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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

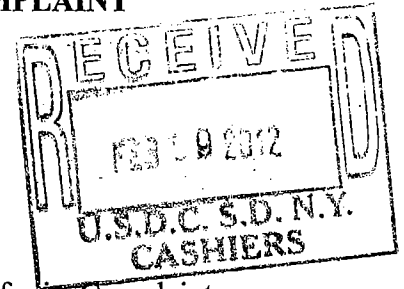
-against-

BRENT C. BANKOSKY,

Defendant.

ECF CASE

COMPLAINT



Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant Brent C. Bankosky (“Bankosky” or “Defendant”), alleges as follows:

SUMMARY

1. This case involves multiple instances of insider trading carried out by Bankosky, who was at the time a Director in Takeda Pharmaceuticals International, Inc.’s (“Takeda”) business development group.

2. Through his work, Bankosky obtained material, nonpublic information (“inside information”) in advance of: (1) the March 31, 2008 post-close announcement that Takeda had formed a strategic alliance with Cell Genesys, Inc. (“Cell Genesys”); and (2) the April 10, 2008 announcement that Takeda had agreed to acquire Millennium

Pharmaceuticals, Inc. (“Millennium”) through a cash tender offer. Bankosky then breached his duty to his employer and its shareholders by using this inside information to trade in his personal account and purchase out-of-the-money call options in the securities of Cell Genesys and Millennium. Through these trades, Bankosky reaped over \$63,000 in profits on an initial investment of \$37,500, achieving a 169% rate of return.

3. Later, Bankosky again breached his duty to his employer and its shareholders by purchasing out-of-the-money call options in the securities of two other issuers — Arena Pharmaceutical, Inc. (“Arena”) and AMAG Pharmaceutical, Inc. (“AMAG”) — that were engaged in confidential discussions with Takeda in 2009 and 2010, respectively. Bankosky, however, failed to profit from these trades.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

4. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)]. The Commission seeks a permanent injunction against the Defendant, enjoining him from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, disgorgement of all profits realized or other ill-gotten gains from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest. The Commission also brings this action pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for civil penalties against the Defendant under the Insider Trading and Securities Fraud Enforcement Act of 1988. In addition, the Commission seeks an order barring Bankosky from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the

Exchange Act [15 U.S.C. § 78o(d)]. Finally, the Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

5. 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), and 78aa].

6. Venue lies in this Court pursuant to Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York and elsewhere and were effected, directly or indirectly, by making the use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. During the time of the conduct at issue, shares of Millennium, Cell Genesys, Arena and AMAG were traded on the Nasdaq, an electronic stock market located in the Southern District of New York.

DEFENDANT

7. **Bankosky**, age 41, worked as a Director of Global Licensing and Business Development at Takeda's Deerfield, Illinois office from January 2008 until September 2010. In 2008, Bankosky was one of ten business development employees who worked in Takeda's business development group in Deerfield. In September 2010, he was promoted to Senior Director. Bankosky resigned from Takeda in May 2011.

RELEVANT ENTITIES

8. **Takeda** is a Japanese pharmaceutical company, headquartered in Osaka, Japan.

9. **Cell Genesys**, originally formed as a Delaware corporation in 1988, is a biotechnology company that was registered with the Commission pursuant to Section 12(b) of the Exchange Act until it was acquired by BioSante Pharmaceuticals, Inc. on October 14, 2009. Until October 2009, Cell Genesys's common stock traded on the Nasdaq, and it filed periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act.

10. **Millennium**, originally formed as a Delaware corporation in 1993, is a biotechnology company that was registered with the Commission pursuant to Section 12(b) of the Exchange Act until it was acquired by Takeda on May 14, 2008. Until May 2008, Millennium's common stock traded on the Nasdaq, and it filed periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act.

11. **Arena** is a clinical-stage biopharmaceutical company incorporated in Delaware, and is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Arena's common stock trades on the Nasdaq, and it files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act.

12. **AMAG** is a biopharmaceutical company incorporated in Delaware, and is registered with the Commission pursuant to Section 12(g) of the Exchange Act. AMAG's common stock trades on the Nasdaq, and it files periodic reports, including

Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act.

CALL OPTIONS

13. Equity call options give the buyer the right, but not the obligation, to purchase a company's stock at a set price (the "strike price") for a certain period of time (through "expiration"). In general, one buys a call option when the stock price is expected to rise, or sells a call when the stock price is expected to fall. For example, in February or March, 2008, one "April \$15.00" call option on Millennium stock would give the purchaser the right to buy 100 shares of Millennium stock for \$15.00 per share before the call expired on April 19, 2008 (options generally expire on the third Friday of the expiration month). If Millennium stock went above \$15.00 per share before the call option expired, the call owner could either exercise the call option and acquire the stock at \$15.00, or sell the call option, which would have increased in value. If Millennium's stock price failed to reach the \$15.00 strike price before the call option expired and the holder had not sold the option, the call would expire worthless. If at the time of purchase of a call option, the strike price of that option is above the price at which the stock is then trading, the call option is referred to as "out-of-the-money," because it would be unprofitable to exercise the call option and pay more for the stock than if the stock were purchased on a stock market.

FACTS

A. Takeda's Nonpublic Discussions with Cell Genesys and Millennium

14. Bankosky traded in advance of Takeda's announcement, following the close of trading on March 31, 2008, that it had formed a strategic alliance with Cell

Genesys (the “Cell Genesys Announcement”). The Cell Genesys Announcement stated, among other things, that “in exchange for exclusive worldwide commercial rights to GVAX immunotherapy for prostate cancer, Takeda will pay Cell Genesys an upfront payment of \$50 million and additional milestone payments totaling up to \$270 million relating to regulatory approval and commercialization of GVAX immunotherapy for prostate cancer in the United States.” Between at least January 1, 2008 and March 31, 2008, Takeda and Cell Genesys conducted nonpublic discussions regarding the strategic alliance. During these nonpublic discussions, Cell Genesys’s stock price traded at a price between \$1.81 and \$2.98. Following the Cell Genesys Announcement, the share price of Cell Genesys rose 31%, from \$2.35 (the closing price on March 31) to \$3.09 (the closing price on April 1).

15. Bankosky also traded in advance of the April 10, 2008 pre-open announcement that Millennium had agreed to be acquired by Takeda (the “Millennium Announcement”). The Millennium Announcement stated, among other things, that “Takeda will acquire Millennium for approximately \$8.8 billion through a cash tender offer of \$25.00 per share.” Between February 1, 2008, and April 10, 2008, Takeda and Millennium conducted nonpublic discussions regarding the impending acquisition. During these nonpublic discussions, Millennium’s stock traded at a price between \$12.82 and \$16.35. Following the Millennium Announcement, Millennium’s shares rose from \$16.35 (the closing price for April 9) to \$24.34 (the closing price for April 10), an increase of 48.87%.

B. Bankosky's Access to Inside Information at Takeda

16. In connection with its discussions with Cell Genesys and Millennium, Takeda relied on certain business development employees located in Deerfield, Illinois to assist it with negotiations. In 2008, all ten members of Takeda's Deerfield business development group, including Bankosky, had offices in the same section of the fifth floor of Takeda's offices.

17. Bankosky obtained inside information concerning Takeda's negotiations with Cell Genesys on or before February 29, 2008. Bankosky's supervisor and another colleague in the business development group in Deerfield led the Cell Genesys discussions on behalf of Takeda. Bankosky sent and received emails concerning the negotiations leading up to the Cell Genesys Announcement. On January 28, 2008, while on a trip to Takeda's Tokyo office, Bankosky sent an email to a colleague saying, in relevant part, "Cell Genesys passed Alliance Committee Review today to submit a non-binding term sheet for the GVAX immunotherapy portfolio." Later, on February 28, 2008, Bankosky was copied on an email that listed the remaining issues subject to continuing negotiation for "Project Ceres," the code name for Cell Genesys. On March 26, 2008, Bankosky was copied on an email that indicated that it was "about 90%" certain that "Ceres" would close by the next Monday.

18. Bankosky obtained inside information concerning Takeda's negotiations with Millennium on or before March 4, 2008. Two of Bankosky's colleagues in the business development group in Deerfield performed extensive work to assist Takeda in its due diligence for the impending Millennium deal and worked long hours on this due diligence between January 2008 and the Millennium Announcement on April 10, 2008.

In a January 17, 2008 email (days after he started at Takeda), one of these colleagues wrote to Bankosky to apologize for rescheduling a meeting and referenced “project Mercury,” the code name for the Millennium transaction. The email said, “have a deadline tonight on project Mercury . . . will tell you about that one.”

C. Takeda’s Insider Trading Policies and Confidentiality Policies

19. Bankosky was barred by Takeda’s internal policy from trading based on inside information. Takeda North America’s Code of Conduct forbids employees from trading based on material nonpublic information or from disclosing such information. It specifically forbids trading in Takeda and “any other company which you have obtained ‘Material Non-Public Information’ as a result of your employment or assignment with Takeda.” The Code of Conduct defines material information as “information for which there is a substantial likelihood that a reasonable investor would consider it important in making his or her investment decisions.” The Code of Conduct also includes specific examples of Material Non-Public Information, including “significant acquisitions,” “joint venture transactions,” “major new contracts,” and “licenses.” Takeda’s Confidentiality, Noncompetition and Intellectual Property Agreement, entered into with all employees, similarly prohibits employees from “us[ing], disclos[ing], or tak[ing] any action which may result in the use or disclosure of, any Confidential Information.”

D. Bankosky’s Purchases of Cell Genesys and Millennium Securities

20. Despite Bankosky’s duty to not use confidential information concerning Takeda’s business, Bankosky traded in the securities of both Cell Genesys and Millennium in his personal account at Scottrade. Bankosky spent over \$17,000 to purchase out-of-the-money call options in Cell Genesys between February 29, 2008 and

March 31, 2008. Specifically, Bankosky purchased: (i) 100 April \$2.50 call options and 20 January 2009 \$5.00 call options on February 29, 2008; (ii) 35 January 2009 \$5.00 call options on March 4, 2008; (iii) 194 January 2009 \$5.00 call options on March 5, 2008; (iv) 50 April \$2.50 call options and 28 January 2009 \$5.00 call options on March 11, 2008; (v) 77 April \$2.50 call options on March 12, 2008; (vi) 65 April \$2.50 call options on March 13, 2008; and (vii) 100 April \$2.50 call options on March 31, 2008. Each of the call options Bankosky purchased had a strike price above Cell Genesys's share price, which never closed above \$2.35 on any of the days that Bankosky purchased the Cell Genesys call options. Bankosky was thus betting that Cell Genesys's share price would increase and was seeking to profit from the rise in price.

21. As detailed above, Bankosky's first Cell Genesys call option purchase, on February 29, 2008, was made the day after he received an email indicating that Takeda was in active negotiations with Cell Genesys, and a month after Bankosky wrote an email to a colleague referencing the confidential negotiations with Cell Genesys.

22. Bankosky also spent over \$20,500 to purchase out-of-the-money call options in Millennium between March 4, 2008 and March 12, 2008. Specifically, Bankosky purchased: (i) 100 April \$15 call options and 100 May \$17.50 call options on March 4, 2008; (ii) 100 May \$17.50 call options on March 5, 2008; (iii) 250 May \$17.50 call options on March 7, 2008; (iv) 100 April \$15 call options on March 11, 2008; and (v) 100 May \$17.50 call options on March 12, 2008. Each of the call options Bankosky purchased had a strike price above Millennium's share price, which never closed above \$13.75 on any of the days that Bankosky purchased the Millennium call options.

Bankosky was thus betting that Millennium's share price would increase and was seeking to profit from the rise in price.

23. As detailed above, these trades were placed after Bankosky's colleagues had begun working intensively on the Millennium transaction, and after Bankosky received a January 17, 2008 email referencing the code name for the confidential negotiations with Millennium.

24. Bankosky funded his Cell Genesys and Millennium purchases by wiring \$40,000 into his account on February 29, 2008, the day of his first Cell Genesys call option purchase. The trades at issue were Bankosky's first trades in Cell Genesys and Millennium securities since at least September 1, 2006. The February 29, 2008 Cell Genesys transaction was the first options trade in his account since September 25, 2007.

E. Bankosky's Sales of Cell Genesys and Millennium Securities

25. After the Cell Genesys Announcement, the price of Cell Genesys rose 31% — from \$2.35 (the closing price on March 31) to \$3.09 (the closing price on April 1). Bankosky sold all his Cell Genesys call options on April 8, 2008 and April 10, 2008 for a total of over \$38,000. As a result of his timely trading in Cell Genesys, Bankosky recorded more than \$21,000 in profit on an investment of approximately \$17,000.

26. Bankosky sold all his Millennium call options on April 8, 2008, prior to the April 10, 2008 Millennium Announcement, for a total of over \$62,000. As a result of his timely trading in Millennium, Bankosky recorded more than \$42,000 in profit on an investment of approximately \$20,500.

27. Cumulatively, Bankosky realized over \$63,000 in profits on his Cell Genesys and Millennium securities transactions on an investment of approximately \$37,500, achieving a rate of return of over 169%.

F. Bankosky's Trades in Arena and AMAG

28. In the spring of 2009, Bankosky purchased out-of-the-money call options in Arena at the same time that Takeda was engaged in confidential discussions concerning a cardiovascular drug in Arena's pipeline. Bankosky was aware of the confidential discussions with Arena and participated in these discussions. Yet, despite knowing the confidential nature of these discussions, on March 26, 2009, Bankosky spent over \$49,000 to purchase 403 April \$5 call options in Arena. The strike price of these options was \$.86 (that is, more than 27%) above Arena's stock closing price on March 26. Bankosky sold these call options at a loss, however, after Arena announced disappointing results for Phase III clinical trials of an obesity drug — not the cardiovascular drug Bankosky was working on — on March 30, 2009. Takeda and Arena never finalized any agreement concerning the cardiovascular drug.

29. In the spring of 2010, Bankosky purchased out-of-the-money call options in AMAG the day before an announcement concerning a deal involving AMAG and Takeda (the "AMAG Announcement"). The April 1, 2010 AMAG Announcement stated that AMAG had granted Takeda an exclusive license to a drug known as Feraheme for certain territories in return for \$60 million and an opportunity to receive an additional \$220 million for "developmental and commercial milestones."

30. Bankosky was aware of Takeda's confidential, nonpublic negotiations on or before March 31, 2010. Bankosky, in fact, participated in the negotiations with

AMAG approximately a year in advance of the AMAG Announcement. While he handed off primary responsibility for the negotiations to another business development colleague a few months later (who later relocated to London), Bankosky was never excluded from the continuing negotiations. Through at least March 2010, Bankosky continued to participate in staff meetings where AMAG was most likely discussed and continued to be copied on documents that referenced AMAG. For example, on March 15, 2010, Bankosky received an email with a table listing the key events scheduled for the business development group in the next three months. This table included a reference to the planned Board of Director approval for AMAG scheduled for March 31, 2010.

31. Despite being aware of the ongoing AMAG negotiations, Bankosky spent over \$6,200 to purchase 57 April \$37.50 call options and 150 April \$40 call options on March 31, 2010, the day prior to the AMAG Announcement. The \$37.50 and \$40 strike prices on these options were above AMAG's stock price, which closed at \$34.91 on March 31, 2010. Following the April 1, 2010 AMAG Announcement, AMAG's stock rose from \$34.91 (the closing price on March 31, 2010) to \$37.58, increasing the value of the options Bankosky had acquired. Rather than selling the options at a profit, however, Bankosky held onto these call options and they eventually lost value. Bankosky ultimately sold these options at a loss just prior to their expiration in April.

CLAIMS FOR RELIEF

CLAIM I

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

32. The Commission realleges and incorporates by reference paragraphs 1 through 31, as though fully set forth herein.

33. The information that Bankosky accessed concerning the impending strategic alliance with Cell Genesys, the impending acquisition of Millennium, the nonpublic discussions with Arena, and the impending announcement concerning AMAG was, in each instance, material and nonpublic. This information was considered confidential by Bankosky's employer, and Bankosky's employer had policies protecting its own and its business partners' confidential information.

34. Bankosky learned the inside information that he used to make the securities transactions alleged herein during the course of his employment, and Bankosky knew, recklessly disregarded, or should have known, that he, directly, indirectly or derivatively, owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

35. Bankosky used the inside information to place trades in his personal account.

36. By virtue of the foregoing, Bankosky, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

37. By virtue of the foregoing, defendant Bankosky, directly or indirectly, violated, and unless enjoined, will again 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].

CLAIM II

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

38. The Commission realleges and incorporates by reference paragraphs 1 through 37, as though fully set forth herein.

39. Prior to the public announcement of the tender offer for Millennium, and after a substantial step or steps to commence such tender offer had been taken, Bankosky, while in possession of material information relating to such tender offer, which information he knew or had reason to know was nonpublic and had been acquired directly or indirectly from the offering company, the issuer, or any officer, director, partner, or employee, or other person acting on behalf of the offering company or issuer, purchased securities of Millennium.

40. By reason of the conduct described above, defendant Bankosky violated, and unless enjoined, will again violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Exchange Act Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining the Defendant, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation

with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from 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 Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Exchange Act Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder;

II.

Ordering the Defendant to disgorge, with prejudgment interest, all illicit trading profits, or other ill-gotten gains received as a result of the conduct alleged in this Complaint.

III.

Ordering the Defendant to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1];

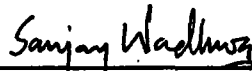
IV.

Barring the Defendant, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

V.

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

Dated: New York, New York
February 9, 2012



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