

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JAMES WALLACE NALL, III,
MICHAEL HALE SMITH,
MICHAEL DWAIN SMITH,
ROBERT WALTE RSMITH, and
WALTER VICE TUTT

Defendants.

Civil Action No. 2:19-CV-00702

JURY TRIAL DEMANDED

ANSWER OF DEFENDANT JAMES WALLACE NALL, III

James Wallace Nall, III (“Nall”) files this Answer to the Complaint filed by Plaintiff United States Securities and Exchange Commission (the “Commission” or “SEC”). Nall hereby responds to each and every numbered paragraph of the Complaint as follows:

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

1. The Securities and Exchange Commission (“Commission” or “SEC”) hereby files its complaint, and alleges the following.

RESPONSE: Paragraph 1 is Plaintiff’s introduction to its Complaint and does not require a response. To the extent that paragraph 1 may be deemed to contain allegations of fact, Nall denies the allegations.

SUMMARY

2. This matter involves insider trading in advance of the July 19, 2016 public announcement of a merger between Golden Enterprises, Inc. (“Golden Enterprises”), formerly a NASDAQ-listed potato chip manufacturer based in Birmingham, Alabama, and Utz Quality Foods, LLC (“Utz”), a privately held company based in Hanover, Pennsylvania.

RESPONSE: To the extent that the allegations in paragraph 1 of the Complaint are limited to the SEC’s characterization of this action and purport to state a legal conclusion, no response is required from Nall. To the extent that any allegations in paragraph 2 may be deemed to be factual, Nall admits that this matter involves a merger between Golden Enterprises, which is based in Birmingham, Alabama, and Utz, which is based in Hanover, Pennsylvania. As it pertains to himself, Nall denies that this matter involves insider trading. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 2 and on that basis denies them.

3. James W. Nall, III (“Nall”) misappropriated material non-public information (“MNPI”) about the merger from his father, a director of Golden Enterprises. Nall did not trade on the information, but he tipped his close friend and business partner, Michael Hale Smith (“Hale Smith”), who in turn tipped his father, Michael Dwaine Smith (“Michael Smith, Sr.”), and boss, Walter Vice Tutt (“Tutt”).

RESPONSE: Nall admits that he did not trade in Golden Enterprises securities. Nall denies that he misappropriated material non-public information about the merger from his father. Nall denies that he tipped his friend and business partner, Hale Smith. Nall denies the characterization of his friendship with Hale Smith as “close” as vague and ambiguous.

Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 3 and on that basis denies them.

4. Michael Smith, Sr. then tipped his son Robert Walter Smith (“Robert Smith”).

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 4 and on that basis denies them.

5. Hale Smith, Michael Smith, Sr., Robert Smith, and Tutt, each of whom knew Nall and understood that his father was a director of Golden Enterprises, purchased Golden Enterprises’ stock in multiple purchases in advance of the merger announcement, collectively realizing profits of approximately \$437,000.

RESPONSE: Nall admits that he knew Hale Smith, Michael Smith, Sr., Robert Smith, and Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 5 and on that basis denies them.

6. Notably, these traders all lived or worked in or around Thomaston, Alabama, a small rural town that Nall — who lived and worked in Birmingham — had adopted as his “second hometown.”

RESPONSE: Nall admits that he lived and worked in Birmingham. Nall further admits that Hale Smith, Michael Smith, Sr., Robert Smith, and Tutt lived or worked in or around Thomaston, Alabama, a small rural town. Nall denies the remaining allegations in paragraph 6.

7. Defendants Nall, Hale Smith, Tutt, Michael Smith, Sr., and Robert Smith have engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute 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].

RESPONSE: Nall denies the allegations in paragraph 7 of the Complaint as it pertains to Nall himself. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 7 and on that basis denies them.

JURISDICTION AND VENUE

8. The SEC brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin the defendants from engaging in transactions, acts, practices and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties. This Court has jurisdiction of 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].

RESPONSE: To the extent that paragraph 8 purports to state a legal conclusion, no responsive pleading is required. Nall admits that based on the language of its Complaint, the SEC brings this action “pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].” Nall admits that based on the language of its Complaint, the SEC seeks to invoke this Court’s jurisdiction “pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].” To the extent that any allegations in paragraph 8 may be deemed to be factual, Nall denies these allegations.

9. The defendants, directly and indirectly, have made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and

instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

RESPONSE: To the extent that paragraph 9 purports to state a legal conclusion, no responsive pleading is required. To the extent any allegations in paragraph 9 may be deemed to be factual, Nall denies these allegations.

10. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because the defendants, except for Nall, reside within this district. Furthermore, certain of the actions set forth herein occurred within the Southern District of Alabama.

RESPONSE: Nall admits that venue is proper in the U.S. District Court for the Southern District of Alabama, while maintaining that the U.S. District Court for the Northern District of Alabama is the more appropriate venue pursuant to 28 U.S.C. § 1404(a). As detailed in response to other paragraphs, Nall denies that certain of the actions alleged herein occurred in the Southern District of Alabama or elsewhere and denies that that the actions alleged herein provide a basis for any claim against him.

THE DEFENDANTS

11. Nall, 58 years old, is a resident of Birmingham, Alabama.

RESPONSE: Nall admits the allegations in paragraph 11.

12. Hale Smith, 45 years old, is a resident of Thomaston, Alabama.

RESPONSE: Nall admits that Hale Smith is a resident of Thomaston, Alabama. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 12 and on that basis denies them.

13. Tutt, 54 years old, owns Tutt Land Co., which is located in Thomaston, Alabama and sells tracts of land throughout Alabama, Mississippi, Tennessee, and Florida. Tutt resides in Demopolis, Alabama.

RESPONSE: Nall admits that Tutt owns Tutt Land Co., which is located in Thomaston, Alabama and sells tracts of land. Nall admits that Tutt resides in Demopolis, Alabama. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 13 and on that basis denies them.

14. Michael Smith, Sr., 69 years old, is Hale Smith's father. Michael Smith, Sr. is a retired cement plant worker who lives in Thomaston, Alabama.

RESPONSE: Nall admits that Michael Smith, Sr., is Hale Smith's father. Nall admits that Michael Smith, Sr. is a retired cement plant worker who lives in Thomaston, Alabama. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 14 and on that basis denies them.

15. Robert Smith, 31 years old, is Hale Smith's brother and Michael Smith, Sr.'s son. Robert Smith lives in Thomaston, Alabama.

RESPONSE: Nall admits that Robert Smith is Hale Smith's brother and Michael Smith, Sr.'s son. Nall admits that Robert Smith lives in Thomaston, Alabama. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 15 and on that basis denies them.

RELATED ENTITIES AND INDIVIDUALS

16. **Golden Enterprises, Inc.** was a Delaware corporation headquartered in Birmingham, Alabama. Golden Enterprises made the Golden Flake brand of potato chips, among other products. Golden Enterprises' common stock was registered with the Commission pursuant

to Exchange Act Section 12(b) and was traded on the NASDAQ under the symbol “GLDC” until it filed a Notice of Termination of Registration with the Commission on October 13, 2016.

RESPONSE: Nall admits that Golden Enterprises, Inc. was headquartered in Birmingham, Alabama. Nall admits that Golden Enterprises made the Golden Flake brand of potato chips, among other products. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 16 and on that basis denies them.

17. **Utz Quality Foods, LLC** is a privately held snack food company based in Hanover, Pennsylvania. In October 2016, Utz completed its acquisition of Golden Enterprises.

RESPONSE: Nall admits that Utz acquired Golden Enterprises. Otherwise, Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 17 and on that basis denies them.

18. **James Wallace Nall, IV** (“Nall, Sr.”), 78 years old, is Nall’s father. Nall, Sr. was a director of Golden Enterprises from 1991 until Utz completed its acquisition of Golden Enterprises in October 2016. Nall, Sr. resides in Birmingham, Alabama.

RESPONSE: Nall admits the allegations in paragraph 18 except for stating that Nall Sr. is 79.

FACTS

A. Nall’s Relationship to Golden Enterprises and the Other Defendants

19. Defendant Nall’s father, Nall, Sr., is a prominent real estate developer based in Birmingham, Alabama, who was also a director of Golden Enterprises for more than 25 years (until the company’s sale to Utz).

RESPONSE: Nall admits the allegations in paragraph 19.

20. Nall works with his father in Birmingham at their family-owned real estate development company, Nall Development Corp. (“Nall Corp.”). Prior to the merger between Golden Enterprises and Utz, Nall Corp. also owned 196,000 shares of Golden Enterprises’ stock.

RESPONSE: Nall admits that he works with his father in Birmingham at their family-owned real estate development company, Nall Development Corp. (“Nall Corp.”). Nall admits that, prior to the merger between Golden Enterprises and Utz, Nall Corp. owned just under 200,000 shares of Golden Enterprises’ stock. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 20 and on that basis denies them.

21. Over the last 15 years, Nall has developed close personal and business relationships with a group of individuals residing in or near Thomaston, Alabama, a rural, 400-person, “one-traffic-light” town located in southwestern Alabama.

RESPONSE: Nall admits that he has developed personal and business relationships with individuals residing in or near Thomaston, Alabama, which is a rural town located in southwestern Alabama. Nall denies the characterization of his personal and business relationships as “close” as vague and ambiguous. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 21 and on that basis denies them.

22. Nall initially became connected to Thomaston when his ex-wife’s cousin married Hale Smith, a local real estate agent and developer.

RESPONSE: Nall admits that his ex-wife’s cousin married Hale Smith, a local real estate agent and developer. Nall denies the characterization that this event caused him to become “connected to Thomaston” as vague and ambiguous.

23. Nall and Hale Smith subsequently became close friends and business associates, developing multiple shared business ventures focusing primarily on purchasing, improving, and reselling hunting properties.

RESPONSE: Nall admits that he and Hale Smith subsequently became friends and business associates and have worked together to purchase, improve, and resell rural real estate, including hunting properties. Nall denies the characterization of his friendship with Hale Smith as “close” as vague and ambiguous. Nall denies the remaining allegations in paragraph 23.

24. Nall visits Thomaston frequently, often staying at a property adjacent to Hale Smith’s house.

RESPONSE: Nall admits that he visits Thomaston several times each year and, when in Thomaston, often stays at a property adjacent to Hale Smith’s house. Nall denies the characterization of his visits as “frequent” as vague and ambiguous.

25. Over the years, Nall’s friendship with Hale Smith has extended to Hale Smith’s brothers, Michael Smith, Jr. and Robert Smith, as well as their father, Michael Smith, Sr.

RESPONSE: Nall admits that his friendship with Hale Smith has extended to Hale Smith’s brother, Michael Smith, Jr. Nall admits that he knows Robert Smith and Michael Smith, Sr. through his business and personal dealings with Hale Smith and Michael Smith, Jr. Nall denies the remaining allegations in paragraph 25.

26. Through Hale Smith, Nall also came to know Tutt, whose real estate company employs Hale Smith as a property broker.

RESPONSE: Nall admits the allegations in paragraph 26.

27. Tutt also acted as the property broker for certain real estate properties purchased by Nall and Hale Smith for development and resale.

RESPONSE: Nall admits the allegations in paragraph 27.

28. Nall's public persona in Thomaston was closely associated with Golden Enterprises. Nall openly discussed, and all of the defendants were aware of, his father's role with the company. More generally, Nall was known throughout Thomaston as "Mr. Potato Chip."

RESPONSE: Nall admits that some individuals in Thomaston understood that his family was associated with Golden Enterprises. Nall denies that he openly discussed his father's role with the company. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 28 and on that basis denies them.

B. Nall Learns Material Non-Public Information From His Father Concerning the Contemplated Merger Between Golden Enterprises and Utz

29. On November 17, 2015, Nall, Sr. first became aware of a possible sale of Golden Enterprises at a special board meeting.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 29 and on that basis denies them.

30. Specifically, Nall, Sr. learned: (a) that Utz had made an informal offer to purchase all of Golden Enterprises' stock for approximately a 60-percent premium over the then per-share market price; (b) that Golden Enterprises' majority shareholder supported a sale; and (c) the company was forming a Special Committee to explore a possible sale. Nall, Sr. was not a member of the committee.

RESPONSE: Nall admits that Nall, Sr. was not a member of the Special Committee. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 30 and on that basis denies them.

31. Upon learning of a possible sale of Golden Enterprises, Nall Sr. immediately thought about the possible tax consequences for Nall Corp. due to its holdings of the company's stock. Around the time of the November 17, 2015 board meeting, Nall Sr. disclosed the contemplated transaction to Nall and their two other partners in Nall Corp., so they could determine the potential tax implications for Nall Corp.

RESPONSE: Nall admits that Nall Sr. learned of a possible sale of Golden Enterprises, thought about the possible tax consequences for Nall Corp. due to its holdings of the company's stock, and disclosed the contemplated transaction to Nall and two other individuals involved in Nall Corp. so they could determine the potential tax implications for Nall Corp. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 31 and on that basis denies them.

32. Nall, Sr. also specifically informed the three men that the information was highly confidential, and that they should not engage in any trading in Golden Enterprises stock.

RESPONSE: Nall admits the allegations in paragraph 32.

33. Nall, Sr. further admonished that "nobody that we know can buy any stock, period."

RESPONSE: Nall admits that, upon discussing the contemplated transaction, Nall, Sr. admonished that the individuals involved in Nall Corp. could not purchase Golden Enterprises stock and could not disclose the contemplated transaction to any person for the purpose of allowing a person to trade in Golden Enterprises stock. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 33 and on that basis denies them.

34. Defendant Nall and the other two partners specifically agreed to maintain the confidential information and not to engage in any related trading activity.

RESPONSE: Nall admits that he agreed not to engage in any trading activity or provide the confidential information to other individuals for the purposes of facilitating trading activity. As to any other individuals, Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 34 and on that basis denies them.

35. From November 2015 through the merger announcement in July 2016, Nall, Sr. continued to receive formal, periodic updates on the possible sale of Golden Enterprises through his attendance at the company's board-of-directors meetings.

RESPONSE: Nall admits that his father attended at least some meetings of Golden Enterprises' board-of-directors meetings. Nall denies the characterization of any updates as "formal" and "periodic" as vague and ambiguous. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 35 and on that basis denies them.

36. Significantly, Nall, Sr. continued to provide periodic updates on the status and progress of the merger to Defendant Nall and the other partners at Nall Corp.

RESPONSE: Nall admits that Nall Sr. provided limited updates regarding the merger to Defendant Nall and the other individuals involved in Nall Corp. Nall denies that the updates were "periodic" or co-extensive with the updates referenced in paragraph 35. Nall denies the remaining allegations in paragraph 36.

37. Nall, Sr. reemphasized the merger's anticipated timeline with them as he grew increasingly frustrated with their apparent lack of progress on related tax issues.

RESPONSE: Nall denies the allegations in paragraph 37.

C. Nall Misappropriates the Information and Tipping Commences

a. Summary of the Defendants' Insider Trading

38. Nall misappropriated material non-public, deal-related information he received from Nall, Sr., by repeatedly tipping Hale Smith about the detailed progress of the transaction;

RESPONSE: Nall denies the allegations in paragraph 38.

39. Hale Smith traded on the basis of the information, and also tipped his father, Michael Smith, Sr., and boss, Tutt, each of whom also traded on the basis of that information.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 39 and on that basis denies them.

40. Michael Smith, Sr. tipped another son, Robert Smith, who also traded on the basis of the information.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 40 and on that basis denies them.

41. These relationships are diagrammed in the following paragraph.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 41 and on that basis denies them.

42. [DIAGRAM]

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 42 and on that basis denies them.

43. Alternatively, Nall tipped Michael Smith, Sr. and/or Tutt during visits Nall made to Thomaston.

RESPONSE: Nall denies the allegations in paragraph 43.

44. Also alternatively, Hale Smith tipped his brother, Robert Smith regarding the pending merger.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 44 and on that basis denies them.

b. Individual Trading Activity

45. The trading activity for each of the defendants before and after the July 19, 2016 merger announcement is summarized in the following chart: [CHART]

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 45 and on that basis denies them.

c. Aberrational Nature of the Involved Trading Activity

46. At the time of his initial investment, Michael Smith, Sr., a retired cement plant worker, owned two brokerage accounts, one of which was a rollover IRA from his former employer's retirement plan. The holdings in his IRA were diversified equities that he purchased based on his own research.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 46 and on that basis denies them.

47. In November 2015, when Michael Smith, Sr. first purchased Golden Enterprises stock, his IRA was valued at approximately \$310,000. At that time, his other brokerage account was worth approximately \$103,000 and was invested in a single real estate investment trust.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 47 and on that basis denies them.

48. In the previous 15 months, Smith, Sr. had not purchased Golden Enterprises stock in either account, yet by the time of the announcement, Golden Enterprises stock represented approximately 26 percent of his holdings.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 48 and on that basis denies them.

49. Hale Smith is primarily invested in his real estate business and related joint ventures with Nall. He and his wife maintained two brokerage accounts which had a combined value of less than \$5,000 at the time he began trading Golden Enterprises stock.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 49 and on that basis denies them.

50. Hale Smith had not made any stock purchases in the 15-month period preceding his trading in Golden Enterprises stock. Thus, Hale Smith's Golden Enterprises purchases represented virtually the entirety of his trading activity and associated investment holdings.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 50 and on that basis denies them.

51. Robert Smith worked as an independent contractor for his brother's small business (which was sold subsequent to the merger announcement).

RESPONSE: Nall denies the characterization of the business as "small" as vague and ambiguous. Nall admits the remaining allegations in paragraph 51.

52. Robert Smith had no apparent history of trading stocks, and when he opened his brokerage account two weeks before his first purchase of Golden Enterprises stock, he stated his net worth on his account opening form as less than \$50,000 and his liquid net worth as less than \$15,000.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 52 and on that basis denies them.

53. It appears that Robert Smith borrowed money, likely from his father, to invest in Golden Enterprises stock because of his limited financial means.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 53 and on that basis denies them.

54. Tutt owns a real estate brokerage company. His reported annual income in 2015 was between \$250,000 and \$500,000.

RESPONSE: Nall admits that Tutt owns a real estate brokerage company. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 54 and on that basis denies them.

55. Tutt held two IRAs at a single broker dealer with account values of \$127,000 and \$7,000 prior to September 2015. In that month, Tutt opened a taxable brokerage account and transferred \$45,000 cash into that account.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 55 and on that basis denies them.

56. Tutt's first purchase of Golden Enterprises stock on March 18, 2016, was the first order Tutt had placed in that account since he opened it. The only other trade he made during the relevant period was a purchase of BP stock.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 56 and on that basis denies them.

57. Additionally, while Golden Enterprises' share price generally increased during the period of the merger negotiations, there were no major price fluctuations related to any public announcements made by the company (or other events) that would explain the defendants' trading activity.

RESPONSE: Nall admits that Golden Enterprises' share price generally increased during the period of the merger negotiations. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 57 and on that basis denies them.

58. Finally, Golden Enterprises' stock was relatively thinly traded, and the defendants' purchases comprised a significant percentage of total trading volume on certain days. For example, Hale Smith's initial purchases of Golden Enterprises stock, made between March 28 and March 30, 2016, comprised almost 40 percent of the total trading volume during that same period.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 58 and on that basis denies them.

d. **Events, Tips, and Trading Chronology**

i. **November 17, 2015 Board of Directors Meeting/Michael Smith, Sr.'s and Robert Smith's First Trades**

59. As noted above, Golden Enterprises board of directors, including Nall, Sr., first discussed the sale of the company on November 17, 2015. On Friday and Saturday, November 20 and 21, 2015, “right around” the time that Nall first learned about the possibility of Golden Enterprises being sold, Nall (who was in Birmingham) and Hale Smith (who was in Thomaston) had telephone conversations lasting 13 minutes and 19 minutes.

RESPONSE: Nall admits that on November 20 and 21, 2015, he was in Birmingham. Nall admits that he learned of the possibility of Golden Enterprises being sold in or around November 2015. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 59 and on that basis denies them.

60. Although Nall and Hale Smith spoke by phone regularly, these calls lasted for an unusually long time.

RESPONSE: Nall admits that he and Hale Smith spoke by phone regularly. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 60 and on that basis denies them.

61. Both Hale Smith and his father Michael Smith, Sr. were in Thomaston at this time.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 61 and on that basis denies them.

62. On Tuesday, November 24, 2015, based on a tip from either Nall or Hale Smith, Michael Smith, Sr. purchased 2,000 shares of Golden Enterprises stock in his own account. Michael Smith, Sr. placed the orders electronically without using a broker. The same day, he

opened an IRA account in his wife's name and soon after electronically purchased 5,000 more shares of Golden Enterprises stock in her account.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 62 and on that basis denies them.

63. Neither Michael Smith, Sr. nor his wife had ever held Golden Enterprises stock before these purchases.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 63 and on that basis denies them.

64. Michael Smith, Sr.'s initial purchase in his own account represented approximately three percent of the account balance at that time, while his initial purchase in his wife's account was the only equity position.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 64 and on that basis denies them.

65. A few days later, Defendant Robert Smith opened a Vanguard rollover IRA account with a \$500 deposit, and then, based on a tip from either Hale Smith or Michael Smith, Sr., purchased 100 shares of Golden Enterprises' stock for \$483.35.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 65 and on that basis denies them.

66. Robert Smith did not hold any other positions in this account for at least the following 20 months.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 66 and on that basis denies them.

ii. *March 4, 2016 Special Committee Meeting/Trading by Tutt and Michael Smith, Sr.*

67. On Thursday, January 28, 2016, Michael Smith, Sr. sold all but approximately \$500 of the Golden Enterprises stock in his account (but did not sell any shares in his wife's account). Thereafter Michael Smith, Sr. continued to purchase Golden Enterprises stock, and did not make any further sales until after the merger was announced.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 67 and on that basis denies them.

67. On March 4, 2016, the company's financial advisor identified a two-step auction process that could "realistically maximize" shareholder value. The financial advisor also outlined a timeline for completion of the deal.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 67 and on that basis denies them. [Nall also notes that the SEC's Complaint contains a duplicate paragraph 67.]

68. On March 16, 2016, Nall, Sr. revisited the tax issues associated with the pending merger with his Nall Corp. partners. During that meeting or shortly thereafter, Nall was apprised of the developments in the merger negotiations.

RESPONSE: Nall admits that Nall Sr. revisited the tax issues associated with the potential merger with other individuals involved in Nall Corp. Nall lacks knowledge or

information sufficient to form a belief regarding the truth of the allegations in paragraph 68 and on that basis denies them.

69. On Thursday, March 17, 2016, Nall traveled from Birmingham to Thomaston, at least in part to join Hale Smith and Tutt for the opening weekend of turkey hunting season.

RESPONSE: Nall admits that on Thursday, March 17, 2016, Nall traveled from Birmingham to Thomaston to join Hale Smith, Tutt, and other individuals for the opening weekend of turkey hunting season. Nall denies any inference that there was an improper purpose for this trip.

70. On the morning of March 18, 2016, Tutt, based on a tip from either Nall or Hale Smith, texted his broker directing him to purchase \$20,000 of Golden Enterprises stock.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 70 and on that basis denies them.

71. This was the first order Tutt had placed in his account since he opened it on September 2, 2015.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 71 and on that basis denies them.

72. While his broker and Tutt had discussed other stocks during that period, they had never discussed Golden Enterprises stock prior to this text.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 72 and on that basis denies them.

73. Tutt changed his order to \$10,000 of Golden Enterprises stock after his broker texted back that the stock was thinly traded and near the top of its three-year range.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 73 and on that basis denies them.

74. On March 18, 2016, based on a tip from either Nall or Hale Smith, Michael Smith, Sr. also purchased 1,886 additional shares of Golden Enterprises stock (886 shares in his account and 1,000 shares in his wife's account).

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 74 and on that basis denies them.

iii. *March 23, 2016 Special Committee Meeting/Initial Trading by Hale Smith*

75. On March 23, 2016, the Special Committee met to compile a list of prospective buyers of the company. The next day, Nall and Hale Smith spoke on the phone twice for a total of 16 minutes. Nall and Hale Smith had five more short phone calls with each other from March 25, 2016 through March 27, 2016.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 75 and on that basis denies them.

76. Between March 29 and April 4, 2019, based on tips from Nall, Hale Smith purchased 10,555 shares of Golden Enterprises stock in his wife's IRA account.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks

sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 76 and on that basis denies them.

77. That account had not been used to trade any securities for at least the prior 15 months. Hale Smith placed the orders himself electronically.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 77 and on that basis denies them.

78. Hale Smith purchased an additional 635 shares of Golden Enterprises stock between April 4 and April 6, 2016 based on tips from Nall.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 78 and on that basis denies them.

iv. *April 6, 2016 Special Committee Meeting/Trading by Hale Smith, Tutt, and Michael Smith, Sr.*

79. On April 6, 2016, the Special Committee met to discuss prospective buyers that were to be included in the auction process, including several that would, in the opinion of the company's financial advisor, be "highly interested in a transaction," including Utz. The auction process was expected to take place over a two-month period.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 79 and on that basis denies them.

80. The board of directors was formally updated on April 7, 2016. However, Nall, Sr. knew such details before attending the April 7, 2016 board meeting.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 80 and on that basis denies them.

81. Specifically, notes made by one of the Nall Corp. partners indicate that Nall, Sr. updated the partners, including Nall, on April 5, 2016, indicating that the deal would happen “sooner rather than later.”

RESPONSE: Nall admits that a note made by one of the individuals involved in Nall Corp. indicates that Nall, Sr. updated the other individuals in Nall Corp., including Nall, on April 5, 2016, and Nall refers to the text of that note for a complete statement of its contents. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 81 and on that basis denies them.

82. On April 6, 2016, Nall and Hale Smith had six phone calls with each other.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 82 and on that basis denies them.

83. Between April 7 and April 18, 2016, based on tips from Nall, Hale Smith purchased an additional 4,000 shares of Golden Enterprises stock.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 83 and on that basis denies them.

84. During the same time, based on tips from either Nall or Hale Smith, Michael Smith, Sr. purchased an additional 500 shares; and Tutt purchased an additional 1,869 shares.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 84 and on that basis denies them.

v. *April 18, 2016 Special Committee Meeting/Trading by Robert Smith, Hale Smith, and Michael Smith, Sr.*

85. On April 18, 2016, the Special Committee held a meeting in which they finalized the list of buyers to participate in the auction process. At this meeting, the company's financial advisor indicated that "the climate of the financial markets was favorable" for a sale.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 85 and on that basis denies them.

86. Later that day, Hale Smith and Nall had two short phone calls.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 86 and on that basis denies them.

87. Between April 18 and April 19, 2016, based on tips from Nall, Hale Smith purchased 4,000 shares of Golden Enterprises stock.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 87 and on that basis denies them.

88. During that same time, Michael Smith, Sr. purchased an additional 3,550 shares of Golden Enterprises stock based on tips from either Nall or Hale Smith.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 88 and on that basis denies them.

89. On April 19, 2016, based on tips from either Hale Smith or Michael Smith, Sr., Robert Smith also purchased Golden Enterprises stock in a brokerage account that he opened only two weeks earlier, and funded with a \$13,000 cash deposit.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 89 and on that basis denies them.

90. Michael Smith, Sr. gave Robert Smith the money to make this purchase.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 90 and on that basis denies them.

91. Until late June, 2018, there was little new information from the Special Committee concerning progress on the sale, as the prospective buyers were conducting due diligence. During this period, Hale Smith purchased an additional 3,694 shares of Golden Enterprises stock based on tips from Nall, and Robert Smith purchased an additional 517 shares based on tips from either Hale Smith or Michael Smith, Sr.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 91 and on that basis denies them.

vi. *June 28, 2016 Special Committee Meeting/Trading by Michael Smith, Sr., Robert Smith, and Tutt*

92. On June 28, 2016, the Special Committee was updated by the Company's financial advisor concerning the progress made by the auction participants with respect to their due

diligence. The critical takeaway was that Utz and another company indicated their desires to move forward as quickly as possible.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 92 and on that basis denies them.

93. Nall, Sr. likely learned of this information, and shared it with Nall, prior to this meeting. Specifically, while the negotiations were ongoing, members of the Special Committee were periodically provided with “process update materials,” which outlined the specific progress made by each company in the due diligence process.

RESPONSE: Nall denies that he learned of this information prior to this meeting. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 93 and on that basis denies them.

94. Nall travelled to Thomaston from June 23, 2016 through June 25, 2016.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 94 and on that basis denies them.

95. On June 24, 2016, Nall wrote Hale Smith a check for \$27,000 purportedly to cover expenses associated with one of their joint business ventures. Hale Smith deposited the check into his personal banking account and, based on tips from Nall, used a substantial amount of these funds to purchase an additional 4,000 shares of Golden Enterprises stock on June 27, 2016.

RESPONSE: Nall admits that on June 24, 2016, Nall wrote Hale Smith a check for \$27,000 to cover actual or anticipated expenses related to one of their joint business ventures. Nall denies that, on or about June 24, 2016, he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall

lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 95 and on that basis denies them.

96. Hale Smith also purchased 3,000 shares on July 6, 2016 based on tips from Nall.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 96 and on that basis denies them.

97. Between June 24 and July 6, 2016, Michael Smith, Sr. purchased 4,548 shares and Tutt purchased 1,359 shares of Golden Enterprises stock, based on tips from Nall or Hale Smith.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 97 and on that basis denies them.

98. During this same time, Robert Smith received a cash deposit of \$20,000 from an unknown source and used those fund to purchase 3,027 additional shares of Golden Enterprises stock.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 98 and on that basis denies them.

vii. **July 12, 2016 Special Committee Meeting/Trading by Hale Smith, Robert Smith, and Tutt**

99. The Special Committee met on July 12, 2016. At the meeting, Golden Enterprises' financial advisor indicated that the only final bid submitted was from Utz, which was prepared to offer \$11.50 per share, more than previously expected by the company.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 99 and on that basis denies them.

100. Nall, Sr. told one of his partners about Utz's offer (including the share price) on July 11, 2016 showing that Nall, Sr. obtained information about the merger before the Special Committee meeting.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 100 and on that basis denies them.

101. Between July 11, 2016 and July 18, 2016, Nall and Hale Smith had a flurry of 25 telephone calls with a total duration of more than 3 hours.

RESPONSE: Nall denies the characterization of any phone calls as a "flurry" as vague and ambiguous. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 101 and on that basis denies them.

102. On July 15, 2016, based on a tip from Nall, Hale Smith purchased 5,000 shares, Robert Smith purchased 1,166 shares, and Tutt purchased 2,631 shares of the Company's stock.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 102 and on that basis denies them.

103. After the deal was announced on July, 19, 2016, the trading defendants sold all of their shares, realizing total profits of approximately \$437,000.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 103 and on that basis denies them.

104. The day the merger was announced, Michael Smith, Sr. called Nall for 12 minutes. This call was only the second time Michael Smith, Sr. and Nall had spoken on the phone all year; the only other occasion was a week earlier.

RESPONSE: Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 104 and on that basis denies them.

Hale Smith and Tutt Each Contribute to Nall's "Charity" Project

105. Shortly after Nall learned of the proposed sale of Golden Enterprises (and tipped Hale Smith), Nall and Hale Smith developed a plan to help revitalize Thomaston's "dying" downtown by purchasing and renovating an old "general store" and potentially using it as a deer-hunting museum.

RESPONSE: Nall denies that he misappropriated material non-public information and that he tipped Hale Smith, Michael Smith, Sr., Robert Smith, or Tutt. Nall admits that he and Hale Smith developed a plan to revitalize Thomaston, Alabama by purchasing and renovating an old "general store" and potentially using it as a deer-hunting museum. Nall denies any inference connecting the plan to revitalize Thomaston, Alabama to any trading activity in Golden Enterprises stock. Nall denies the remaining allegations in paragraph 105.

106. Immediately before Tutt began trading in Golden Enterprises stock, he agreed to relocate his real estate business to the top floor of that building.

RESPONSE: Nall admits that, in 2016, Tutt agreed to relocate his real estate business to the top floor of that building. Nall denies any inference connecting the agreement to any trading activity in Golden Enterprises stock. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 106 and on that basis denies them.

107. Nall, who had adopted Thomaston as his “second hometown,” has described the project as a “charity” that carried no realistic prospects of any associated economic returns.

RESPONSE: Nall denies that he had adopted Thomaston as his second hometown. Nall admits that he understood the project was a potentially charitable endeavor with uncertain prospects of making a profit. Nall denies the remaining allegations of paragraph 107.

108. Through a complex ownership structure, an entity owned by Hale Smith, Nall, and Michael Smith, Jr. split the cost and renovation of the building with Tutt. Tutt contributed approximately \$177,000 to the cost of the building, and Hale contributed approximately \$60,000.

RESPONSE: Nall denies that the ownership structure was complex. Nall admits that Nall, Hale Smith, Michael Smith, Jr., and Tutt split the renovation cost of the building consistent with their ownership interests. Nall lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 108 and on that basis denies them.

109. After Hale Smith sold his Golden Enterprises shares, he opened a checking account — in the name of the limited liability company that he and Nall were using to invest in the building —and deposited \$27,000 as repayment of the “loan” from Nall that Hale Smith had used for a portion of his earlier Golden Enterprises stock purchases.

RESPONSE: Nall admits that Hale Smith opened a checking account in the name of the limited liability company that he and Nall were using to invest in the building and deposited the amount that Nall had previously advanced to the to-be-formed limited liability company to cover any business expenses prior to the formation of the limited liability company and availability of a company bank account. Nall lacks sufficient knowledge to

form a belief as to the truth or falsity of the allegations in paragraph 109 and on that basis denies them.

CLAIM FOR RELIEF

COUNT I—FRAUD

110. Paragraphs 1 through 109 are hereby realleged and are incorporated herein by reference.

RESPONSE: Nall incorporates his defenses and responses to paragraphs 1 through 109 of the Complaint as if fully set forth herein.

111. Defendants Nall, Hale Smith, Michael Smith, Sr., Robert Smith and Tutt, in 2015 and 2016, singly or in concert, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a) employed devices, schemes, and artifices to defraud;
- b) made untrue statements of material facts and 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; and
- c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above

RESPONSE: Nall denies the allegations in paragraph 111.

112. The Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of

business. In engaging in such conduct, the Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

RESPONSE: Nall denies the allegations in paragraph 112.

113. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to 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].

RESPONSE: Nall denies the allegations in paragraph 113.

PRAYER FOR RELIEF

Nall denies that the SEC is entitled to any of the relief requested.

ALLEGATIONS NOT SPECIFICALLY ADMITTED

Nall denies any and all allegations in the Complaint that are not specifically admitted above in their entirety, including, in particular, any allegations contained in the section and subsection headings of the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

Nall asserts the following known affirmative defenses. In asserting these defenses, Nall does not assume the burden of proof with respect to any issue as to which applicable law places the burden of proof upon the SEC.

FIRST DEFENSE

The Complaint fails to state any claim against Nall upon which relief may be granted.

SECOND DEFENSE

The Complaint fails to plead fraud with the particularity required by Federal Rule of Civil Procedure 9(b).

THIRD DEFENSE

The SEC's claims fail as a matter of law for lack of causation.

FOURTH DEFENSE

The SEC's claims fail because Nall did not perform any act alleged with the required level of knowledge, intent, or scienter.

FIFTH DEFENSE

The SEC's claims fail as a matter of law because Nall did not receive any benefit as a result of the actions alleged.

SIXTH DEFENSE

The SEC's claims fail a matter of law because Nall did not act with the expectation of receiving a benefit.

SEVENTH DEFENSE

The SEC's claims fail as a matter of law because Nall did not misappropriate material non-public information and, to the extent Nall received any benefit, he had no knowledge that anything provided to him was a benefit in exchange for nonpublic information.

EIGHTH DEFENSE

The SEC's claims fail as a matter of law because Nall did not misappropriate material non-public information and, even if any information was disclosed, it was not material and/or was not non-public.

NINTH DEFENSE

The SEC's claims fail as a matter of law because Nall did not misappropriate material non-public information. Notwithstanding the foregoing, even if Nall disclosed any information, it was disclosed to a recipient who agreed to maintain the information in confidence.

TENTH DEFENSE

The SEC's claims fail as a matter of law because Nall did not misappropriate material non-public information. Notwithstanding the foregoing, even if Nall disclosed any information, it was communicated to person(s) with whom Nall had a history, pattern, or practice of sharing confidences such that the recipient knew or should have known that the information was to remain confidential.

ELEVENTH DEFENSE

The Complaint and each count thereof fail to allege facts and fail to make a showing sufficient to support any granting of injunctive relief because Nall's history is inconsistent with the likelihood of any future violation of the securities laws. Therefore, the SEC cannot establish that there is a reasonable likelihood that Nall would violate the securities laws in the absence of injunctive relief.

TWELFTH DEFENSE

The Complaint and each count thereof fail to allege facts and fail to make a showing sufficient to support an order of disgorgement because there is no evidence that Nall wrongfully obtained profits by reason of the conduct alleged in the Complaint or that disgorgement is necessary for deterrence purposes.

THIRTEENTH DEFENSE

The Complaint and each count thereof fail to allege facts and fail to make a showing sufficient to support the imposition of any civil penalties.

FOURTEENTH DEFENSE

Nall reserves the right to timely raise any additional affirmative defenses not yet asserted which he becomes aware of through discovery, other investigation, or additional disclosures by the SEC.

CONCLUSION

As a final response to the Complaint, Nall denies each and every allegation that is not otherwise admitted in this Answer.

Dated: October 23, 2019

Respectfully submitted,

/s/ J. Mark White

/s/ Gregg M. McCormick

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 23, 2019, the foregoing **ANSWER** was filed electronically via the Court's CM/ECF filing system and served on all counsel of record as follows:

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