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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL J. BARON,

Defendant.

Case No. 14-cv-3699-KSH

**COMPLAINT FOR  
VIOLATIONS OF  
THE FEDERAL  
SECURITIES LAWS**

Plaintiff Securities and Exchange Commission (the "Commission"), 1617 JFK Boulevard, Suite 520, Philadelphia, Pennsylvania, 19103, alleges as follows against Michael J. Baron, who resides at 18 Waterview Avenue, Belford, New Jersey, 07718.

**SUMMARY**

1. This matter involves Michael J. Baron ("Baron" or "Defendant"), a former senior editor at a financial publication, who participated in an insider trading scheme involving a group of high school friends and others who profited from confidential business information that insiders obtained from their employers.

2. The illegal conduct began in 2007, spanned five years, and involved illegal tipping by insiders at three public companies: (1) Celgene Corp. (“Celgene”); (2) Sanofi-Aventis Corporation (“Sanofi”); and (3) Stryker Corp. (“Stryker”). Collectively, those sources, including John Lazorchak (“Lazorchak”), a Director of Financial Reporting at Celgene, and Mark Foldy (“Foldy”), a marketing employee who was involved with mergers and acquisitions at Stryker, tipped confidential information regarding at least eleven material events to numerous downstream tippees, including Baron.

3. In November 2012, the Commission filed an enforcement action against Lazorchak, Foldy, and five others, charging them variously with 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]; and Section 17(a) of the Securities Act of 1933 (“Securities Act”), [15 U.S.C. § 77q] (the “First Civil Action”).

4. The Commission now charges Baron with the illegal tipping of material nonpublic information concerning two of those events: Celgene Corp.’s acquisition of Pharmion Corp., which was publicly announced on November 19, 2007 (the “Celgene-Pharmion Acquisition”); and Stryker Corp.’s tender offer to acquire Orthovita, Inc., which was publicly announced on May 16, 2011 (the “Stryker-Orthovita Tender Offer”). Baron’s tippee traded on the basis of the illegally tipped information, resulting in ill-gotten gains of more than \$6,500.

5. By knowingly and/or recklessly engaging in the conduct described in this Complaint, Baron violated and unless enjoined will continue to violate Sections 10(b) and 14(e) of the 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

6. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§78u(d) and 78u-1], to enjoin such acts, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

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

8. Venue in this District is proper because the Defendant is found, inhabits, and/or transacts business in the District of New Jersey and/or because one or more acts or transactions constituting the violation occurred in the District of New Jersey.

9. In connection with the conduct alleged in this Complaint, the Defendant made use of a means or instrumentality of interstate commerce, the mails, and/or of a facility of a national securities exchange.

## DEFENDANT

10. **Michael J. Baron**, age 43, resides in Belford, New Jersey. At relevant times, Baron was a senior editor at a financial publication. Baron attended high school with Lazorchak and Foldy.

## INDIVIDUALS AND ENTITIES RELEVANT TO THIS ACTION

11. In August 2007, Celgene hired **John Lazorchak** as an employee in its financial reporting department. In February 2008, Lazorchak became Celgene's Director of Financial Reporting, and he held that position until he left Celgene in November 2012. Lazorchak attended high school with Baron.

12. At relevant times, **Mark Foldy** was employed by Stryker in its marketing department. Foldy attended high school with Baron.

13. **Celgene Corporation** is a biopharmaceutical company incorporated in Delaware with its principal place of business in Summit, New Jersey. At all relevant times, Celgene had a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, under the ticker “CELG” on the NASDAQ.

14. **Orthovita, Inc.** (“Orthovita”) was a specialty spine and orthopedic company incorporated in Pennsylvania with its principal place of business located in Malvern, Pennsylvania. At all relevant times, Orthovita had a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, under the ticker “VITA” on the NASDAQ. Orthovita was acquired by Stryker Corporation in 2011 and its securities registration was terminated.

15. **Pharmion Corporation** (“Pharmion”) was a pharmaceutical company incorporated in Delaware with its principal place of business in Boulder, Colorado. At all relevant times, Pharmion had a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, under the ticker “PHRM” on the NASDAQ.

16. **Stryker Corporation** is a medical technology company incorporated in the state of Michigan with its principal place of business in Kalamazoo, Michigan. At all relevant times, Stryker had a class of securities registered pursuant to Section 12 of the Exchange Act, 15U.S.C. § 78l, under the ticker “SYK” on the New York Stock Exchange.

## FACTS

### Illegal Tipping and Trading in Connection With the Celgene-Pharmion Acquisition

17. As an employee in the financial reporting department at Celgene, Lazorchak possessed material, nonpublic information regarding the Celgene-Pharmion Acquisition including the name of the target company, expected purchase price, and the date of the transaction.

18. In or about September 2007, Lazorchak tipped material, nonpublic information about the Celgene-Pharmion Acquisition to Baron (the “Celgene-Pharmion Inside Information”), including that Celgene was seeking to acquire Pharmion.

19. At the time of the tip, Baron knew or was reckless in not knowing that the information Lazorchak tipped to him regarding the Celgene-Pharmion Acquisition was material and nonpublic. He also knew or should have known that Lazorchak should not have disclosed it to him.

20. Prior to November 14, 2007, Baron tipped the Celgene-Pharmion Inside Information that he received from Lazorchak to a relative (the “Tippee”) with the suggestion that the Tippee purchase Pharmion stock.

21. On November 14, 2007, on the basis of the information tipped by Baron, the Tippee bought 200 shares of Pharmion stock at an average price of \$48 per share.

22. Prior to the opening of the market on November 19, 2007, Pharmion and Celgene issued a joint press release publicly announcing that Celgene had agreed to acquire Pharmion for \$2.9 billion in cash and stock (the “Celgene-Pharmion Announcement”). That day, Pharmion’s stock price closed at \$65.12 per share, an increase of \$15.84 per share, or approximately 32%

over the prior day's closing price of \$49.28 per share. That same day, Pharmion's trading volume increased by over 847% to more than 8 million shares.

23. The Tippee sold all of his Pharmion stock holdings when the Celgene-Pharmion Acquisition was completed. The illegal trading resulted in profits exceeding \$3,500.

**Illegal Tipping and Trading in Connection  
with the Stryker-Orthovita Tender Offer**

24. By March 28, 2011, substantial steps had been taken to complete Stryker's tender offer to acquire Orthovita. Among other things, by March 28, 2011, Stryker and Orthovita had each retained financial advisors and legal counsel; exchanged a preliminary, nonbinding proposal; were in the process of conducting due diligence; and had started to negotiate the terms and conditions of the merger agreement.

25. At all relevant times, Foldy was employed by Stryker in its marketing department. Prior to March 28, 2011, in the course of his employment, Foldy came into possession of material, nonpublic information concerning the Stryker-Orthovita Tender Offer, including that Stryker and Orthovita were in discussions about a tender offer, Stryker was conducting due diligence at Orthovita, and that plans were being made with respect to the integration of the employees of both companies.

26. Prior to March 28, 2011, Foldy tipped material, nonpublic information about the Stryker-Orthovita Tender Offer to Baron (the "Stryker-Orthovita Inside Information"), including that Stryker was looking to acquire Orthovita.

27. At the time of the tip, Baron knew that the Stryker-Orthovita Inside Information tipped to him by Foldy was material and nonpublic, and that Foldy should not have disclosed it to him.

28. Baron tipped the Stryker-Orthovita Inside Information to the Tippee prior to March 28, 2011 with the suggestion that the Tippee buy Orthovita stock.

29. On March 28, 2011, on the basis of the information tipped to him by Baron, the Tippee bought 2,000 shares of Orthovita stock at an average price of \$2.13 per share.

30. Prior to the opening of the market on May 16, 2011, Orthovita announced that Stryker had agreed to acquire Orthovita through an all cash tender offer to acquire the outstanding shares of Orthovita stock for \$3.85 per share, or approximately \$316 million. That day, Orthovita's stock price closed at \$3.83 per share, an increase of \$1.10 per share, or approximately 40% over the prior day's closing price of \$2.73 per share. That same day, Orthovita's trading volume increased by over 14,740% to more than 41.5 million shares.

31. The Tippee sold his Pharmion stock upon the completion of the Stryker-Orthovita Tender Offer. The illegal trading resulted in profits exceeding \$3,000.

**Baron Violated the Federal Securities Laws.**

32. In tipping the Celgene-Pharmion Inside Information to Baron, Lazorchak tipped material, nonpublic information in breach of a fiduciary duty, or a duty of trust or confidence.

33. Lazorchak learned the Celgene-Pharmion Inside Information in the course of his employment at Celgene. As an employee of Celgene with access to material nonpublic information, including the Celgene-Pharmion Inside Information, Lazorchak owed a duty to his employer, Celgene, to keep such information confidential. He breached this duty when he misappropriated the Celgene-Pharmion Inside Information and tipped it to his friend Baron.

34. In tipping the Stryker-Orthovita Inside Information to Baron, Foldy tipped material, nonpublic information in breach of a fiduciary duty, or a duty of trust or confidence.

35. Foldy learned the Stryker-Orthovita Inside Information in the course of his employment at Stryker. As an employee of Stryker with access to material nonpublic information, including the Stryker-Orthovita Inside Information, Foldy owed a duty to his employer, Stryker, to keep such information confidential. He breached this duty when he misappropriated the Stryker-Orthovita Inside Information and tipped that information to his friend, Baron.

36. Based on, among other things, his professional experience and his knowledge of where his two friends were employed, Baron knew or reasonably should have known that the Celgene-Pharmion Inside Information that he received from Lazorchak, and the Stryker-Orthovita Inside Information that he received from Foldy, was obtained and transmitted by Lazorchak and Foldy in breach of fiduciary duties or duties of trust or confidence.

37. When Lazorchak disclosed to Baron the Celgene-Pharmion Inside Information, Baron assumed a duty to maintain the confidentiality of that information.

38. When Foldy disclosed to Baron the Stryker-Orthovita Inside Information, Baron assumed a duty to maintain the confidentiality of that information.

39. Based on his professional experience as well as his job training, Baron knew or was reckless in not knowing that it was a violation of the securities laws to trade on the basis of the Celgene-Pharmion Inside Information or the Stryker-Orthovita Inside Information, or to disclose that information to others.

40. When Baron tipped to the Tippee the Celgene-Pharmion Inside Information, Baron:

- a. Knew or was reckless in not knowing that the information that he tipped was material and nonpublic;



- b. Breached the duty that he inherited from Lazorchak by knowingly or recklessly tipping the information, knowing that there was a reasonable expectation that the Tippee would trade on the basis of or tip that information, or recklessly indifferent to the same; and
- c. received a personal benefit from the tip.

41. Baron knew or should have known that Foldy was associated with Stryker, the company making the tender offer.

42. When Barón tipped to the Tippee the Stryker-Orthovita Inside Information, Baron:

- a. knew or was reckless in not knowing that the information that he tipped was material and nonpublic;
- b. Breached the duty that he inherited from Foldy by knowingly or recklessly tipping the information, knowing that there was a reasonable expectation that the Tippee would trade on the basis of or tip that information, or recklessly indifferent to the same; and
- c. received a benefit from the tip.

**I.**

**FIRST CLAIM FOR RELIEF**

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder**

43. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 42, inclusive, as if they were fully set forth herein.

44. Baron, by engaging in the conduct described above, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or

instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (a) employed devices, schemes or artifices to defraud;
- (b) made untrue statements of material facts 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; and/or
- (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

45. By reason of the foregoing, Baron 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 [17 C.F.R. § 240.10b-5], thereunder.

### III.

#### **SECOND CLAIM FOR RELIEF**

##### **Violations of Section 14(e) of the Exchange Act and Rule 14e-3 thereunder**

46. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 45, inclusive, as if they were fully set forth herein.

47. By March 28, 2011, the date of the Tippee's illegal trade in Orthovita securities alleged herein, substantial steps had been taken to complete Stryker's tender offer to acquire Orthovita.

48. Defendant Baron knew or had reason to know that the Stryker-Orthovita Inside Information was nonpublic information that had been acquired from a representative of Stryker, the offering entity. Baron was required to refrain from communicating this information to third-

parties, including the Tippee, under circumstances in which it was reasonably foreseeable that such communications were likely to result in unlawful trading.

49. By reason of the foregoing, Baron violated, and unless enjoined, will continue to violate, 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].

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court enter final judgment:

#### **I.**

Permanently restraining and enjoining Baron from, directly or indirectly, violating 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], and from violating 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];

#### **II.**

Ordering Baron to disgorge all ill-gotten gains or unjust enrichment gained by his tippee as set forth in this Complaint, together with prejudgment interest thereon;

#### **III.**

Ordering Baron to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

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

Respectfully submitted,

Date: June 10, 2014

BY: 

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## CERTIFICATION

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged in the foregoing Complaint is the subject of the civil and criminal actions identified below, although the defendant is not a defendant in any of the identified actions.

### **Civil Action:**

Securities and Exchange Commission v. John Lazorchak, Mark S. Cupo, Mark D. Foldy, Michael L. Castelli, Lawrence D. Grum, Michael T. Pendolino, and James Deprado, 2:12-cv-07164-KSH-CLW (D.N.J.)

### **Criminal Actions:**

U.S. v. John Lazorchak, 2:13-cr-00656-KSH (D.N.J.)

U.S. v. Mark S. Cupo, 2:13-cr-00658-KSH (D.N.J.)

U.S. v. Mark D. Foldy, 2:13-cr-00659-KSH (D.N.J.)

U.S. v. Michael L. Castelli, 2:13-cr-00738-KSH (D.N.J.)

U.S. v. Lawrence D. Grum, 2:13-cr-00737-KSH (D.N.J.)

U.S. v. Michael T. Pendolino, 2:13-cr-00657-KSH (D.N.J.)

Date: June 10, 2014

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MICHAEL J. BARON,

Defendant.

Case No.

**DESIGNATION OF AGENT  
FOR SERVICE**

Pursuant to Local Rule 101.1(f), because the Securities and Exchange Commission (the "Commission") does not have an office in this district, the United States Attorney for the District of New Jersey is hereby designated as eligible as an alternative to the Commission to receive service of all notices or papers in the captioned action. Therefore, service upon the United States or its authorized designee, Paul Blaine, Chief, Civil Division, United States Attorney's Office for

the District of New Jersey, 970 Broad Street, 7th Floor, Newark, NJ 07102 shall constitute service upon the Commission for purposes of this action.

Respectfully submitted,

Date: June 10, 2014

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