UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,                                  :
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                              Plaintiff,                             :
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          - against –                                               :      10 Civ. 457 (GLS)
                                                                     :
MCGINN SMITH & CO., INC. ET AL,                                      :
                                                                     :
                              Defendants,                            :
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NOTICE TO PRO SE LITIGANT NANCY MCGINN OF CONSEQUENCES OF FAILING TO PROPERLY RESPOND TO PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Securities and Exchange Commission has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in this case. This means that the plaintiff has asked the Court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. THE CLAIMS ASSERTED IN THE PLAINTIFF'S SECOND AMENDED COMPLAINT MAY BE DETERMINED AGAINST YOU WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION ON TIME by filing sworn affidavits and/or other documents as required by Rule 56(c) of the Federal Rules of Civil Procedure .

In short, Rule 56 provides that you may NOT oppose summary judgment simply by relying upon the statements and allegations in your answer. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the plaintiff and raising specific facts that support your defense or claims. If you have proof of your defense or claims, now is the time to submit it. Any witness statements must be in the form of affidavits.

An affidavit is a sworn statement of fact based on personal knowledge stating facts that would be admissible in evidence at trial. You may submit your own affidavit and/or the affidavits of others. You may submit affidavits that were prepared specifically in response to plaintiff's motion for summary judgment.

If you do not respond to the motion for summary judgment on time with affidavits and/or documents contradicting the material facts asserted by the plaintiff, the Court may accept plaintiff's facts as true. The plaintiff's case may be determined against you and judgment may be entered in plaintiff's favor without a trial.

A copy of the Court's "Notice of the Consequences of Failing to Respond to A Summary Judgment Motion" is attached hereto. While it is phrased from the perspective of a pro se plaintiff receiving a summary judgment motion filed by a defendant, its instruction apply equally to a pro se defendant who receives a summary judgment motion filed by a plaintiff, as is the case here. Please read and follow the instructions carefully.

If you have any questions, you may direct them to the Pro Se Office.

Dated: New York, New York
      July 8, 2014

SECURITIES AND EXCHANGE COMMISSION

By: _____
      Kevin P. McGrath
      David Stoelting
      3 World Financial Center, Room 400
      New York, New York 10281-1022
      Tel: (212) 336-0533 (McGrath)
      Tel: (212) 336-0174 (Stoelting)
      Fax: (703) 813-9544

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NOTIFICATION OF THE CONSEQUENCES OF FAILING TO RESPOND TO A SUMMARY JUDGMENT MOTION

The defendants have moved for **summary judgment** under Federal Rule of Civil Procedure 56. A motion for summary judgment asks the Court to make a final judgment dismissing some or all of your claims. If you do not file a proper response to this motion, the Court may grant the motion **and dismiss some or all of your claims**. Under Local Rule 7.1(a), to file a proper response to this motion, you must submit the following papers:

(1)   A **response to the defendants' statement of material facts** that admits and/or denies each of the defendants' assertions in matching numbered paragraphs,[1] and that supports each denial with citations to record evidence;[2]

(2)   Copies of all **record evidence** that you cite in your response to the defendants' statement of material facts;[3] **AND**

(3)   A **response memorandum of law** (no more than 25 pages long and formatted in compliance with Local Rule 10.1) that responds to each of the legal arguments contained in the defendants' memorandum of law, and that contains any additional legal arguments you may have in response to the defendants' motion for summary judgment.

WARNING: If you do not submit a proper response to the defendants' statement of material facts, **the Court may deem you to have admitted the defendants' factual statements**. If you do not submit copies of record evidence in support of your denials, **the Court may deem defendants' factual statements to be true**. If you do not submit a proper response memorandum of law, **the Court may deem you to have conceded the defendants' arguments**. If you do not respond to this motion properly (or at all), summary judgment may be entered against you, meaning that **SOME OR ALL OF YOUR CLAIMS MAY BE DISMISSED.**

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[1] In other words, your paragraph "1" should admit or deny defendants' paragraph "1," your paragraph "2" should admit or deny defendants' paragraph "2," and so on. Any additional material facts you wish to raise must be set forth separately from your admissions or denials of the defendants' statements of material facts.

[2] In certain circumstances, instead of admitting or denying a statement of material fact, you may dispute it by "*showing* that the materials cited [by the defendants] do not establish the absence . . . of a genuine dispute [of fact]." Federal Rule of Civil Procedure 56(c)(1)(B) (emphasis added).

[3] Record evidence includes material in the record such as "depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Federal Rule of Civil Procedure 56(c)(1)(A). If you submit an affidavit in support of your response, it "must be made on personal knowledge, set forth facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Federal Rule of Civil Procedure 56(c)(4).

Updated 7/11/2011