IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **LESLIE J. JACOBS, II, and ANDREW W. JACOBS** **Defendants.**	**Civil Action No.**

COMPLAINT

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This litigation involves an insider trading scheme in which Andrew W. Jacobs ("A. Jacobs"), the former head of U.S. sales for a Fortune 500 company, disclosed material non-public information about a pending tender offer for Chattem, Inc. ("Chattem") securities to his brother, Leslie J. Jacobs, II ("L. Jacobs").

2. On December 21, 2009, Sanofi-Aventis ("Sanofi"), a French pharmaceutical company, announced its intent to make a tender offer for Chattem,

a Tennessee-based distributor of over-the-counter pharmaceutical products, at the price of $93.50 per share ("Announcement"). Shares of Chattem closed 32.60% higher on the day of the Announcement than the prior trading day's close of $69.98 and volume increased more than 3,000% to 10.3 million shares.

3. On December 1, 2009, several weeks before the Announcement, A. Jacobs had drinks with his brother-in-law, Blair Ramey, in Bentonville, Arkansas. At the time, Ramey was Chattem's Vice President of Marketing.

4. Ramey had flown to Arkansas directly from a meeting in New York attended by senior officers of Chattem and Sanofi. That meeting had convinced Ramey that Sanofi's then potential tender offer for Chattem was going to take place. He was quite concerned about the effect the tender offer and subsequent change in senior management would have on his career at Chattem.

5. Remembering that A. Jacobs, with whom he had been friends since business school and who was now his brother-in-law, had worked at an American company when it was acquired by a European company, Ramey told A. Jacobs that he needed to discuss something confidential with him when the two were in Bentonville.

6. On December 1, 2009, the two had a discussion in a Bentonville hotel room during which Ramey asked A. Jacobs a series of questions and made a series of statements that made clear to A. Jacobs that Chattem was going to be acquired by a European company in the near future.

7. A. Jacobs, who agreed to keep the conversation confidential, called his brother, L. Jacobs, the next morning and at least two more times in the next few days.

8. A. Jacobs disclosed to L. Jacobs in one or more of those conversations material non-public information, disclosed in confidence to him by Ramey, that Chattem was going to be acquired imminently.

9. On December 4, 2009, L. Jacobs purchased 2,000 shares of Chattem, which he sold shortly after the Announcement for profits of $49,457.21.

10. As a result of this conduct, Defendants have engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) & 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 & 240.14e-3].

JURISDICTION AND VENUE

11. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) & 78u(e)] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

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

13. Defendants, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

14. Certain of the transactions, acts, practices, and courses of business constituting violations of the Exchange Act occurred in the Northern District of Ohio. Specifically, L. Jacobs received confidential information in the Northern District of Ohio, and he placed his trades in Chattem securities from the Northern District of Ohio. L. Jacobs is a resident of Cleveland, Ohio.

15. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business

alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

THE DEFENDANTS

16. **Andrew W. Jacobs**, 43, was until May 2012, Vice-President/General Manager for U.S. Customers for a Fortune 500 company. Since obtaining his MBA with an emphasis in marketing in 1993, he has worked in various marketing related jobs for a number of confectionary companies. A. Jacobs is the brother of L. Jacobs and the brother-in-law of Ramey (Ramey's wife and A. Jacobs' wife are sisters).

17. **Leslie "Les" J. Jacobs, II**, 49, was most recently a Vice-President at a national bank. He has held both Series 7 and 63 licenses. L. Jacobs is the brother of A. Jacobs.

RELEVANT ENTITIES

18. **Chattem, Inc.** had, for over 125 years, manufactured and sold health and beauty products, toiletries, proprietary drugs and dietary supplements. By 2009 it was one of the largest distributors of over-the-counter pharmaceutical products in the world. Its product line included Cortizone 10, Unisom, Gold Bond, Aspercreme and IcyHot. Chattem's shares traded on the NASDAQ as CHTT.

19. **Sanofi-Aventis**, a French pharmaceutical company, describes itself as a "diversified global healthcare company engaged in the research, development, manufacture and marketing of healthcare products. [Its] business includes pharmaceuticals, comprising prescription drugs, consumer healthcare and generics; vaccines and animal health." American depository shares of this Paris-based company trade on the NYSE under the symbol SNY.

BACKGROUND OF SANOFI'S TENDER OFFER TO CHATTEM

20. On September 10, 2009, the CEOs of Sanofi and Chattem met to discuss "potential strategic relationships" between their companies.

21. By mid-November 2009, Sanofi had informed Chattem that it was "interested in acquiring Chattem . . . for a price in the range of $85.00 – $90.00 per share in cash" and Chattem had responded that although it was "willing to consider a potential transaction, there would need to be a meaningful improvement in the price offered."

22. By the end of that month the companies had retained financial advisors and legal counsel, executed confidentiality and exclusivity agreements, held "telephonic due diligence meetings" and were negotiating the terms of an

agreement that provided for Sanofi to "pursue a two-step transaction in which a tender offer would be followed by a merger."

23. On December 1, 2009, senior members of both entities' management teams met "to conduct face-to-face due diligence meetings." Ramey was one of the senior members of Chattem in attendance at these due diligence meetings.

24. Before the markets opened on December 21, 2009, Chattem announced that it had entered into a definitive agreement to be acquired by Sanofi.

25. Under that agreement, Sanofi agreed to make a $1.9 billion tender offer for 100% of Chattem's outstanding shares, at a share price of $93.50 per share. The acquisition price represented a 32.60% premium above the closing price of $69.98 on the prior trading day, Friday, December 18, 2009.

26. On December 21, 2009, Chattem's share price closed at $93.02 and trading volume increased by almost 3,270% to 10.3 million shares.

THE RELATIONSHIP BETWEEN A. JACOBS AND RAMEY

27. Ramey and A. Jacobs met and became good friends while working on their MBAs at Wake Forest University in 1991. Ramey married his wife during business school and A. Jacobs married her sister after he graduated from business school.

28. Ramey and A. Jacobs discussed traditionally confidential topics such as impending job changes, promotions, and problems with supervisors after graduate school. Both understood that the latter had to be kept in confidence because, among other reasons, each knew some of the other's coworkers.

THE DISCLOSURE OF MATERIAL, NONPUBLIC INFORMATION

29. Although Ramey, in his capacity as Chattem's Vice-President for Marketing, had been aware of Sanofi's interest in Chattem since October 2009, it was not until he had completed a marketing briefing with representatives of Sanofi on or about November 17, 2009, that he became reasonably certain that Sanofi would make a tender offer for Chattem's shares.

30. By the conclusion of a December 1, 2009 meeting in Manhattan, New York attended by the senior officers of Chattem and Sanofi, Ramey knew that Sanofi was going to make a tender offer for Chattem.

31. Ramey feared that Sanofi's acquisition of Chattem and the accompanying changes in the management structure could adversely affect the conditions of his employment at Chattem. Ramey also knew that his employment contract allowed him only a fixed number of days (270 days from the completion of the tender offer) to decide whether to remain at Chattem after a change in

control. As a result, Ramey was trying to weigh the risk of working for a new European-based management team (that might replace him with one of their own) against the rewards of a generous severance package.

32. By December 1, 2009, Ramey had decided that it would be helpful to have more guidance as he decided whether to remain at Chattem after the acquisition.

33. Ramey felt that none of his colleagues at Chattem had been through a transition that was sufficiently similar to that facing Chattem for them to address his specific concerns and he was growing increasingly anxious because he had an impending decision to make.

34. Ramey flew directly from the meeting in New York to Bentonville, Arkansas to participate in a conference attended by some of Walmart's largest suppliers.

35. Upon learning that he would be in Bentonville at the same time as A. Jacobs, the two arranged to meet for drinks.

36. On the evening of December 1, 2009, Ramey and A. Jacobs met at a restaurant within walking distance of their hotel in Rogers, Arkansas.

37. Although Ramey and A. Jacobs talked briefly in the presence of a coworker when A. Jacobs arrived at the restaurant, Ramey ate by himself and A. Jacobs ate with his coworkers.

38. After dinner, Ramey and A. Jacobs got a table in the restaurant and talked generally about their respective careers and family matters.

39. Ramey and Jacobs then went to A. Jacobs' hotel room, where Ramey told A. Jacobs that he had something confidential to discuss with him.

40. A. Jacobs agreed to keep the information confidential.

41. Ramey then asked A. Jacobs, who had been employed at an American company in 1994 when it was acquired by a European company, to tell him what it was like to transition from American to European management.

42. Ramey asked about things to "watch out for" and how things changed.

43. A. Jacobs told Ramey that it was financial, sales, and marketing personnel that were replaced by the European entity during the acquisition he had previously been through.

44. They also discussed headhunters that A. Jacobs had used in the past, and A. Jacobs told Ramey that he would contact some of those headhunters and ask them to call Ramey.

45. Although Ramey never explicitly stated that Chattem was going to be acquired by another entity or said "Sanofi," he is certain that A. Jacobs would have reasonably deduced from the nature of the conversation that Chattem was going to be acquired by a European entity.

46. Ramey called A. Jacobs after their conversation to remind him of the confidential nature of what was discussed, and A. Jacobs reiterated that he understood that the information was confidential.

A. JACOBS' MISAPPROPRIATION OF MATERIAL NON-PUBLIC INFORMATION AND L. JACOBS' SUBSEQUENT TRADING

47. A. Jacobs owed Ramey a duty of trust or confidence based on their understanding to that effect and their friendship, familial relationship and history of sharing confidences and secrets.

48. Disregarding the duty of trust or confidence he owed to Ramey, A. Jacobs called his brother, L. Jacobs, and informed him that Chattem was going to be acquired.

49. A. Jacobs intended that his brother would purchase Chattem securities when he disclosed the material, non-public information that he had obtained from Ramey.

50. Based upon the nature of the information, the family relationships and his knowledge that Ramey was a Chattem executive, L. Jacobs knew or was reckless in not knowing that A. Jacobs disclosed the material, non-public information in violation of a duty he owed to Ramey.

51. On Friday, December 4, 2009, L. Jacobs, purchased 2,000 shares of Chattem at a cost of $136,579.85.

52. L. Jacobs' investment in Chattem was the largest securities purchase that L. Jacobs had made in the prior eight years and represented a very rare foray into the stock of a consumer products company, as most of his other investments were in the energy sector.

53. L. Jacobs sold his Chattem shares shortly after the Announcement for profits of $49,457.21.

COUNT I—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]

54. Paragraphs 1 through 53 are hereby re-alleged and are incorporated herein by reference.

55. During December 2009, Defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and 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; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

56. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

57. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate 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].

COUNT II—INSIDER TRADING

Violations of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)]and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3]

58. Paragraphs 1 through 53 are hereby re-alleged and are incorporated herein by reference.

59. By December 4, 2009, substantial steps had been taken to commence a tender offer for the securities of Chattem by Sanofi-Aventis, including, among others: (1) retaining financial advisors and legal counsel; (2) executing confidentiality and exclusivity agreements; (3) holding "telephonic due diligence meetings;" and (4) negotiating the terms of an agreement that provided for Sanofi to "pursue a two-step transaction in which a tender offer would be followed by a merger."

60. At the time L. Jacobs purchased Chattem securities, he was in possession of material information regarding the tender offer for Chattem

securities by Sanofi-Aventis, which he knew or had reason to know was nonpublic, and which he knew or had reason to know was acquired directly or indirectly from an officer, director, partner, or employee or other person acting on behalf of the issuer.

61. A Jacobs tipped L. Jacobs with the material nonpublic information relating to the Chattem tender offer, and thereby caused L. Jacobs to trade, when he knew that such information came from an officer, director, partner, or employee or other person acting on behalf of the issuer and it was reasonably foreseeable that such communication was likely to result in L. Jacobs purchasing Chattem securities, in violation of Section 14(e) and Rule 14e-3.

62. By reason of the foregoing, Defendants violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays for:

I.

A permanent injunction enjoining Defendants, their agents, servants, employees, and attorneys from violating, directly or indirectly, 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].

II.

A permanent injunction enjoining Defendants, their agents, servants, employees, and attorneys from violating, directly or indirectly, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

III.

An order pursuant to Section 21(d)(2) of the Exchange Act imposing an officer and director bar against A. Jacobs.

IV.

An order requiring the disgorgement by Defendants of all ill-gotten gains or unjust enrichment, including any received by their tippees, with prejudgment interest, to effect the remedial purposes of the federal securities laws.

V.

An order pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] imposing civil penalties against Defendants.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

JURY DEMAND

Plaintiff hereby demands a jury trial as to all issues so triable.

Dated: June 11, 2013

Respectfully submitted,

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