

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
HAROLD L. ALTVATER)	JURY TRIAL DEMANDED
)	
Defendant,)	
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COMPLAINT

Plaintiff Securities and Exchange Commission (“the Commission”) alleges the following against defendant Harold L. Altvater (“Altvater”), and hereby demands a jury trial:

PRELIMINARY STATEMENT

1. This case involves unlawful insider trading by Altvater in the stock of Ariad Pharmaceuticals, Inc. (“Ariad”), a company based in Massachusetts engaged in the business of developing and marketing drugs to treat cancer. During the period from October 2013 to January 2014, Altvater misappropriated information he learned from his wife, who, in her capacity as an employee of Ariad, obtained material nonpublic information concerning Ariad’s communications with the United States Food & Drug Administration (“FDA”) about the safety profile of Ariad’s only FDA approved drug, Iclusig. Shortly after Altvater’s wife learned the material, nonpublic information concerning Ariad’s communications with the FDA, Altvater engaged in trades of Ariad stock in advance of three different public announcements by Ariad. These announcements were variously perceived by investors to be either positive or negative, and Ariad’s stock price increased or decreased accordingly after each announcement. By trading in advance of these announcements while in possession of the inside information that Altvater had misappropriated

from his wife, Altvater fraudulently avoided losses and obtained insider profits totaling more than \$102,000. Altvater also advised a friend to trade Ariad stock on the basis of the material nonpublic information he learned from his wife, enabling the friend to obtain insider trading profits of almost \$5,000.

2. By knowingly or recklessly engaging in the conduct described in this Complaint, Altvater violated Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

JURISDICTION

3. 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]. The Commission seeks a permanent injunction against Altvater, enjoining him from engaging in the acts, practices and courses of business alleged in this Complaint, disgorgement of all profits, prejudgment interest, civil monetary penalties, and such other and further relief as the Court may deem just and appropriate.

4. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d)(1), 78u(e), 78aa]. Venue is proper in this District because Altvater’s acts and practices alleged herein occurred primarily in Massachusetts, Altvater resides in Massachusetts, and Ariad is located in Massachusetts.

5. In connection with the conduct described in this Complaint, Altvater directly or indirectly made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange.

DEFENDANT

6. **Harold L. Altvater**, age 55, is a resident of North Reading, Massachusetts. He lived with his wife in Stoneham, Massachusetts during the relevant period. Since February 2013,

Altwater has operated Delta 9 Medical Consulting, a cannabis consultation practice with offices in Malden and Methuen, Massachusetts. Prior to that, he worked as an anesthesiologist.

RELEVANT ENTITY

7. **Ariad Pharmaceuticals, Inc.** is a Delaware company with a principal place of business in Cambridge, Massachusetts. Ariad describes itself as an oncology company engaged in the business of developing and marketing drugs to treat cancer. During the relevant time period, Ariad was in the process of obtaining approval of and commencing marketing and distribution of Iclusig, a drug which was approved by the FDA as a second line option for the treatment of adult patients with certain types of leukemia. Ariad's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Ariad is quoted under the symbol "ARIA" on the NASDAQ Global Select Market.

FACTUAL ALLEGATIONS

8. Altwater and his wife have been married since at least 2012. Altwater's wife held various drug safety positions at Ariad during the period from 2006 to 2014. At all relevant times, Altwater lived with his wife in their shared residence, was aware that she worked for Ariad, and understood her role at Ariad.

I. Trading Ahead of Ariad's October 9, 2013 Announcement of a Pause in Enrollment for Iclusig Clinical Trials

9. At 8:30 a.m. on October 9, 2013, Ariad issued a press release stating that the incidence of "serious arterial thrombosis" (blood clots developing in arteries) in Iclusig-treated patients had increased upon a review of 24-month clinical data as compared to the previous rate of incidence identified in 11-month clinical data. In connection with this news, Ariad stated that "patient enrollment in all clinical studies is being paused, and subject to agreement with the FDA, will be resumed with anticipated changes in dose and other modifications. In concert with

this action, the FDA placed a partial clinical hold on all new patient enrollment in clinical trials of Iclusig.”

10. Companies like Ariad are routinely the subject of published reports by stock analysts who evaluate companies as investment opportunities and make recommendations to investors about whether to buy, sell, or hold a particular company’s securities. A number of analysts responded to the October 9, 2013, announcement by decreasing Ariad revenue estimates to eliminate assumptions for broadened FDA approval of Iclusig for use with larger patient populations.

11. After the October 9, 2013 announcement, Ariad’s stock price declined 66%; from \$17.14 per share at the close of the previous day to \$5.83 per share at market close on October 9.

12. Prior to the October 9, 2013 announcement, Altvater’s wife had attended multiple meetings between Ariad and the FDA. During a September 30, 2013 teleconference with the FDA, Altvater’s wife took notes stating that FDA representatives had observed increased incidence of adverse events related to Iclusig. At a follow-up in-person meeting in Washington, DC on October 2, 2013, FDA representatives informed Altvater’s wife and others that they viewed continued exposure to Iclusig at current doses to be dangerous. The FDA representatives also stated that Ariad had not been in compliance with adverse event reporting requirements to the agency. The information that Altvater’s wife obtained in the above teleconferences and meetings constituted material nonpublic information about Ariad and its drug, Iclusig.

13. The FDA’s views regarding the safety profile of Iclusig constituted material nonpublic information in part because, among other things, they resulted in Ariad pausing the clinical development of its only FDA-approved drug.

14. In recognition of the material nonpublic nature of the information about

communications with the FDA concerning Iclusig, on October 4, 2013 Ariad implemented a company-wide “black-out” period that prohibited trading in Ariad securities by company employees and related persons. The “black-out” period remained in place until November 14, 2013.

15. On the morning of October 2, 2013, two days after his wife’s conference call with the FDA and while his wife was en route to Washington, DC to meet with the FDA in person, Altwater advised a friend via email to “put in stop loss orders” for the friend’s recent purchases of Ariad shares. A “stop loss order” limits an investor’s loss on a position in a security by instructing the investor’s broker to sell when the security reaches a certain price. In his email, Altwater told his friend that the stock could “drop 50-70% in a matter of hours.”

16. On October 3 and 4, 2013, after his wife returned to her shared home with Altwater on the evening of October 2, 2013, Altwater sold 5,890 shares of Ariad stock (the entire balance he held at the time) for approximately \$110,000.

17. Altwater sold his Ariad stock on the basis of material nonpublic information that Altwater’s wife had received in the course of her employment by Ariad. By selling his Ariad stock on October 3 and 4, 2013, Altwater avoided a loss of approximately \$75,226.30, which he would have incurred if the sales had taken place after the announcement on October 9, 2013.

II. Trading Ahead of Ariad’s October 31, 2013 Announcement of a Temporary Suspension of Iclusig Marketing

18. On October 31, 2013, Ariad announced a temporary suspension of Iclusig marketing in the United States, noting that it took the action in response to an FDA request. After the October 31, 2013 announcement, Ariad’s stock price declined approximately 49%; from \$3.96 per share at the close of the previous day to \$2.20 per share at market close on October 31. One analyst commented that the FDA’s actions “suggest[] a much higher level risk

than previously acknowledged by [Ariad], and a level of concern by FDA that is non-reassuring.” Another characterized the FDA’s actions as “surprising,” noting that “the suspension clearly speaks to the level of discomfort the FDA has with Iclusig’s risk/benefit profile.”

19. Prior to the announcement, on October 24, 2013, Altvater’s wife participated in a conference call with the FDA where the agency suggested the possibility of discontinuing sales of Iclusig. The fact that the FDA had referred to the possibility of discontinuing sales of Iclusig constituted material nonpublic information because it portended the FDA’s ultimate request to suspend marketing of the company’s only drug six days later.

20. During the period from October 24–31, 2013, Ariad continued to implement the company-wide “black-out” period instituted on October 4 that prohibited trading in Ariad securities by company employees and related persons. Altvater purchased 17,000 shares of Ariad stock on October 10 and 15, 2013 in violation of the terms of the blackout period.

21. On October 24, 2013, approximately an hour after Altvater’s wife’s call with the FDA concluded, she called Altvater. Less than a half hour after their telephone call, Altvater sold all 17,000 shares of Ariad stock he recently purchased for approximately \$57,000.

22. Altvater sold his Ariad stock on the basis of material nonpublic information that Altvater’s wife had received in the course of her employment by Ariad. By selling the Ariad stock he held on October 24, 2013, Altvater avoided a loss of approximately \$19,210, which he would have incurred if the sales had taken place after the announcement on October 31, 2013.

III. Trading, and Tipping a Friend Ahead of Ariad's December 20, 2013 Announcement Regarding the Resumption of Iclusig Marketing and Commercial Distribution

23. On December 20, 2013, Ariad announced its resumption of Iclusig marketing and commercial distribution following FDA approval of revised prescribing information and a Risk Evaluation Mitigation Strategy ("REMS") for Iclusig.

24. After the December 20, 2013 announcement, Ariad's stock price increased approximately 11%; from \$5.78 per share when the market opened to \$6.43 per share at the close of the trading day. Analysts noted that the announcement was earlier than expected and a positive surprise.

25. During November and December 2013, Altvater's wife participated in Ariad's communications with the FDA, which were aimed at obtaining the agency's approval to resume marketing and distribution of Iclusig. Altvater's wife worked on the REMS submitted to the FDA on December 4, 2013. Prior to the submission of the REMS, on November 20, 2013, Altvater's wife participated in a conference call with the FDA, in which the agency expressed that it shared Ariad's goal to resume marketing and commercial distribution of Iclusig. On November 25, 2013, Ariad's Director of Regulatory Affairs notified Altvater's wife that Ariad should submit its REMS by December 5, 2013 and further notified her that the FDA would consider the REMS "under a rapid regulatory procedure" that "could mean a faster time back on the market."

26. The impending resumption of marketing and commercial distribution of Iclusig constituted material nonpublic information because it would enable Ariad to resume selling its only approved drug in its largest available market. Analysts noted that the re-entry of the drug to the market was a "positive surprise" and "earlier than expected."

27. On December 4, 2013, the day Ariad submitted the REMS to the FDA, Altvater

bought 11,500 shares of Ariad stock for approximately \$55,775. On January 6, 2014, approximately two weeks after Ariad announced resumption of Iclusig marketing and commercial distribution on December 20, 2013, Altwater sold the shares he had purchased on December 4, 2013.

28. The January 6, 2014 sale was for total proceeds of approximately \$77,000, a net gain of approximately \$21,000.

29. Altwater purchased Ariad stock on December 4, 2013 on the basis of material nonpublic information that Altwater's wife had received in the course of her employment by Ariad. By selling the Ariad stock he purchased on December 4, 2013 after Ariad's December 20, 2013 public announcement, Altwater achieved a gain of approximately \$7,590, which he would not have achieved if the sale had taken place before the December 20 announcement.

30. In the days following Altwater's December 4, 2013 purchase of Ariad stock, Altwater repeatedly spoke by telephone with a friend whom he directed to purchase Ariad stock. Altwater met this friend more than five years prior to their December 2013 discussions about Ariad. Altwater and his friend rode motorcycles together, and Altwater consulted with this friend regarding his medical marijuana practice. Altwater directed his friend to purchase Ariad stock on the basis of the same material nonpublic information that he used to purchase Ariad stock on December 4. Altwater's friend purchased 1,200 shares of Ariad stock on December 13, 2013 for approximately \$4,920. Altwater's friend sold his entire holdings of Ariad stock on December 26, 2013 and January 30, 2014, after Ariad's positive December 20, 2013 public announcement, for total proceeds of \$10,701.90.

31. By selling the Ariad stock he purchased on December 13, 2013 after Ariad's December 20, 2013 announcement, Altwater's friend achieved a gain of approximately \$4,188,

which he would not have achieved if the sales had taken place before the December 20 announcement.

IV. Altvater Misappropriated the Information He Learned About Ariad's Communications with the FDA From His Wife in Breach of A Duty of Trust or Confidence

32. At all relevant times, Altvater understood that his wife worked at Ariad, understood the nature and responsibilities associated with her position and role at Ariad, and knew that his wife was subject to various company regulations that restricted her buying and selling of Ariad stock. From July 1, 2013 through the end of the relevant period, Ariad's insider trading policy explicitly prohibited immediate family members who reside with Ariad employees from trading in Ariad stock when in possession of material nonpublic information.

33. Altvater owed a duty to his wife to: (i) maintain the confidentiality of material nonpublic information regarding Ariad provided to him by his wife; (ii) abstain from purchasing or selling securities based on that material nonpublic information; and (iii) abstain from passing that material nonpublic information to others, including family and friends. On at least one occasion in October 2013, Altvater's wife instructed Altvater not to trade in Ariad stock. In addition, Altvater hid the trading and tipping described herein from his wife, well knowing that she would not approve of it.

34. Altvater knew or recklessly disregarded that his trading and tipping of his friend was in breach of an obligation owed to his wife arising from a relationship of trust and confidence.

35. Altvater knew or recklessly disregarded that the information he misappropriated from his wife regarding Ariad's communications with the FDA was material and nonpublic.

36. Altvater knew or recklessly disregarded that he had a duty to refrain from trading on material nonpublic information.

FIRST CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

37. The Commission repeats and incorporates by reference the allegations in paragraphs 1–36 of the Complaint as if set forth fully herein.

38. The information described in paragraphs 12, 19, and 25 was material and nonpublic and considered by Ariad to be confidential. Ariad had policies and procedures protecting confidential information.

39. Altwater learned of the material nonpublic information described in paragraphs 12, 19, and 25 from his wife. Altwater had a duty of trust and confidence with his wife by means of their marital relationship.

40. Altwater traded Ariad stock and tipped his friend to trade in Ariad stock based on the material nonpublic information described in paragraphs 12, 19, and 25.

41. As alleged herein, Altwater directly or indirectly, singly or in concert, by the use of the means and instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, intentionally, knowingly or recklessly: (a) employed or is employing devices, schemes or artifices to defraud; (b) made or is making untrue statements of material fact or omitted or is omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged or is engaging in acts, practices or courses of business which operate as a fraud or deceit upon other persons.

42. By reason of the foregoing, Altwater has 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

- A. Enter a permanent injunction restraining Altwater, as well as his agents, servants, employees, attorneys, and other persons in active concert or participation with them, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation 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];
- B. Require Altwater to disgorge his ill-gotten gains, plus prejudgment interest;
- C. Order Altwater to pay an appropriate civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. §78u-1];
- D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and
- E. Award such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands a jury trial in this action of all issues so triable under the claims in this Complaint.

Respectfully submitted,

/s/ Deena R. Bernstein

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