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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**CV 08 80 189 MISC WHA**

SECURITIES AND EXCHANGE COMMISSION,  
Applicant,  
vs.  
CHARLES ADAMS,  
Respondent.

Misc. No. \_\_\_\_\_

**SECURITIES AND EXCHANGE  
COMMISSION'S APPLICATION FOR AN  
ORDER COMPELLING COMPLIANCE  
WITH ADMINISTRATIVE SUBPOENAS  
AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

[ORAL ARGUMENT REQUESTED]



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Securities and Exchange Commission, the federal agency charged with protecting  
4 investors in America's securities markets, respectfully invokes the aid of the Court to enforce  
5 administrative subpoenas issued to a witness in a Commission investigation.

6 Congress has vested the Commission with broad authority to investigate possible violations of  
7 the federal securities laws and to subpoena documents and testimony in such investigations.

8 Exercising this authority, the Commission instituted a nonpublic, formal investigation titled "In Re  
9 Pegasus Wireless Corporation, Inc." Pegasus Wireless Corporation is a once-high-flying, now-  
10 bankrupt penny stock company that made extravagant claims about certain acquisitions and then  
11 mysteriously issued hundreds of millions of shares of stock to satisfy so-called debts that previously  
12 had never been publicly disclosed. In the investigation, the Commission validly served subpoenas for  
13 documents and testimony on Charles Adams, an individual that has relevant information about  
14 Pegasus and about statements the Company made in its Commission filings.

15 Adams has failed to respond to the subpoenas served on him. He has not produced a single  
16 document in response to the subpoenas, and he has failed to appear for testimony on the required  
17 dates. The federal securities laws authorize this Court to issue an order compelling Adams to appear  
18 for testimony and produce documents. The subpoenas here readily satisfy the requirements for  
19 enforcement. As discussed in detail below, the Commission respectfully requests the Court to issue  
20 an order compelling Adams to comply with the subpoenas.

21 **II. STATEMENT OF FACTS**

22 **A. The Commission's Investigation Relating to Pegasus Wireless**

23 In 2004, Pegasus, then named Blue Industries, Inc., was a struggling penny stock company  
24 with virtually no cash or assets and an accumulated deficit of more than \$3 million. Declaration of  
25 Susan Fleischmann ("Fleischmann Decl.") ¶ 2, Ex. 1. Its common stock was registered with the  
26 Commission under Section 12(g) of the Securities Exchange Act. Id. Following a series of reverse  
27 mergers, Pegasus became, ostensibly, a provider of wireless networking products. According to its  
28 filings with the Commission, between May 2005 and approximately November 2006, Pegasus'

1 principal executive offices were located in Fremont, California, and it continued to maintain offices  
2 in Fremont through approximately November 2006. Id. ¶ 3, Exs. 2-4.

3 In late 2005 and early 2006, Pegasus announced several acquisitions, all supposedly financed  
4 by the Company's CEO. Id. ¶ 4, Ex. 5. Pegasus' stock began to climb. On April 21, 2006, Pegasus  
5 shares began trading on the NASDAQ National Market, opening at \$14.45 per share. Id. ¶ 5, Exs. 6-  
6 7. But the stock steadily and substantially fell in the following months, as negative press articles  
7 questioned Pegasus' valuation and reported that the CEO and CFO had headed other penny stock  
8 companies whose stock rose and crashed in short periods of time. Id. ¶ 6, Exs. 8-9.

9 Also in mid 2006, Pegasus began issuing large amounts of shares, claiming it was doing so to  
10 satisfy debts incurred by Blue Industries that had not been previously disclosed to investors. Id. ¶ 7,  
11 Exs. 10-11. When the Commission staff requested documents relating to the so-called debts, Pegasus  
12 produced several promissory notes purportedly issued to Adams. Id. ¶ 8, Ex. 12. Between mid 2006  
13 and 2008, Pegasus issued nearly 500 million shares (more than 75% of the outstanding shares) based  
14 on promissory notes it claims were made out to Adams by Blue Industries.

15 Pegasus ultimately was delisted from the NASDAQ. Id. ¶ 9, Ex. 13. Since then, Pegasus  
16 shares have been quoted on the OTC Bulletin Board, where they trade for less than a penny. Id. ¶ 10,  
17 Ex. 14. On January 28, 2008, Pegasus filed for Chapter 11 bankruptcy protection in Southern  
18 Florida, where it maintains a mail box it describes as its principal place of business. Id. ¶ 11, Ex. 15.

19 On March 19, 2008, pursuant to Sections 19(c) and 20(a) of the Securities Act and Section  
20 21(a) and (b) of the Securities Exchange Act, the Commission issued an Order Directing Private  
21 Investigation and Designating Officers to Take Testimony in an investigation captioned, In the Matter  
22 of Pegasus Wireless Corp. (the "Formal Order"). See Fleischmann Decl. ¶ 12, Ex. 16; 15 U.S.C. §§  
23 77s(c) & 77t(a); 15 U.S.C. § 78u(a) & (b). The Formal Order directs the Commission staff to  
24 investigate, among other things, whether Pegasus and others violated Section 5 of the Securities Act,  
25 15 U.S.C. § 77e, by offering or selling stock without a registration statement or exemption, and  
26 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j (b), and Rule 10b-5 thereunder, by making  
27 materially false statements or omitting material facts in press releases and SEC filings about Pegasus'  
28 financing, business prospects, use of funds, and financial condition. Id. The Commission's

1 investigation is being carried out by the Commission's staff of attorneys and other professionals in its  
2 San Francisco Regional Office, which has issued more than 50 subpoenas and document requests to  
3 witnesses in no fewer than eight states.

4 **B. The Investigative Subpoenas and Respondent's Failure to Comply**

5 Adams appears to have knowledge regarding the alleged debt Pegasus began disclosing in mid  
6 2006. On June 18, 2008, the Commission's staff served Adams with a subpoena requesting  
7 documents and testimony by Federal Express at his home address. Fleischmann Decl. ¶ 13, Ex. 17.  
8 The return date for the documents was July 2, 2008, and Adams was required to appear in San  
9 Francisco for testimony on July 10, 2008. Adams failed to respond to the subpoena. Id. ¶ 14.

10 On July 10, 2008, the Commission staff issued a second, identical subpoena to Adams, this  
11 time requiring him to produce documents by July 25 and to appear for testimony in San Francisco on  
12 August 8. Id. ¶ 15, Ex. 18. This subpoena was served personally at his home address on July 15, Id.,  
13 as well as by Federal Express. Id., Ex. 19.¶

14 On August 3, 2008, Adams faxed a letter to the Commission staff. The letter was dated July  
15 23 and listed an address of "3133 Cambridge Road, #5, Cameron Park, California 95682," though the  
16 fax number from which it was received indicated a Florida area code. In the letter, Adams stated he  
17 had received the staff's subpoena and was seeking counsel. Fleischmann Decl. Ex. 20. This letter  
18 concluded, "As soon as I have found and retained an attorney, I or they will notify you." Id. On  
19 August 8, the Commission staff sent Adams a letter requesting that he provide, no later than August  
20 15, contact information for the attorney who would represent him in the investigation. Fleischmann  
21 Decl. Ex 21. The letter also advised Adams that if he continued to fail to respond to the subpoenas,  
22 the staff would seek judicial relief. Id.

23 Adams did not respond to the staff's August 8, 2008 letter. Fleischmann Decl. ¶ 18. On  
24 August 20, 2008 the staff served him with another identical subpoena by Federal Express. This  
25 subpoena required Adams to produce documents by August 29, 2008 and to appear for testimony in  
26 San Francisco on September 16, 2008. Fleischmann Decl. Ex. 22. Adams has not produced any  
27 documents in response to the subpoena and failed to appear for testimony on September 16, 2008. Id.  
28 ¶ 20.

1 **III. ARGUMENT**

2 **A. The Federal Securities Laws Authorize This Court to Enforce Commission**  
3 **Subpoenas.**

4 The Exchange Act states, “The Commission may, in its discretion, make such investigation as  
5 it deems necessary to determine whether any person has violated, is violating, or is about to violate  
6 any provision of this title, [or] the rules and regulations thereunder . . . .” Exchange Act § 21(a), 15  
7 U.S.C. § 78u(a); see also Securities Act § 20(a), 15 U.S.C. § 77t(a). This authority includes the  
8 power to “subpoena witnesses, compel their attendance, take evidence, and require the production of  
9 any books, papers, correspondence, memoranda, or other records which the Commission deems  
10 relevant or material to the inquiry.” Exchange Act § 21(b), 15 U.S.C. § 78u(b); see also Securities  
11 Act § 20(a), 15 U.S.C. § 77t(a). Congress created the Commission and assigned it the responsibility  
12 of protecting investors and ensuring the fairness and honesty of the nation’s capital markets by giving  
13 the Commission “broad authority to conduct investigations into possible violations of the federal  
14 securities laws and to demand production of evidence relevant to such investigations.” SEC v. Jerry  
15 T. O’Brien, Inc., 467 U.S. 735, 741 (1984).

16 If subpoenaed parties, such as Adams, refuse to comply with a Commission subpoena, the  
17 Commission may seek an order from the court compelling full compliance. Exchange Act § 21(c), 15  
18 U.S.C. § 78u(c); Securities Act § 22(b), 15 U.S.C. § 77v(b). Jurisdiction over enforcement of an  
19 administrative subpoena is explicitly conferred on the United States district courts. Exchange Act §  
20 21(c), 15 U.S.C. § 78u(c); Securities Act § 22(b), 15 U.S.C. § 77v(b).

21 Congress has provided for worldwide service of process in cases of enforcement of subpoenas  
22 issued by the Commission. See Securities Act § 22(a), 15 U.S.C. § 77v(a) (authorizing service of  
23 process in any district “of which the defendant is an inhabitant or wherever the defendant may be  
24 found”); Exchange Act § 21(c), 15 U.S.C. § 78u(c) (permitting service “wherever [the defendant]  
25 may be found”). Consequently, this Court has personal jurisdiction so long as the respondent has  
26 minimum contacts with the United States. See SEC v. Knowles, 87 F.3d 413, 417 (10th Cir. 1996)  
27 (Colorado district court may enforce subpoena issued by SEC office in Denver to Bahamas resident  
28 with minimum contacts with the United States). Specific contacts with the district in which

1 enforcement is sought, in this case the Northern District of California, need not be shown. Id. Adams  
2 has minimum contacts with the United States: he resides in Florida, purports to have an address in  
3 Northern California, and from 2006 through 2008 directly acquired stock from a public company in  
4 Fremont, California.

5 Venue is governed by Exchange Act Section 21(c), 15 U.S.C. § 78u(c), which states that:

6 [i]n case of contumacy by, or refusal to obey a subpoena issued to, any  
7 person, the Commission may invoke the aid of any court of the United  
8 States within the jurisdiction of which such investigation or proceeding is  
9 carried on . . . in requiring the attendance and testimony of witnesses and  
10 the production of books, papers, correspondence, memoranda, and other  
11 records. And such court may issue an order requiring such person to  
12 appear before the Commission or member or officer designated by the  
13 Commission, there to produce records, if so ordered, or to give testimony  
14 touching the matter under investigation or in question . . . .

15 See also Securities Act § 22(b), 15 U.S.C. § 77v(b). In this matter, the Commission’s investigation is  
16 being conducted by the Commission’s staff in its San Francisco Regional Office, which has issued  
17 more than 50 subpoenas and document requests to witnesses in no fewer than 8 states. See Knowles,  
18 87 F.3d at 414 (affirming Colorado district court’s enforcement of subpoena to a Bahamas witness  
19 where the investigation was “conducted by the SEC out of its Denver, Colorado, office”); FEC v.  
20 Comm. to Elect Lyndon LaRouche, 613 F.2d 849, 853-58 (D.C. Cir. 1979) (discussing comparable  
21 venue provision for FEC subpoena enforcement and holding that the “hub of investigative activity”  
22 was jurisdiction for enforcement); Fleischmann Decl. ¶ 21. All of the subpoenas issued to Adams  
23 were from, and were returnable to, San Francisco. Id. ¶ 22. Venue here is therefore proper.

24 Finally, a subpoena enforcement application may be granted in summary show cause  
25 proceedings. EEOC v. St. Regis Paper Co.-Kraft Div., 717 F.2d 1302, 1304 (9th Cir. 1983) (stating  
26 that “[a] subpoena enforcement action is a summary procedure” with no discovery absent  
27 “exceptional circumstances”); see also SEC v. Knopfler, 658 F.2d 25, 26 (2d Cir. 1975) (per curiam)  
28 (“Commission enforcement proceedings may be summary in nature . . . .”); United States v. Church  
of Scientology of Cal., 520 F.2d 818, 821 (9th Cir. 1975) (stating that “a district court may limit the[]  
application [of the Federal Rules of Civil Procedure] in a proceeding to enforce a summons which is  
intended to be a summary proceeding”). This summary procedure, rather than an action instituted by

1 complaint, is appropriate because investigative agencies in general, and the Commission in particular,  
2 should be allowed to conduct investigations and enforce subpoenas “free . . . [of] undue interference  
3 or delay to conduct an investigation which will adequately develop a factual basis for a determination  
4 as to whether particular activities come within the Commission’s regulatory authority.” SEC v.  
5 Brigadoon Scotch Distributing Co., 480 F.2d 1047, 1053 (2d Cir. 1973).

6 For these reasons, this Court has jurisdiction over the subject matter of the application and the  
7 statutory power to enter the requested order, venue is proper here, and the Court may rule upon the  
8 application in summary show cause proceedings.

9 **B. The Commission’s Subpoenas Satisfy the Standards for Judicial Enforcement.**

10 “The scope of the judicial inquiry in an . . . agency subpoena enforcement proceeding is quite  
11 narrow.” EEOC v. Federal Exp. Corp., \_\_\_ F.3d \_\_\_, 2008 WL 4149661, at \*4 (9th Cir. Sept. 10,  
12 2008) (quoting EEOC v. Karuk Tribe Housing Auth., 260 F.3d 1071, 1076 (9th Cir. 2001)).

13 Generally, courts in the Ninth Circuit consider: (1) whether Congress has granted the authority to  
14 investigate; (2) whether procedural requirements have been followed; and (3) whether the evidence is  
15 relevant and material to the investigation. Id.; see United States v. Powell, 379 U.S. 48, 57-58 (1964)  
16 (stating that courts should determine whether the agency’s inquiry is being conducted pursuant to a  
17 legitimate purpose, the subpoena seeks information relevant to the investigation that is not already  
18 within the agency’s possession, and all administrative requirements have been satisfied); Endicott  
19 Johnson Corp. v. Perkins, 317 U.S. 501 (1943); United States v. Blackman, 72 F.3d 1418, 1422 (9th  
20 Cir. 1995); Federal Mar. Comm’n v. Port of Seattle, 521 F.2d 431 (9th Cir. 1975); Brigadoon Scotch,  
21 480 F.2d at 1053. “Put another way, courts must enforce administrative subpoenas unless ‘the  
22 evidence sought by the subpoena [is] plainly incompetent or irrelevant to any lawful purpose of the  
23 agency.’” Karuk Tribe Housing Auth., 260 F.3d at 1076 (quoting Fed. Mar. Comm’n, 521 F.2d at  
24 433) (alteration in original and internal quotations omitted).

25 An agency need only make a “minimal” showing in order to establish a prima facie case for  
26 subpoena enforcement. Blackman, 72 F.3d at 1422. The agency need not establish “probable cause”  
27 of a violation or that it had “reasonable grounds” to commence its investigation when seeking  
28 subpoena enforcement. Brigadoon Scotch, 480 F.2d at 1053; see United States v. Morton Salt Co.,



1 338 U.S. 632, 642 (1950) (“[An administrative agency] is more analogous to the Grand Jury, which  
2 does not depend on a case or controversy for power to get evidence but can investigate merely on  
3 suspicion that the law is being violated, or even just because it wants assurance that it is not.”). The  
4 agency may satisfy its “minimal” burden by declarations alone. United States v. Abrahams, 905 F.2d  
5 1276, 1280 (9th Cir. 1990) (a declaration by the investigating agent is sufficient to substantiate  
6 Powell requirements). As described below, each of the criteria for enforcement is met here.

7 **1. Congress Has Granted the Commission Authority to Investigate.**

8 The Commission is expressly authorized by both the Securities Act and the Exchange Act to  
9 conduct investigations in its discretion to determine whether any person “has violated, is violating, or  
10 is about to violate” any provisions of those federal securities laws or any rule or regulation  
11 promulgated thereunder. Exchange Act § 21(a)(1), 15 U.S.C. § 78u(a)(1); Securities Act § 20(a), 15  
12 U.S.C. § 77t(a). The Commission’s Formal Order authorizes the designated officers of the  
13 Commission to investigate, among other things, whether violations of Section 5 of the Securities Act,  
14 Section 10(b) of the Exchange Act, and Rule 10b-5 have occurred. It is beyond dispute this  
15 investigation is lawful and falls within the scope of the authority Congress granted to the  
16 Commission.

17 **2. The Commission Has Followed All Procedural Requirements.**

18 The Commission issued the subpoenas in accord with all applicable administrative  
19 requirements. Section 19(b) of the Securities Act, 15 U.S.C. § 77s(b), and Section 21(b) of the  
20 Exchange Act, 15 U.S.C. § 78u(b), provide that the Commission may, in the course of conducting  
21 investigations, designate officers and empower them to subpoena witnesses and require production of  
22 records. In this case, a staff attorney of the Division of Enforcement, designated in a Formal Order as  
23 an officer of the Commission, issued the subpoenas to Adams.

24 In addition, the Commission’s Rules Relating to Investigations and Rules of Practice permit  
25 investigative subpoenas to be served by several methods, including personal service, mail, and  
26 “[s]ending the papers through a commercial courier service or express delivery service” like Federal  
27 Express. 17 C.F.R. §§ 201.232(c), 201.150(c), & 203.8; see SEC v. Knowles, 902 F. Supp. 211, 212  
28 (D. Colo. 1995) (enforcing subpoena where service complied with applicable regulations), aff’d, 87

1 F.3d 413, 417 (10th Cir. 1996). Service by express delivery is complete upon delivery. 17 C.F.R. §  
2 201.150(d). In this case, a Commission staff attorney served Adams by sending the subpoenas by  
3 Federal Express to his home address as well has by having Adams served personally at his home.  
4 Indeed, Adams acknowledged his receipt of the Commission's July 10, 2008 subpoena.

5 Accordingly, the Commission has met all administrative requirements for enforcement of the  
6 subpoenas.

7 **3. The Commission Is Seeking Relevant and Material Information.**

8 For purposes of subpoena enforcement, relevance is established when the information sought  
9 is not "plainly incompetent or irrelevant for any lawful purpose." SEC v. Arthur Young & Co., 584  
10 F.2d 1018, 1029 (D.C. Cir. 1978) (citing Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 509  
11 (1943)). "[T]he test is relevance to the specific purpose, and the purpose is determined by the  
12 investigators." Id. at 1031.

13 Here, the information sought by the Commission is relevant to the Commission's ongoing  
14 investigation of securities violations. The Commission seeks to learn, among other things, the basis  
15 for certain statements in Pegasus' Commission filings related to stock issuances, and the facts relating  
16 to the promissory notes purportedly issued by Blue Industries to Adams. The documents and  
17 testimony requested through the subpoenas issued to Adams are directly relevant to those issues.

18 **C. Respondent Has No Excuse for Refusing to Comply with the Subpoenas.**

19 Once an agency has made its "minimal showing" that the Powell criteria are met, a court  
20 should enforce the subpoenas unless the subpoenaed parties prove the inquiry is unreasonably  
21 overbroad or unduly burdensome, or the subpoenas were issued for an improper purpose. See  
22 Administrator, U.S. EPA v. Alyeska Pipeline Serv. Co., 836 F.2d 443, 446 (9th Cir. 1998); Brigadoon  
23 Scotch, 480 F.2d at 1056 (citing Powell, 379 U.S. at 58). "But the burden of showing that an agency  
24 subpoena is unreasonable remains with the respondent and where . . . the agency inquiry is authorized  
25 by law and the materials sought are relevant to the inquiry, that burden is not easily met." Id.; SEC v.  
26 Nicita, 2007 WL 1704585, at \*3 (S.D. Cal. Jun. 13, 2007).

27 There is no basis for any argument that the Commission subpoenas are overbroad or unduly  
28 burdensome, or that they were issued for an improper purpose. Adams has simply failed to respond

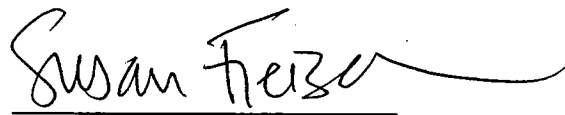
1 to the subpoenas, in raw disregard of the Commission's lawful demands. Adams cannot show the  
2 Commission's subpoenas are unreasonably overbroad, unduly burdensome, or issued for an improper  
3 purpose. Accordingly, they should be enforced.

4 **IV. CONCLUSION**

5 For these reasons, the Commission respectfully requests the Court to issue an order in the  
6 form attached compelling Adams to comply with the administrative subpoenas.

7  
8 Dated: September 25, 2008

Respectfully submitted,

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11 Susan Fleischmann

12 Attorneys for Applicant  
13 SECURITIES AND EXCHANGE COMMISSION  
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