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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

BRIAN WONG,

Defendant.

COMPLAINT

1:22-cv-9618

JURY TRIAL DEMANDED

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Brian Wong (also referred to here as “Defendant”), alleges as follows:

SUMMARY

1. This case involves insider trading by Brian Wong in the securities of Pandion Therapeutics, Inc. (“Pandion”), in advance of the February 25, 2021 announcement of a tender offer by Merck & Co., Inc. (“Merck”) to acquire Pandion (the “Announcement”).

2. On July 25, 2022, the Commission filed a Complaint against Seth Markin (“Markin”) and his close friend and Brian Wong’s brother, Brandon Wong, in this District (the “July Complaint”).¹ As alleged in the July Complaint, during the approximately three-and-a-half weeks

¹ *SEC v. Markin, et al.*, 1:22-cv-06276-VM (S.D.N.Y. July 25, 2022).

leading up to the Announcement, Markin misappropriated material nonpublic information about Merck's planned tender offer for Pandion (the "Merck-Pandion Deal") from his romantic partner, an associate (the "Associate") at a major law firm (the "Law Firm") that represented Merck in the Merck-Pandion Deal. While the Associate worked on the Merck-Pandion Deal, Markin often stayed for multiple days at a time at the Associate's apartment. The Associate worked on the deal and engaged in frequent telephone calls regarding the deal from her apartment. In breach of his duty of trust and confidence to the Associate, Markin used the information he obtained while staying in the Associate's apartment to purchase Pandion stock ahead of the Announcement and to tip his close friend Brandon Wong, who also purchased Pandion stock ahead of the Announcement.

3. In addition to trading himself, Brandon Wong also unlawfully disclosed the material nonpublic information he received from Markin to his brother Brian Wong, who then also purchased Pandion stock ahead of the Announcement.

4. When Pandion's stock price increased by over 133% on the day of the Announcement, Brian Wong reaped ill-gotten gains of over \$400,000.

VIOLATIONS

5. By virtue of the foregoing conduct and as alleged further herein, Defendant has violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Exchange Act Section 14(e) [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

6. Unless Defendant is restrained and enjoined, Defendant will engage in the acts, practices, transactions, and courses of business set forth in this Complaint or in acts, practices, transactions, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

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

8. The Commission seeks a final judgment: (a) permanently enjoining Defendant from violating the federal securities laws and rules this Complaint alleges he has violated; (b) ordering Defendant to pay disgorgement and prejudgment interest pursuant to Exchange Act Sections 21(d)(5) and 21(d)(7) [15 U.S.C. §§ 78u(d)(5) and 78u(d)(7)]; (c) ordering Defendant to pay civil money penalties pursuant to Exchange Act Section 21A(a) [15 U.S.C. § 78u-1(a)]; and (d) ordering any other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Exchange Act Section 27 [15 U.S.C. § 78aa].

10. Defendant, directly and indirectly, has made use of the means or instrumentalities of interstate commerce or of the mails or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged herein.

11. Venue lies in this District under Exchange Act Section 27 [15 U.S.C. § 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within this District. At all relevant times, common stock of Pandion traded publicly on The Nasdaq Stock Market, which is headquartered in New York, New York.

DEFENDANT

12. **Brian Wong**, age 44, is a resident of Secaucus, New Jersey and Brandon Wong's brother. During the events alleged herein, Brian Wong was employed in an office support position at a major financial institution.

RELEVANT INDIVIDUALS AND ENTITIES

13. **Markin**, age 31, is a resident of Washington Crossing, Pennsylvania. Markin was formerly in new agent training for the Federal Bureau of Investigation. During the insider trading alleged in this Complaint, Markin was employed by a federal contractor as a compliance analyst.

14. **Brandon Wong**, age 39, is a resident of New York, New York. He is Brian Wong's brother and Markin's close friend. During the insider trading alleged in this Complaint, Brandon Wong was employed by a tutoring company in a technical support role.

15. **Pandion** at all relevant times was a Delaware corporation with headquarters in Cambridge, Massachusetts. Pandion was a clinical-stage biopharmaceutical company that developed therapeutics for patients with autoimmune diseases. Prior to the completion of Merck's acquisition of Pandion in April 2021, Pandion's common stock was listed on The Nasdaq Global Select Market under the symbol PAND.

16. **Merck** is a New Jersey corporation with headquarters in Rahway, New Jersey (formerly headquartered in Kenilworth, New Jersey), and with common stock listed on the New York Stock Exchange. It is a global health care company with products that include prescription medicines, vaccines, biologic therapies, and animal health products.

FACTS

I. MERCK TOOK SUBSTANTIAL STEPS TO ACQUIRE PANDION BY TENDER OFFER

17. As alleged in the July Complaint, beginning in August of 2020, representatives of Merck and Pandion began meeting to discuss updates to Pandion's drug developments and to facilitate due diligence by Merck of Pandion pursuant to the parties' confidentiality agreement. In September 2020, executives at both companies met to discuss working together on advancing Pandion's products, culminating in an unaccepted proposal by Merck in October 2020 for a possible partnership agreement between the companies.

18. From November 2020 through January 2021, Merck continued its due diligence of Pandion, including accessing Pandion's virtual data room containing regulatory submissions and related information. By at least January 25, 2021, Merck had retained the Law Firm as counsel to represent Merck in developing and implementing its plan to acquire Pandion.

19. On or about February 5, 2021, Merck engaged an investment bank to provide investment banking services in anticipation of a potential deal with Pandion.

20. On or about February 7, 2021, Merck submitted a proposal to Pandion to acquire all of its common stock.

21. On or about February 9, 2021, Merck and Pandion reached agreement on a proposed acquisition price for Pandion's common stock of \$60 per share.

22. Also on or about February 9, 2021, Merck provided Pandion with an initial draft of a merger agreement, under which Merck would acquire Pandion's shares of common stock by tender offer.

II. MARKIN MISAPPROPRIATED MATERIAL NONPUBLIC INFORMATION FROM THE ASSOCIATE

23. As alleged in the July Complaint, beginning in or about October 2020 and through approximately May 2021 except for a few days in January 2021, Markin was in a close romantic relationship with the Associate. Throughout their relationship, Markin often stayed at the Associate's apartment for extended periods of time.

24. Because of the global pandemic, Markin and the Associate frequently worked from the Associate's apartment during their relationship.

25. During their relationship, Markin and the Associate shared confidences, including discussions about each other's families and plans of marriage.

26. As part of his relationship with the Associate, Markin agreed, expressly or by implication, to treat information related to the Associate's work as confidential and not to trade on it, use it for personal benefit, or share it with others.

27. On or about January 31, 2021, the Associate joined the Law Firm's team of attorneys representing Merck on the Merck-Pandion Deal and became aware of Merck's efforts to acquire Pandion. The Associate continued working on the Merck-Pandion Deal through and beyond the date of the Announcement.

28. The Associate frequently worked on the Merck-Pandion Deal from her apartment, where Markin was often staying, and she kept a binder of documents concerning the Merck-Pandion Deal in the apartment.

29. Among the documents included in the binder was a printed copy of an internal Law Firm email, dated January 31, 2021, which indicated that Merck was considering the acquisition of Pandion and sought to move quickly. Additionally, the email disclosed a code name for the deal and stressed that the deal was "highly confidential" and that those working on the deal must be "extremely careful" not to disclose information associated with the deal.

30. Starting on or before February 1, 2021, and continuing in the days leading up to the Announcement, Markin misappropriated material nonpublic information about the Merck-Pandion Deal from the Associate, including that Merck planned to acquire Pandion, the target date when the acquisition would be publicly announced, and an estimated share price for the acquisition.

31. While working from home in January and February 2021, the Associate conducted work-related telephone calls, including on the Merck-Pandion Deal, from the Associate's one-bedroom apartment. At times, Markin was present in the Associate's apartment when the Associate conducted such work-related calls.

32. Additionally, on multiple occasions in or about January and February 2021, without the Associate's consent and while she could not observe him, Markin reviewed the Associate's binder of documents concerning the Merck-Pandion Deal.

33. As alleged in the July Complaint, between February 1, 2021, the day after the Associate was assigned to work on the Merck-Pandion Deal, and February 23, 2021, two days before the Announcement, Markin purchased 2,270 shares of Pandion stock.

34. Further, as alleged in the July Complaint, in or about February 2021, Markin tipped Brandon Wong the material nonpublic information about the Merck-Pandion Deal that Markin had misappropriated from the Associate. The information he communicated to Wong included details about the nature of the transaction, the target date of the Announcement, and the expected transaction price.

35. Additionally, Markin told Brandon Wong that Markin had learned the information about the Merck-Pandion Deal by secretly reviewing his romantic partner's work-related binder, without her knowledge or consent. Through his friendship with Markin, Brandon Wong knew that the Associate was Markin's romantic partner, and knew that the Associate was an attorney who was working on the Merck-Pandion deal team.

36. Between February 10, 2021 and February 24, 2021, Brandon Wong purchased 35,382 shares of Pandion stock.

III. BRANDON WONG UNLAWFULLY COMMUNICATED MATERIAL NONPUBLIC INFORMATION ABOUT PANDION TO BRIAN WONG, AND BRIAN WONG BOUGHT PANDION STOCK AHEAD OF THE ANNOUNCEMENT

37. In or about February 2021, Brandon Wong unlawfully communicated to his brother, Brian Wong, material nonpublic information about the Merck-Pandion Deal that he had learned from Markin.

38. On or about February 21, 2021, after Brandon Wong had begun purchasing shares

of Pandion stock based on material nonpublic information, Brandon Wong called Brian Wong. The call lasted approximately five minutes.

39. Between February 22, 2021 and February 25, 2021, Brandon Wong and Brian Wong communicated repeatedly about Pandion through an encrypted messaging application. On or about February 22, 2021, via encrypted message, Brandon Wong sent Brian Wong a link to an article concerning a Pandion presentation at an annual scientific meeting. Brandon Wong followed up with a message to Brian Wong in which he stated that “an announcement should be this Thurs, it was supposed to be last week but it got pushed back . . . then 🦄 city.”

40. On or about February 22, 2021, via encrypted messaging application, Brandon Wong sent Brian Wong another link to a news release concerning Pandion and, moments later, followed up with a message to Brian Wong in which he stated, “will present at the . . . Conference on Thursday, February 25, 2021, at 9:20 a.m. E.T. . . . we’re hoping/thinking that’s when they make the announcement.” Brian Wong immediately responded with a message that stated, “[b]ut that’s public info,” to which Brandon Wong responded, “not what’s going to be said.” Brian Wong then followed up with the question, “[a]nd if they don’t.” In response, Brandon Wong stated, “maybe delay til Friday or another week? but they already delayed a week from last week . . . can’t keep delaying forever.”

41. Throughout Brandon and Brian Wong’s conversations about Pandion, via encrypted messages, Brandon Wong referred to the source of his information as his friend who was also investing in Pandion stock. On or about February 22, 2021, Brandon Wong sent Brian Wong a message in which he stated that his “friend is gonna buy a Lotus [a luxury car brand] with his

money.” Brandon Wong later sent his brother an encrypted message with a 🐼 emoji, followed by “lol / that’s the symbol me [sic] friend and I use / I will buy a 🐼 watch / getting a real one.”²

42. Brandon Wong and Brian Wong also deleted the content of more than 50 of the messages sent between them on February 22, 2021.

43. On or about February 23, 2021, Brandon Wong sent Brian Wong an encrypted message that stated, “[m]y friend said they may or may not make the announcement this Thurs, so if they don’t just have to keep waiting / it’s big news / so they need to do it right / when you hear it you’ll be like WOW.”

44. On or about February 24, 2021, the day before the Announcement, in response to a message from Brian Wong that “Panda need to happen,” Brandon Wong stated, “if it happens tomorrow and we can bounce with all that \$\$. . . retire cityyyyyyyyyyyyy . . .”

45. Between February 22 and 24, 2021, Brian Wong purchased 11,888 shares of Pandion stock in a brokerage account held in the name of his life partner.

46. Brian Wong purchased Pandion stock as alleged above while in possession of, and on the basis of, material nonpublic information about the Merck-Pandion Deal that was unlawfully communicated to him by Brandon Wong.

47. Brian Wong knew, was reckless in not knowing, or consciously avoided knowing that the information he received from Brandon Wong was material and nonpublic.

48. Brian Wong also knew, was reckless in not knowing, or consciously avoided knowing that Brandon Wong provided him with material nonpublic information about the Merck-Pandion Deal that was conveyed in breach of a duty of trust and confidence and for personal benefit.

² Panda or 🐼 also is used to reference a watch, including one manufactured by Rolex, with black and white dials, resembling the face of a panda bear. As alleged in the July Complaint, after the Announcement, Brandon Wong bought Markin a Rolex watch to thank Markin for the tip.

49. Brian Wong also knew or had reason to know, was reckless in not knowing, or consciously avoided knowing that the material nonpublic information about the Merck-Pandion Deal had been acquired directly or indirectly from an insider to the Merck-Pandion Deal negotiations – that is, from an employee or an agent of the target company, or the acquiring company, or an advisor to one of those companies in connection with the transaction.

V. THE ANNOUNCEMENT AND DEFENDANT’S ILL-GOTTEN GAINS

50. On February 25, 2021, before market open, Merck and Pandion announced that the companies had entered into a definitive agreement under which Merck would acquire Pandion. Under the agreement, Merck would initiate a tender offer to acquire all outstanding shares of Pandion for \$60 per share. Pandion’s stock price closed at \$59.81 per share that day, an increase of \$34.18 per share or over 133% from the previous day’s close of \$25.63 per share.

51. As a result of the price increase, Brian Wong, trading in an account in the name of his life partner, generated total ill-gotten gains of approximately \$400,000.

52. Additionally, while in possession of material nonpublic information about the Merck-Pandion Deal, Brian Wong encouraged two other individuals to trade in Pandion securities. These two individuals purchased Pandion stock the day before the Announcement and collectively generated profits of approximately \$2,000 as a result of the post-Announcement price increase.

FIRST CLAIM FOR RELIEF

Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder

53. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 52.

54. Defendant, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly has (i)

employed one or more devices, schemes, or artifices to defraud, (ii) made one or more untrue statements of a material fact or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and/or (iii) engaged in one or more acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

55. By reason of the foregoing, Defendant, directly or indirectly, singly or in concert, has violated and, unless enjoined, will again violate Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Violations of Exchange Act Section 14(e) and Rule 14e-3 Thereunder

56. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 52.

57. Between January 25, 2021 and February 24, 2021, Merck (the “offering person”) took substantial steps to commence or did commence a tender offer for Pandion shares of stock but the proposed tender offer was not publicly announced during this time.

58. Between February 21, 2021 and February 24, 2021, Defendant possessed material nonpublic information from the Associate, an employee of Merck’s counsel with respect to the tender offer, relating to the tender offer for Pandion; knew or had reason to know that this information was nonpublic; knew or had reason to know that this information was acquired directly or indirectly from (a) the offering person, (b) the issuer of the securities sought or to be sought by such tender offer, or (c) any officer, director, partner or employee or any other person acting on behalf of such offering person or such issuer; and purchased or sold, or caused to be purchased or sold, Pandion’s securities; and/or communicated material nonpublic information relating to such tender offer to one or more other persons under circumstances in which it was

reasonably foreseeable that such communication was likely to result in a violation of Exchange Act Rule 14e-3.

59. By reason of the foregoing, Defendant has violated and, unless enjoined, will again violate Exchange Act Section 14(e) [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 a Final Judgment:

I.

Permanently enjoining Defendant and his agents, servants, employees and attorneys and all persons in active concert or participation with any of them from violating, directly or indirectly, Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Exchange Act Section 14(e) [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3];

II.

Ordering Defendant to disgorge all ill-gotten gains Defendant received as a result of the alleged violations with prejudgment interest thereon pursuant to Exchange Act Sections 21(d)(5) and 21(d)(7) [15 U.S.C. §§ 78u(d)(5) and 78u(d)(7)];

III.

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

IV.

Granting any other and further relief this Court may deem just and proper.

Dated: New York, New York
November 10, 2022

/s/ Tracy Sivitz

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