR stock around each of its earnings announcements since the July 28, 2010 earnings announcement. Put simply, they have correctly predicted the reaction of GMCR's stock price to twelve out of the last thirteen quarterly earnings announcements. Most of the options they purchased were "out of the money" at the time of purchase, representing a bold, collective bet of hundreds of thousands in option premiums that GMCR's stock price would move sharply to cover their bet. As a result of all of these trades, McGinnis, Pugach, and B. Pugach have illegally made well over \$7 million. The illegal trades were as follows:

July 28, 2010 Earnings Announcement

- On July 28, 2010, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased by 9.38%.
- Prior to the announcement, Pugach purchased 9,000 shares of GMCR.
- Following the announcement, Pugach sold the shares for a profit of at least **\$25,610**.

November 19, 2010 Restatement of Financials

- On November 19, 2010, GMCR announced a restatement of its earnings for the past four years. The following trading day, GMCR's stock price increased by 18.24%.
- Prior to the announcement, McGinnis purchased 3,600 shares of GMCR. Pugach purchased 12,000 shares of GMCR and 200 out-of-the-money GMCR call options.
- Following the announcement, McGinnis sold the shares for a profit of at least **\$17,844**. Pugach sold the shares and call options for a profit of at least **\$131,457**.

December 9, 2010 Earnings Announcement

- On December 9, 2010, GMCR announced its year-end earnings. The following trading day, GMCR's stock price decreased by 9.64%.
- Prior to the announcement, Pugach sold 1,400 GMCR call options that he had previously purchased for a profit of at least **\$95,748**.
- Following the announcement, the options become almost worthless.

February 2, 2011 Earnings Announcement

- On February 2, 2011, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased by 14.62%.
- Prior to the announcement, McGinnis purchased 100 out-of-the-money GMCR call options. Pugach purchased 4,000 shares of GMCR and 209 out-of-the-money GMCR call options.
- Following the announcement, McGinnis sold the options for a profit of at least **\$57,266**. Pugach sold the shares and call options for a profit of at least **\$79,934**.

May 3, 2011 Earnings Announcement

- On May 3, 2011, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased by 18.59%.

- On April 30, 2011, Pugach and McGinnis spoke via their cell phones on two occasions.
- Prior to the announcement, McGinnis purchased 125 GMCR call options (most if not all were out of the money) and sold 100 put options. Pugach purchased 200 out-of-the-money GMCR call options and sold 280 put options.
- Following the announcement, McGinnis sold the call options and most of the put options expired out of the money, resulting in a profit of at least **\$70,048**. Pugach sold his call options and most of the put options expired out of the money, resulting in profit of at least **\$113,884**.

July 27, 2011 Earnings Announcement

- On July 27, 2011, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased by 16.41%.
- There were seven text messages between the phones of McGinnis's spouse and Pugach's spouse on July 21, 2011.
- Prior to the announcement, McGinnis purchased 150 GMCR call options (most were out of the money). Pugach purchased 500 GMCR call options (most were out of the money).
- Following the announcement, McGinnis sold the call options for a profit of at least **\$156,385.62**. Pugach sold the call options he had purchased for a profit of at least **\$345,204.08**.

November 9, 2011 Earnings Announcement

- On November 9, 2011, GMCR announced its quarterly and year-end earnings. The following trading day, GMCR's stock price decreased by 38.99%.
- Prior to the announcement, Pugach shorted 6,000 shares of GMCR and purchased 100 out-of-the-money GMCR put options.

- Following the announcement, Pugach covered his short position and sold the GMCR put options for a profit of at least **\$305,042**.

February 1, 2012 Earnings Announcement

- On February 1, 2012, GMCR announced its quarterly earnings. The following trading day GMCR's stock price increased by 23.85%.
- Between January 26, 2012 and February 1, 2012, there were 49 phone communications between the phone numbers assigned to the spouses of Pugach and McGinnis, with 25 of those occurring on the day of the announcement.
- While B. Pugach did not trade around this announcement, both she and McGinnis logged into their trading accounts on February 1, 2012 from the same IP address. In addition, Pugach made trades from that same IP address in late January.
- Prior to the announcement, McGinnis purchased 50 out-of-the-money GMCR call options. Pugach purchased 6,000 shares of GMCR stock and 1,385 GMCR call options (most were out of the money).
- Following the announcement, McGinnis sold the call options for a profit of at least **\$17,584**. Pugach sold his shares and call options for a profit of at least **\$1,068,783**.

May 2, 2012 Earnings Announcement

- On May 2, 2012, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price decreased by 47.76%.
- Prior to the announcement, there were 25 communications between the phone numbers assigned to McGinnis or his spouse and the phone number assigned to Pugach's spouse. The day after the announcement McGinnis and Pugach spoke five times on the phone.

- Beginning on May 1, 2012, the accounts of McGinnis, Pugach and B. Pugach were logged into scores of times over the next three days from an IP address associated with McGinnis's home.
- Prior to the announcement, McGinnis purchased 700 out-of-the-money GMCR put options. Pugach purchased 1,850 GMCR put options (most of which were out of the money). B. Pugach shorted 2,000 shares of GMCR.
- Following the announcement, McGinnis sold almost all of his put options for a profit of at least **\$839,953.85**. Pugach sold almost all of his put options for a profit of at least **\$1,235,923.81**, and later realized an additional **\$789,977.78** at least from exercising options and selling shares. B. Pugach covered her short position for a profit of at least **\$38,565.80**.

August 1, 2012 Earnings Announcement

- On August 1, 2012, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased by 26.52%.
- On July 30, 2012 and August 1, 2012, there were 34 telephone or text message communications between McGinnis and Pugach or between the phone numbers assigned to McGinnis's spouse and Pugach's spouse. In the three days after the announcement, there were 54 telephone or text message communications between McGinnis and Pugach.
- On July 31, 2012 and August 2, 2012, both McGinnis's and Pugach's accounts were accessed from an IP address assigned to McGinnis's home.
- Prior to the announcement, McGinnis purchased 300 call options. Pugach purchased 10,000 shares of GMCR stock.
- Following the announcement, McGinnis sold the call options for a profit of at least **\$86,347**. Pugach sold the shares he had purchased for a profit of at least **\$32,336**.

November 27, 2012 Earnings Announcement

- On November 27, 2012, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased by 27.32%.
- Prior to the announcement, there was one telephone communication between McGinnis and Pugach and another 46 such communications between the phone numbers assigned to McGinnis's spouse and Pugach's spouse. McGinnis and Pugach communicated five times by telephone or text message following the announcement.
- Almost every time McGinnis or Pugach accessed their accounts prior the announcement, it was done from an IP address assigned to McGinnis's home.
- Prior to the announcement, McGinnis purchased 40,000 shares of GMCR stock and call options. Pugach purchased 1,400 GMCR call options.
- Following the announcement, McGinnis exercised the call options, thereby acquiring additional shares. He then used those shares to sell covered call options, profiting at least **\$1,187,045**. Pugach exercised the call options, acquiring shares, and then used those shares to sell covered call options, profiting at least **\$824,900**.

February 6, 2013 Earnings Announcement

- On February 6, 2013, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased 5.35%, the smallest change in response to any of the earnings announcements.
- The day following the announcement, McGinnis and Pugach communicated by telephone.
- McGinnis's and Pugach's trading accounts were accessed principally from an IP address associated with McGinnis's home in the days leading up to the earnings announcement.

- Prior to the announcement, McGinnis sold 500 GMCR put options. Pugach sold 600 GMCR put options.
- Following the announcement, McGinnis effectively repurchased the put options at a lower price, for a profit of at least **\$193,532**. Pugach also repurchased the put options at a lower price, for a profit of at least **\$205,628**.
- In connection with this earnings announcement, McGinnis and Pugach entered into numerous other option transactions and, overall, lost money on the quarter. This loss may be attributed to the relatively small stock price movement in response to the announcement.

May 8, 2013 Earnings Announcement

- On May 8, 2013, GMCR announced its quarterly earnings. The following trading day, GMCR's stock price increased by 27.8%.
- While Pugach did not make trades in GMCR stock around this announcement, he did log into his trading account from an IP address assigned to McGinnis's home in the days around this announcement.
- Around this announcement, McGinnis made various transactions in GMCR options and stock. Due to limited information, the Commission is not yet able to estimate the profits made by McGinnis but it appears that he made a substantial profit in excess of \$100,000.

Defendants' profits and losses avoided from their illegal trades

19. McGinnis and Pugach's profits from their illegal trades surrounding GMCR's earnings announcements are at least as follows:

DATE OF ANNOUNCEMENT	GMCR ONE DAY STOCK PRICE MOVEMENT	CHAD McGINNIS PROFITS	SERGEY PUGACH PROFITS
July 28, 2010 – Q3	9.38% increase (\$28.67 to \$31.36)	(No trade)	\$25,610.74

November 19, 2010 – Restatement of Financials	18.24% increase (\$30.26 to \$35.78)	\$17,844.14	\$131,457.33
December 9, 2010 – Q4/Year End	9.64% decrease (\$37.42 to \$33.81)	(No trade)	\$95,748.29
February 2, 2011 – Q1	14.62% increase (\$32.96 to \$37.78)	\$57,266.04	\$79,934.76
May 3, 2011 – Q2	18.59% increase (\$64.07 to \$75.98)	\$70,048.20	\$113,884.85
July 27, 2011 – Q3	16.41% increase (\$88.11 to \$102.57)	\$156,385.62	\$345,204.08
November 9, 2011 – Q4/Year End	38.99% decrease (\$67.02 to \$40.89)	(No trade)	\$305,042.64
February 1, 2012 – Q1	23.85% increase (\$53.63 to \$66.42)	(No profit)	\$1,068,783.64
May 2, 2012 – Q2	47.76% decrease (\$49.52 to \$25.87)	\$839,953.85	\$2,025,901.59
August 1, 2012 – Q3	26.52% increase (\$17.91 to \$22.66)	\$13,894.95	\$2,083.78
November 27, 2012 – Q4/Year End	27.32% increase (\$28.95 to \$36.86)	\$1,430,149.41	\$898,686.70
February 6, 2013 – Q1	5.35% decrease (\$48.94 to \$46.32)	(No profit)	(No profit)
TOTAL PROFITS		\$2,585,542.21	\$5,092,338.40

20. McGinnis and Pugach also avoided losses of hundreds of thousands of dollars through their illegal trades.

21. B. Pugach opened a brokerage account on January 24, 2012 in which she stated that she had less than one year trading experience and had a net worth of less than \$100,000.

Her opening account balance was \$100,000. On May 2, 2012, B. Pugach shorted 2,000 shares of GMCR. B. Pugach profited in the amount of at least \$38,565.80 on this investment.

CLAIMS FOR RELIEF

Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder (Against All Defendants)

22. The Commission realleges and incorporates by reference paragraphs 1 through 21, as though fully set forth herein.

23. At the time the Defendants made their purchases in connection with GMCR's earnings announcements, they were in possession of material, nonpublic information about the content of the announcements. The Defendants: (a) knew, recklessly disregarded or should have known that their trading was in breach of a fiduciary duty or an obligation arising from a similar relationship of trust and confidence, owed to the shareholders of GMCR or to GMCR; and (b) knew, recklessly disregarded or should have known that the material, nonpublic information about the earnings announcements was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

24. All material, nonpublic information that the McGinnis tipped and Pugach received concerning the earnings announcements was either: (a) misappropriated from GMCR by McGinnis; or (b) was disclosed by McGinnis with the expectation of receiving a benefit, which he received with the expectation of receiving a benefit.

25. By virtue of the foregoing, the Defendants, with scienter, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances

under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

26. By virtue of the foregoing, the Defendants directly or indirectly violated and unless enjoined will again violate Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

**Violations of Securities Act Section 17(a)
(Against All Defendants)**

27. The Commission realleges and incorporates by reference paragraphs 1 through 26, as though fully set forth herein.

28. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, McGinnis and Pugach: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

29. By reason of the conduct described above, McGinnis and Pugach directly or indirectly violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

RELIEF SOUGHT

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

I.

Temporarily, preliminarily, and permanently restraining and enjoining the Defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], Rule 10b-5 thereunder [17 C.F.R. 240.10b-5], and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

II.

Ordering the Defendants to disgorge, with prejudgment interest, all illicit trading profits and losses avoided or other ill-gotten gains received as a result of the conduct alleged in this Complaint;

III.

Ordering the Defendants to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. 78u(d)(3), 78u-1]; and

IV.

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

JURY DEMAND

The Commission demands a jury in this matter.


Dated: July 24, 2013

Respectfully submitted,



s/John B. Hughes

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