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Approved: _____

PABLO QUIÑONES
REED BRODSKY
Assistant United States Attorneys

Before: HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA : SEALED COMPLAINT

- v. -

YVES BENHAMOU,

Defendant.

: Violation of
18 U.S.C. § 371; 15 U.S.C.
§§ 78j(b), 78ff; 17 C.F.R.
§ 240.10b-5

: COUNTY OF OFFENSE:
NEW YORK

- - - - - X

SOUTHERN DISTRICT OF NEW YORK, ss.:

MICHAEL HOWARD, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

(Conspiracy to Commit Securities Fraud)

1. From at least in or about November 2007 through and including in or about January 2008, in the Southern District of New York and elsewhere, YVES BENHAMOU, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

2. It was a part and object of the conspiracy that YVES BENHAMOU, the defendant, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices,

schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon the purchaser and seller, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Overt Acts

3. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt act, among others, was committed in the Southern District of New York and elsewhere:

a. On or about January 18, 2008, YVES BENHAMOU, the defendant, communicated with a co-conspirator not named herein ("CC-1"), which led CC-1 to cause a certain hedge fund group (the "Hedge Fund") to sell all of its remaining common stock in Human Genome Science, Inc. ("HGSI"), a biopharmaceutical company whose shares traded in the NASDAQ stock market in Manhattan.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Securities Fraud)

4. From in or about November 2007 through in or about January 2008, in the Southern District of New York and elsewhere, YVES BENHAMOU, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, BENHAMOU, while working as a consultant to HGSI, disclosed material nonpublic information to the Hedge Fund about an HGSI clinical drug trial that caused the Hedge Fund to sell approximately six million shares of HGSI, a publicly traded

company on the NASDAQ stock market, and thereby avoid approximately \$30 million in losses.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5; and
Title 18, United States Code, Section 2.)

The basis for my knowledge and the foregoing charges is, in part, as follows:

5. I have been a Special Agent with the Federal Bureau of Investigation for approximately three years. I am currently assigned to a squad responsible for investigating violations of the federal securities laws and related offenses. I have participated in investigations of these offenses and in arresting individuals for participating in such offenses.

6. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources and agents, including: (a) information provided to me by the United States Securities and Exchange Commission (the "SEC"); (b) telephone records; (c) trading records from banks and broker-dealers; (d) e-mails and other documents prepared by YVES BENHAMOU, the defendant, and his co-conspirators; and, (e) publicly available documents. Because this affidavit is prepared for limited purposes, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part. Where dates, figures, and calculations are set forth herein, they are approximate.

Relevant Entities and Individuals

7. Based on my review of public records and documents obtained from the SEC, I have learned the following:

8. YVES BENHAMOU, the defendant, is a citizen of France and a medical doctor with an expertise in hepatitis treatment.

9. At all relevant times, BENHAMOU worked for HGSI on a steering committee that oversaw the conduct of the Achieve Trial of Albuferon (the "Steering Committee"), a potential drug to treat the liver disease Hepatitis C.

a. At all relevant times, HGSI was a Delaware corporation headquartered in Rockville, Maryland, that operated

as a biopharmaceutical company. HGSI's common stock is registered with the SEC and quoted on the NASDAQ Global Market under the ticker symbol HGSI.

10. At the same time that YVES BENHAMOU, the defendant, served as a member of the Steering Committee and worked for HGSI, BENHAMOU consulted with hedge funds and other investors who purchased and sold securities in the healthcare sector.

11. At all relevant times, the Hedge Fund was a privately owned hedge fund sponsor, operating as a subsidiary of a major investment management company (the "Investment Management Company"). The Hedge Fund had offices in Greenwich, Connecticut; New, York, New York; and London, England.

a. From in or about November 2007 through in or about January 2008, a co-conspirator not named herein ("CC-1") worked for the Hedge Fund as a portfolio manager for healthcare funds with the authority to cause the Hedge Fund to sell its shares of HGSI. The Hedge Fund also paid substantial fees to another company, for which BENHAMOU worked as a consultant, to allow CC-1 and others at the Hedge Fund to consult with, among others, BENHAMOU about his expertise in the healthcare sector.

Confidentiality

12. Based on my experience and information obtained from the SEC, I know that HGSI required the members of the Steering Committee, including YVES BENHAMOU, the defendant, to keep any nonpublic information concerning HGSI confidential, including information about the Achieve Trial, and prohibited Steering Committee members from disclosing confidential Achieve Trial information because, among other reasons, the disclosure and trading on the basis of such information would violate the securities laws.

13. On or about July 3, 2004, HGSI and BENHAMOU entered a "Unilateral Confidential Disclosure Agreement For Human Genome Sciences Confidential Information" (the "HGSI Confidentiality Agreement"). Pursuant to the HGSI Confidentiality Agreement, BENHAMOU agreed to not disclose HGSI's confidential information, and to take reasonable steps to prevent accidental or other loss of HGSI's confidential information, for a period of ten years from the date the confidential information was disclosed to BENHAMOU.

14. On or about January 25, 2008, BENHAMOU signed a "Human Genome Sciences Consulting Agreement" (the "HGSI Consulting Agreement") that HGSI and BENHAMOU made effective on

February 1, 2007, pursuant to its terms. The HGSI Consulting Agreement provided, in relevant part, that HGSI's information "will not be disclosed to any person or entity or used by [BENHAMOU] for any purpose other than for the benefit of HGS."

15. On or about May 14, 2009, during an interview by French financial investigators and in the presence of two SEC enforcement officials, BENHAMOU acknowledged that any information he received as a member of the Steering Committee of HGSI was confidential and that, although he had not signed the HGSI Consulting Agreement until January 2008, he considered himself bound to maintain the information he received confidential from the establishment of the Steering Committee in or about early 2007.

16. I also know based on my experience that hedge funds distribute policies and procedures to their employees that prohibit trading based on confidential, nonpublic information. In particular, the Hedge Fund required its employees, including CC-1, to acknowledge receipt of an "Employee Trading Policy and Code of Ethics," which, among other things, prohibited employees from using material nonpublic information when trading in publicly held stocks and advised employees of the potential penalties of insider trading, including the existence of criminal penalties for such conduct.

Insider Trading in the Securities of HGSI

17. Unless otherwise specifically stated, based on my review of documents received from the SEC and electronic communications and records, I have learned the following:

a. From February 1, 2007 through December 3, 2007, the Hedge Fund purchased approximately 6.2 million shares of HGSI at an average price of approximately \$10.32 per share, totaling approximately \$64 million.

b. In late November 2007, HGSI learned that during the third phase and late stage development of its clinical trial of Albuferon two participants suffered serious adverse events: one participant later died and another developed lung disease from possible side effects of the 1200-mcg dosage they were receiving.

c. By at least December 1, 2007, HGSI, YVES BENHAMOU, the defendant, and other Steering Committee members were communicating to determine how to respond to these serious adverse events.

d. On or about December 5, 2007, HGSI sent an e-mail to members of the Steering Committee indicating that the trial's independent safety committee believed that the serious adverse events required further examination.

e. On or about December 7, 2007, CC-1 sent an instant message to a trader at the Hedge Fund ("Trader-1") that directed Trader-1 to "sell 30 100 150 bps [basis points]¹ hgsi for the funds and sell 75 bps for fcn."

f. By on or about December 7, 2007, the independent safety committee had become more alarmed and was considering whether to recommend stopping part of the clinical trial. In response, on December 9, 2007, HGSI held a conference call with the Steering Committee, which call was scheduled in a way to allow BENHAMOU to participate while attending a Hepatitis conference in Hawaii.

g. On December 10, 2007, BENHAMOU and CC-1 exchanged the following e-mail:

Benhamou: "I'm at the hep dart [medical conference] in Hawaii, when can we talk?"

CC-1: "Now? [cellular telephone number provided]"

h. Based on my review of the cellular telephone records for the number provided by CC-1 in his December 10, 2007 e-mail, I have learned that shortly after that e-mail, the cellular telephone used by CC-1 was in contact with BENHAMOU's cellular telephone for approximately five minutes. CC-1's cellular telephone records also show that immediately after the call with BENHAMOU, CC-1's cellular telephone called a land line telephone at the Hedge Fund for a portfolio manager ("Manager-1") who, along with others, managed the healthcare funds.

i. During the time that the cellular telephone of CC-1 was in contact with the land line of Manager-1, Manager-1 exchanged the following instant messages with Trader-1:

Manager-1: "[Trader-1] load up to sell ½ the HGSI in the funds; no rush, work w/volume"

¹ A basis point is a 1/100th of 1 percent or .01 percent.

Trader-1: "ok, I am still working order from Friday, sold 335K at 10.83 [leaves] 163K"

Manager-1: "[o]k"
"keep working more"

Trader-1: "got it"

j. Less than a minute after Manager-1 ordered Trader-1 to sell half of the Hedge Fund's shares in HGSI, CC-1 sent an e-mail to BENHAMOU that stated the following:

CC-1: "Let's keep this very confidential. Thanks shaun [sic] for calling. I will get back to you."

k. On December 12, 2007, CC-1 exchanged instant messages with another portfolio manager at the Hedge Fund ("Manager-2") referring to the results of the HGSI clinical trial and to the Hepatitis conference BENHAMOU was attending in Hawaii:

CC-1: "I think we should reduce the size of our sale in hgsi to 1/3 instead of 1/2"
"interferon's are known to have infections associated with them"

Manager-2: "reason?"

CC-1: "it's 2 cases in over 4k patients"

Manager-2: "fair p[o]int"
"plus movement forward with pipeline"
"GLP and LPPLA2 [two other drugs HGSI was developing]"

CC-1: "yeah"
"exactly"
"people will be bullish on this"

Manager-2: "agreed"

CC-1: "The meeting is g[o]ing on right now in hawaii and no one is saying anything about this"

l. Less than a minute later, CC-1 sent Trader-1 and instant message asking him to "reduce the size of the sell to dump 1/3."

m. From December 7, 2007, to December 18, 2007, the Hedge Fund sold approximately 2.9 million, or nearly 47 percent, of its HGSI shares at an average price of \$10.65 per share.

n. On December 12, 2007, the HGSI independent safety committee met and permitted the clinical trial of Albuferon to continue with the understanding that, after reviewing the additional clinical data requested from the trial sites, it would meet again to determine whether to recommend that HGSI stop a part of the clinical trial based on the reported adverse events.

o. By January 8, 2008, the Steering Committee, including BENHAMOU, the defendant, knew that the independent safety committee would meet on January 17, 2008, to give its recommendation. This information was not publicly known.

p. On January 10, 2008, BENHAMOU, the defendant, sent CC-1 an e-mail, stating, in part, that:

As I am thinking to put money in the stock I would like to have your opinion on [1.] Human Genome, do you think that stock will go up? What price? [W]hen? [2.] Do you have any information on KING PHARMA? Any other ideas for the near future[.]

In response, CC-1 stated "I think HGSI is a good company and not currently reflecting the value of albuferon. . let alone the rest of their pipeline . . . but rest is VERY high risk. The stock will go up based on albuferon data . . . this year." CC-1 further provided BENHAMOU investment advice about two other pharmaceuticals companies.

q. On January 17, 2008, CC-1 sent BENHAMOU, the defendant, an e-mail that asked "Want to touch base today?"

r. On January 17, 2008, the HGSI independent safety committee recommended that HGSI stop a part of the clinical trial of Albuferon. This information was not publicly known.

s. On January 18, 2008, HGSI sent BENHAMOU, the defendant, an e-mail that (1) detailed the recommendation of the independent safety committee, (2) requested advice on how to convey the recommendation in a press release and in a letter to

the physicians conducting the clinical trial, including draft language, (3) requested advice from BENHAMOU about how to address physicians participating in the trial in Europe and outside of the United States, and (4) requested a time to discuss the matters by telephone.

t. Minutes after receiving the HGSI e-mail, BENHAMOU e-mailed CC-1 asking "When can I call you?" CC-1 responded "now? [number provided]."

u. Approximately seven minutes later, CC-1 exchanged the following instant messages with Trader-1:

CC-1: "[Trader-1] sell the hgsi"
"all of it"

Trader-1: "ok"

v. Subsequently, Trader-1 contacted a certain investment bank (the "Investment Bank") and asked it for a bid to buy all of the Hedge Fund's remaining shares of HGSI. The Investment Bank made a bid that was rejected by the Hedge Fund, which then proceeded to sell HGSI into the market. By the end of the day on January 18, 2008, Trader-1 had sold nearly 700,000 shares of HGSI at an average price of approximately \$10.72 share.

w. During the weekend of January 19 to January 21, 2008, BENHAMOU, the defendant, worked with executives of HGSI on formulating HGSI's communications to physicians participating in the clinical trial and agreed to participate in responding to questions about the recommendation to discontinue part of the clinical trial.

x. On January 22, 2008, the first trading day after the Martin Luther King, Jr., Holiday weekend and the day before HGSI publicly disclosed the two serious adverse events which occurred during Phase III of the Albuferon clinical trial, CC-1 and BENHAMOU exchanged the following e-mails:

CC-1: "are you around for a quick call today
Love to catch up."

Benhamou: "you can call now [number provided]"

CC-1: "calling"

y. Based on my review of the Hedge Fund's telephone records, I have learned that on January 22, 2008, a call was placed to the telephone number that BENHAMOU provided at approximately the same time that CC-1 indicated that he was

calling BENHAMOU. The telephone records indicate that the conversation lasted approximately 14 minutes. At the same time that this telephone call was taking place, CC-1 exchanged the following instant messages with Trader-1:

CC-1: "[Trader-1], try and get a little more aggressive with hgsi"

Trader-1: "ok"
"225K out of 980 is pretty aggressive but I hear you"

CC-1: "i show we still own 2.3 m[illion] shares."
"is that right"

Trader-1: "yes, we held over 3MM"

CC-1: "ok"
"Work out of all of it"

* * * *

CC-1: "i think the stock could see 7 or 8"

z. On January 22, 2008, the Hedge Fund sold approximately 600,000 HGSI shares at an average price of \$10.37 per share. Near the end of the day, Trader-1 contacted the Investment Bank again and asked it to bid on the remaining approximately 2 million shares. The Investment Bank offered less than before and the Hedge Fund accepted, thereby successfully liquidating all of its HGSI shares before the market closed.

The HGSI Share Price Following the Public Disclosure

18. On January 23, 2008, HGSI issued its press release about its independent safety committee's recommendation and its decision to stop a part of its Albuferon clinical trial. On the same day, HGSI sent its letter to the physicians participating in the clinical trial.

19. The press release provided, in relevant part, that:

HUMAN GENOME SCIENCES MODIFIES DOSING IN ACHIEVE TRIALS
OF ALBUFERON®

ROCKVILLE, Maryland - January 23, 2008 - Human Genome Sciences Inc. (Nasdaq: HGSI) announced today that it will modify the dosing in one arm of each of its

ACHIEVE clinical trials of Albuferon® (albinterferon alfa-2b) for chronic hepatitis C. Patients in the Phase 3 trials who have been receiving the 1200-mcg dose will now receive a 900-mcg dose. The change is based on recommendations made by the studies' independent Data Monitoring Committee (DMC). HGS continues to expect to have all Phase 3 data available by spring 2009 to support the filing of global marketing authorization applications by fall 2009.

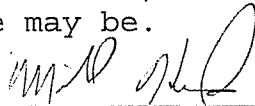
* * *

Consistent with its charter, the DMC routinely reviews all adverse events for each treatment group. Serious pulmonary adverse events, while expected and rare during interferon therapy, were higher in the treatment group receiving 1200-mcg Albuferon administered every two weeks. The DMC did not express any safety concerns about the 900-mcg dose of Albuferon. Based on the DMC's review and conclusions, the patients receiving a 1200-mcg dose of Albuferon will be moved to the 900-mcg dose.

20. As a result of this negative announcement, HGSI's share price dropped from approximately \$10.02 a share at the close of the previous day, to approximately \$5.62 a share at the close of January 23, 2008 - a 44 percent decline in the share value of HGSI.

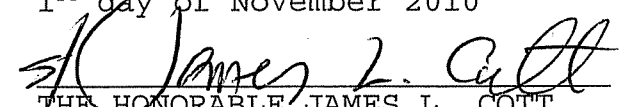
21. By selling more than 6 million shares of HGSI before HGSI made its January 23, 2008 public announcement, the Hedge Fund avoided losses totaling approximately \$30 million.

WHEREFORE, deponent prays that an arrest warrant be issued for YVES BENHAMOU, the defendant, and that he be imprisoned or bailed as the case may be.



MICHAEL HOWARD
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this
1st day of November 2010



THE HONORABLE JAMES L. COTT
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK