

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES L. LIEBERMAN,

Defendant.

COMPLAINT

Plaintiff, Securities and Exchange Commission (“Commission”), for its complaint, alleges:

I. SUMMARY OF ACTION

1. During March and April 2010, James L. Lieberman (“Lieberman” or “Defendant”) traded Array BioPharma Inc. stock based on material nonpublic information about a pending transaction with Novartis, A.G. On March 5, 2010, Lieberman, then Array’s manager of environmental health and safety, received an e-mail from his supervisor, Array’s chief financial officer (“CFO”), informing him that a significant transaction with Novartis was imminent. Twelve minutes later, Lieberman placed a limit order to purchase shares of Array common stock for his own account. Two minutes after that, Lieberman placed a limit order to purchase shares in his sister’s account, in which he was authorized to trade. Over the next two weeks, Lieberman purchased nearly 50,000 shares of Array stock, for a total purchase price of \$128,686. After Array publicly announced the Novartis transaction on April 19, 2010, Lieberman sold all the shares in both accounts, reaping profits of \$71,361.

II. JURISDICTION AND VENUE

2. The Commission brings this civil enforcement action pursuant to the authority conferred upon it by Sections 21(d) and (e) and 21A(a) of the Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78u (d) and (e) and 78u-1(a)].

3. This Court has jurisdiction over this action under the provisions of Sections 21(d), 21(e), 21A(a) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e), 78u-1(a) and 78aa].

4. Defendant Lieberman, directly and indirectly, singly or in concert, made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, or of the mails in connection with the acts, practices and courses of conduct alleged in this Complaint, certain of which occurred within the District of Colorado.

5. Venue is proper in this court pursuant to Sections 27 and 21A(d)(4) of the Exchange Act [15 U.S.C. § 78aa and 78u-1(d)(4)], because Lieberman resides in Boulder, Colorado and many of the transactions, acts, practices and course of business constituting the violations of law alleged herein occurred within this judicial district.

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, Lieberman, directly and indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the means and instruments of transportation or communication in interstate commerce.

7. Lieberman, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices and courses of business as set forth in this complaint or in similar illegal transactions, acts, practices and courses of business.

III. THE DEFENDANT AND RELEVANT ENTITIES

8. **James L. Lieberman** is a resident of Boulder, Colorado. He was the manager of environmental health and safety at Array from November 2001 until July 2010.

9. **Array BioPharma Inc.** is a Delaware corporation with its principal place of business in Boulder, Colorado that develops drugs to treat cancer and inflammatory diseases. Array's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is quoted on Nasdaq under the symbol ARRY.

10. **Novartis A.G.**, a Swiss corporation with its principal executive offices in Basel, Switzerland, is one of the world's largest pharmaceutical manufacturers. Novartis' American depository shares are registered with the Commission pursuant to Section 12(b) of the Exchange Act and are quoted on the New York Stock Exchange under the symbol NVS.

IV. SUMMARY OF VIOLATIONS

11. Through the activities alleged in this Complaint, Lieberman, directly or indirectly, engaged in transactions, acts, practices and courses of business that violated Exchange Act Section 10(b) [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

V. FACTUAL ALLEGATIONS

Array Begins Merger Discussions With Novartis

12. During the summer of 2009, Array began to explore potential collaboration opportunities for a protein inhibitor, known as "ARRY 162," that the company hoped it could develop into an anti-cancer drug. It was widely understood by Array executives and senior personnel that securing a collaboration agreement for ARRY 162 was extremely important for the company, because Array had not located a partner to assist in developing any of its drugs in several years, and it needed capital to fund ongoing research programs.

13. In the fall of 2009, Array commenced confidential discussions with Novartis about a potential collaboration deal for ARRY 162. At the time, Novartis was the sixth largest pharmaceutical company in the world based on revenue, with a history of developing anti-cancer drugs through collaborations with smaller biotech companies like Array. Discussions between Array and Novartis continued through the fall and into the winter, but began to slow in December 2009, when Array discovered that the counterparty to a pre-existing contract for the same protein inhibitor might need to consent to the Novartis transaction. In early February 2010, the counterparty refused to grant consent, forcing Array to stop its discussions with Novartis.

14. Lieberman was interested in whether ARRY 162 would positively impact Array. On February 11, 2010, he sent an e-mail to Array's chief executive officer, suggesting questions for an all-company meeting to be held the next day asking, "What's happening with 162? Does it look promising to make a deal in this quarter? ... What, if anything, are we doing to improve Array's stock price?"

15. At the February 12 meeting, which Lieberman attended, Array's senior management outlined the deal terms Array had been negotiating with Novartis. The presentation made clear that the deal would be extremely significant to Array: the company would receive an upfront payment from Novartis of \$40 million and total payments of as much as \$430 million if certain milestones were reached; Novartis would defer Array's funding obligation for the first two years of the collaboration; and Array would receive certain royalties from any drug that was developed.

16. Discussions with Novartis stalled for only a few weeks. By early March 2010, Array resolved the consent issues with the third party. Confidential negotiations with Novartis resumed. On Thursday, March 4, Array's CFO sent an e-mail to his four direct reports -- which

included Lieberman -- informing them that "Novartis on 162 is still slowly progressing and if it happens will likely be in about 1-2 months."

Lieberman Buys Nearly 50,000 Shares of Array Common Stock Based on Inside Information About an Imminent Deal with Novartis

17. On Friday, March 5, the deal's status changed. Array's chief operating officer and vice president for business development ("COO") reached an agreement with Novartis that would allow negotiations to quickly move forward. That afternoon, at 4:47 p.m. MST, Array's CFO sent a second e-mail to his direct reports, this time forwarding a message from Array's COO that made clear that the Novartis transaction was imminent. Array's COO wrote: "I heard from NVS and they are ready to move frwd (*sic*) to finalize our agreement. We should have their revised agreement Tuesday or Wednesday of next week. They would like to close this deal within 30 days."

18. Twelve minutes later, at 4:59 p.m., Lieberman logged in to his online brokerage account from his computer at Array's offices, and placed a limit order to purchase 35,000 Array shares. Two minutes after that, at 5:01 p.m., Lieberman placed a limit order in his sister's online account, over which he had trading authority, to purchase another 25,000 shares. In total, during the two weeks after receiving the March 5 e-mail from Array's CFO, Lieberman purchased 49,763 shares in both his account and his sister's account for a total purchase price of \$128,686. These transactions were unusual when viewed in light of his prior trading history.

Array Announces the Novartis Deal and Lieberman Sells

19. On April 19, 2010, Array and Novartis executed a collaboration agreement with terms very similar to those described at the February 12 meeting, including a \$45 million upfront payment and an additional \$422 million if certain milestones were achieved. After the close of trading, Array issued a press release announcing the transaction. The price of Array shares

increased from \$3.02 per share on April 19 to \$4.02 per share on April 20, an increase of 33 percent. Trading volume on April 20 was 17.7 million shares, compared with volume of only 1.4 million and 418,000 on the two prior trading days. Within minutes of the announcement, Lieberman placed limit sell orders for all of the shares in his account and his sister's account, ultimately selling all 49,763 shares.

Lieberman Violated Array's Insider Trading Policy

20. When Lieberman arrived at Array in October 2001, he signed an acknowledgement of Array's insider trading policy, which states employees of the company: "[m]ay not buy or sell any security issued by the Company ... while in possession of material nonpublic information regarding the Company."

21. Lieberman received periodic updates of the company's policies along with all other Array employees. On October 22, 2009, he completed an acknowledgement that he had received the company's most recent update to its code of conduct, which provides:

All employees must comply with Array's Insider Trading Policy, which prohibits employees from trading in Array stock or the stock of any other company on the basis of material, non-public information (i.e., "inside information"). Inside information is any nonpublic information that an investor would reasonably consider important in making an investment decision. **Such information includes ... new collaborations ... or other significant events....** Trading in stock on the basis of inside information is a violation of the law and could subject the person who trades on the information and Array to civil liability and criminal prosecution. (emphasis added).

22. Array determined that Lieberman had traded while in possession of inside information and violated Array's company policy.

VI. CLAIM FOR RELIEF

**Fraud – Section 10(b) and Rule 10b-5
of the Exchange Act (Purchase and Sale of Securities)
[15 U.S.C. §§ 78j(b) and §240.10b-5]**

23. Paragraphs 1 through 22 are hereby realleged and incorporated by reference as if fully set forth herein.

24. By engaging in the conduct described above, Lieberman, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by use of the means or instruments of interstate commerce or by use of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or 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; or engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon purchasers of such securities.

25. By reason of the foregoing, Lieberman violated, and unless enjoined, will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

VII. PRAAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Find that Lieberman committed the violations alleged.

Enter injunctive relief permanently restraining and enjoining Lieberman from, directly or indirectly, to the full extent provided by Rule 65(d) of the Federal Rules of Civil Procedure, violating the provisions of law and rules alleged in this Complaint.

II.

Order Lieberman to disgorge and pay over, as the Court may direct, all ill-gotten gains received, or benefits in any form derived, from the conduct alleged in this Complaint, together with pre-judgment and post-judgment interest as provided by law.

III.

Order that Lieberman pay civil penalties.

IV.

Grant other relief as this Court may deem just or appropriate.

Dated: August 20, 2012

Respectfully submitted,

/s/ Rachael Clarke
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