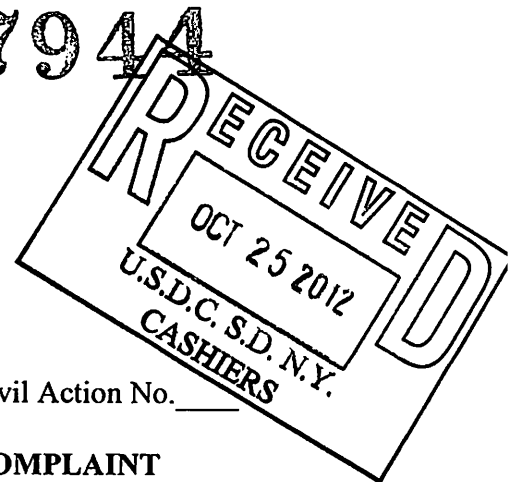


JUDGE NATHAN

12 CIV 7944

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Frank A. LoBue,

Defendant.

Civil Action No. \_\_\_\_\_

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges for its complaint, as follows:

**NATURE OF THE ACTION**

1. This is an insider trading case. Frank A. LoBue, while Director of Store Operations for J.Crew Group, Inc. ("J.Crew"), received nonpublic information about the company's "Stores" component, which comprised approximately 70% of J.Crew's sales. He regularly received and used nonpublic reports about the company's sales and expense performance and how that performance compared to J.Crew's internal projections and comparable sales in prior periods.

2. LoBue breached a duty to his employer and to its shareholders by using this material, nonpublic information about the company's sales and expenses to purchase 2,300 shares of J.Crew common stock in advance of the company's May 28, 2009 earnings release announcing better than expected results. Three months later, LoBue did it again, using sales and expense information to purchase 11,680 shares of J.Crew common stock ahead of the company's

August 27, 2009 earnings release. His aggregate illicit profits from the trades were at least \$60,735.60.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

4. In connection with the transactions, acts, practices, and courses of business described in this complaint, the defendant, directly and indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange.

5. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] or 28 U.S.C. § 1391(b).

### **DEFENDANT**

6. Frank A. LoBue, age 43, resides in Hoboken, New Jersey. He began his employment at J.Crew in 2000. During 2009, LoBue was acting and then permanent Director of Store Operations. In that capacity, he oversaw J.Crew’s stores from the expense side. In addition, he oversaw new store opening teams and store closures. LoBue’s employment was terminated by J.Crew in February 2010.

### **RELEVANT ENTITY**

7. J.Crew Group, Inc. was, during the relevant period, a Delaware corporation with its principal place of business in New York, New York. J.Crew’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the ticker symbol “JCG.” The company is an apparel and accessories

retailer with two primary sales channels: “Stores” (retail and outlet stores) and “Direct” (Web sites and catalogs).

### **STATEMENT OF FACTS**

8. In the course of his employment as Director of Store Operations at J.Crew, LoBue regularly was provided material, nonpublic information about the company’s store performance, including sales, expenses, and comparison of that information to various internal projections and targets from a daily to yearly basis. LoBue analyzed and used this information as part of his employment duties.

9. LoBue knew, or was reckless in not knowing, that the information he received as a part of his employment at J.Crew was material, confidential, nonpublic, and the property of his employer.

### **LoBue’s Trading Before the May 2009 Earnings Release**

10. In April and May of 2009, in the course of his employment, LoBue received multiple reports with J.Crew’s store sales and expenses, including comparisons against internal projections and prior year results. These reports showed that the Stores component of J.Crew’s business was performing better than planned and indicated which stores, regions, and departments were meeting J.Crew’s projected sales estimates.

11. LoBue also received information about J.Crew’s expenses, including metrics for all of J.Crew’s retail stores. Those metrics also showed that J.Crew stores were performing better than planned (although not as well as the previous year on a comparable-store-sales basis).

12. For example on May 5, 2009, LoBue received week-to-date and month-to-date payroll reports which showed that at the beginning of May 2009 J.Crew’s payroll costs were slightly better than planned.

13. As another example, on May 6, 2009, LoBue received an internal J.Crew e-mail with a report containing total and comparable sales for J.Crew's stores for the prior twelve months, including total and comparable sales for the company's fiscal first quarter ended May 2, 2009.

14. On May 20, 2009, LoBue began a string of purchases of J.Crew common stock. In all, he purchased a total of 2,300 shares of common stock between May 20 and the May 28, 2009 announcement.

15. After the U.S. stock markets closed on May 28, 2009, J.Crew announced its results for its first quarter. In the release, the company stated that "[r]evenues increased 2% to \$345.8 million" and "[s]tore sales (Retail and Factory) increased 5% to \$240.7 million, with comparable store sales decreasing 5%."

16. The markets reacted positively to the earnings release, and on May 29, 2009, J.Crew stock closed at \$25.86, up \$5.40 or 26.4% from the prior day's close.

17. LoBue's illicit profits from this trading were at least \$15,308.

#### **LoBue's Trading Before the August 2009 Earnings Release**

18. In July and August of 2009, in the course of his employment, LoBue received multiple reports that set forth J.Crew's store sales and expenses, including comparisons against internal projections and prior year results. These reports showed that J.Crew's Stores component was performing better than planned.

19. For example, on Monday, August 10, 2009 at 8:02 a.m., LoBue received a series of reports on J.Crew's retail sales. The reports encompassed data from all J.Crew retail stores and included total and comparable sales for the company's fiscal second quarter ended August 1, 2009. In an otherwise slow retail market, these reports showed that J.Crew's total performance

was only slightly worse than last year's comparable sales, and that J.Crew was showing an improved sales trend.

20. At 2:52 p.m. on August 10, 2009, LoBue began another string of purchases of J.Crew common stock. He began with a purchase of 5,000 shares. It was his largest purchase ever of J.Crew stock, both in terms of number of shares and absolute dollars invested (\$152,809.99). Two days later, he purchased another 5,000 shares. He purchased a total of 11,680 shares of J.Crew common stock between August 10 and the public announcement on August 27, 2009.

21. After the U.S. markets closed on August 27, 2009, J.Crew announced results for its second quarter, including an overall increase in store sales and an improvement in comparable store sales. The market reacted positively, and on August 28, 2009, J.Crew closed at \$34.73, up \$1.97 or 6.01% from the prior day's close.

22. All of LoBue's trading alleged herein was done on margin in an online brokerage account.

23. As a result of his purchases immediately ahead of the August earnings announcement, LoBue made illicit profits of at least \$45,427.60.

### **FIRST CLAIM FOR RELIEF**

#### **Insider Trading**

Violations of 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]

24. Paragraphs 1 through 23 are realleged and incorporated by reference.

25. At all relevant times, LoBue knew, or was reckless in not knowing, that the sales information he received in his capacity as Director of Store Operations for J.Crew was material, nonpublic, and the property of his employer.

26. LoBue knew, or was reckless in not knowing, that he violated a duty of trust and confidence owed to his employer and a fiduciary duty to the company's shareholders by trading in J.Crew common stock before the May 28, 2009 and August 27, 2009 earnings releases on the basis of material, nonpublic information misappropriated from the company.

27. By reason of the foregoing, defendant LoBue violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

#### **PRAYER FOR RELIEF**

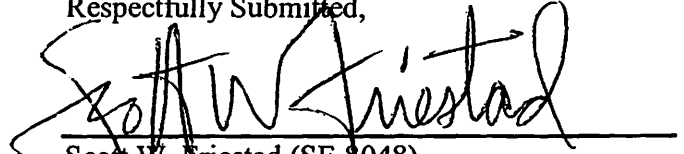
WHEREFORE, the Commission respectfully requests that this Court:

- a) permanently restrain and enjoin Frank A. LoBue from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];
- b) order Frank A. LoBue to disgorge all profits obtained as a result of his illegal conduct, with prejudgment interest thereon;
- c) order Frank A. LoBue to pay a civil money penalty pursuant to Section 21A(a) of the Exchange Act [15 U.S.C. § 78u-1(a)]; and

d) grant such other relief as this Court may deem just and appropriate.

Dated: October 25, 2012

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott W. Friestad", written over a horizontal line.

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Michelle L. Ramos

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