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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

DMR

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12 SECURITIES AND EXCHANGE COMMISSION, Case No. **11 0708**

13 Plaintiff,

COMPLAINT

14 v.

15 ZHENYU NI,

16 Defendant.

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18 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

19 **SUMMARY OF THE ACTION**

20 1. This case involves insider trading in the securities of Bare Escentuals, Inc. ("Bare"), a
21 San Francisco, California cosmetics company. Defendant Zhenyu Ni is the brother of Bare's former
22 Director of Tax. After Ni overheard his sister discussing a then-secret acquisition of Bare, Ni
23 misappropriated this information for his own benefit by purchasing Bare stock and options. After the
24 news that Bare was being acquired became public, Bare's stock price increased over 40 percent and
25 Ni sold his Bare securities for illicit profits of over \$157,000.

26 2. By misappropriating material nonpublic information from his sister and trading on the
27 basis of confidential information he learned from her, defendant Zhenyu Ni violated Section 10(b) of
28 the Securities Exchange Act ("Exchange Act") of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17

1 C.F.R. 240.10b-5] thereunder. Additionally, because the material nonpublic information relating to
2 Bare involved a tender offer, defendant Zhenyu Ni's trading in Bare securities also violated Section
3 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.
4 The Commission seeks a court order requiring that defendant Ni disgorge his ill-gotten gains plus
5 prejudgment interest; imposing civil money penalties; and enjoining him from future violations of
6 these provisions of the securities laws.

7 **JURISDICTION AND VENUE**

8 3. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the
9 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1(c)].

10 4. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A and 27 of
11 the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1 and 78aa].

12 5. Defendants, directly or indirectly, made use of the means or instrumentalities of
13 interstate commerce, or of the mails, or of the facilities of a national securities exchange in
14 connection with the transactions, acts, practices and courses of business alleged herein.

15 6. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.
16 § 78aa] because defendant Zhenyu Ni resides within the Northern District of California and acts and
17 transactions constituting the violations alleged in the Complaint occurred within the Northern District
18 of California.

19 7. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil L.R.
20 3-2(c) because a substantial part of the events or omissions which give rise to this claim occurred in
21 the County of San Francisco.

22 **DEFENDANT**

23 8. Defendant Zhenyu ("Tony") Ni, age 36, resides in San Francisco, California. Ni is an
24 IT Team Lead Manager for a public company.

25 **RELEVANT ENTITY**

26 9. Bare Escentuals, Inc. was a Delaware cosmetics company with its principal office in
27 San Francisco, California. Prior to March 2010, Bare's shares were registered with the Commission
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1 pursuant to Section 12(b) of the Exchange Act and quoted on the Nasdaq Global Market under the
2 symbol "BARE." In March 2010, Shiseido Co., Ltd successfully completed its acquisition of Bare.

3 **DEFENDANT'S ILLEGAL INSIDER TRADING**

4 10. Both Zhenyu Ni and his sister live and work in San Francisco. In November 2009, as
5 Bare's former Director of Tax, the sister began assisting to prepare Bare's due diligence in connection
6 with a potential acquisition of the company by Shiseido Co., Ltd, a large Japan-based cosmetics
7 manufacturer. As part of her work, the sister had access to the deal's dataroom which contained
8 documents relevant to the potential acquisition and other confidential information.

9 11. In December 2009, Zhenyu Ni visited his sister at her Bare office. During their visit,
10 the sister took several phone calls while Ni sat in her office. During these calls, Ni heard key words
11 spoken by his sister such as "due diligence file," "potential buyer" and "merger structure." Ni
12 observed from the state of his sister's office and numerous phone calls that she was very busy at
13 work.

14 12. After his visit to his sister's office, Ni began buying Bare securities. On December 10,
15 2009, Ni purchased 1,000 shares in his father's brokerage account and then began buying 3,000 share
16 blocks of Bare stock in his own account on December 16, 22, 23 and 31. In addition, on January 14,
17 2010, Ni purchased a total of 280 call option contracts in both his and his father's accounts. Call
18 options provide the right to purchase Bare common stock at a price higher than the current market
19 price, and thus had value only if Bare's stock price rose in the short term. By January 14, 2010, Ni
20 spent almost \$165,000 acquiring Bare securities.

21 13. After market close on January 14, 2010, Bare publicly announced the Shiseido tender
22 offer. The following day, based on the news, Bare's common stock closed at \$18.07 per share, 42
23 percent higher than the prior day's closing price. The volume of Bare shares traded increased to over
24 100 times the previous day's volume: from 815,912 shares on January 14 to 90,583,053 shares on
25 January 15. By purchasing Bare stock and call options based on the information Ni misappropriated
26 from his sister, and then cashing out all the Bare securities he held on January 15, 2010, Ni realized
27 illegal profits of \$157,066.

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1 14. Each of Ni's purchases of Bare stock and options alleged herein was made based on
2 inside information misappropriated from his sister in violation of duties of trust and confidence owed
3 to his sister. In addition, Ni was aware that his sister owed a duty of trust or confidence to Bare as a
4 Bare employee.

5 15. Ni knew, or was reckless in not knowing, that the information he misappropriated
6 from his sister regarding the Bare tender offer was material and nonpublic.

7 16. Ni knew, or was reckless in not knowing, that he had a duty to refrain from trading on
8 material, nonpublic information.

9 17. Moreover, Ni knew or had reason to know that the inside information regarding the
10 Shiseido acquisition came from Bare, the target company in a potential tender offer.

11 **FIRST CLAIM FOR RELIEF**

12 Violations of Section 10(b) of the Exchange Act
13 [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5]
14 Promulgated Thereunder

15 18. Paragraphs 1 through 17 are re-alleged and incorporated herein by reference.

16 19. Defendant, with scienter, directly or indirectly:

- 17 a) employed devices, schemes, or artifices to defraud;
- 18 b) made untrue statements of material facts or omitted to state material facts
19 necessary in order to make the statements made, in the light of the
20 circumstances under which they were made, not misleading; and
- 21 c) engaged in acts, practices, or courses of business which operated or would
22 operate as a fraud or deceit upon other persons, including purchasers and
23 sellers of securities;

24 in connection with the purchase or sale of securities, by the use of means or instrumentalities of
25 interstate commerce, of the mails, or the facilities of a national securities exchange.

26 20. By reason of the foregoing, Defendant violated, and unless restrained and enjoined
27 will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
28 thereunder [17 C.F.R. § 240.10b-5].

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SECOND CLAIM FOR RELIEF

Violations of Section 14(e) of the Exchange Act
[15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3]
Promulgated Thereunder

21. Paragraphs 1 through 17 are re-alleged and incorporated herein by reference.

22. After Shiseido had taken a substantial step or steps to commence or had commenced a tender offer, Defendant:

- a) Purchased or sold or caused to be purchased or sold the securities to be sought by the tender offer while in possession of material information relating to such tender offer
- b) which information he knew or had reason to know is nonpublic, and
- c) which he knew or had reason to know had been acquired directly or indirectly from the offering company, the issuing company, or any officer, director, partner or employee acting on behalf of the offering or issuing companies.

23. By reason of the foregoing, Defendant violated, and unless restrained and enjoined will continue to violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin Defendant from directly or indirectly violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

II.

Permanently enjoin Defendant from directly or indirectly violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder;

III.

Order Defendant to disgorge ill-gotten gains derived from the unlawful trading alleged herein, plus prejudgment interest;

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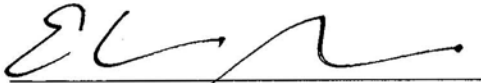
IV.

Order Defendant to pay civil penalties pursuant to Section 21A of the Exchange Act [15
U.S.C. § 78u-1]; and

V.

Grant such other relief as this Court may deem just and appropriate.

Respectfully submitted,



Dated: February 16, 2011

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SECURITIES AND EXCHANGE COMMISSION