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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

	:	
SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	14 Civ. _____ ()
	:	
v.	:	ECF CASE
	:	
ALAN POSNER,	:	
	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff Securities and Exchange Commission (“SEC” or “Commission”), 100 F Street, N.E., Washington, DC 20549, brings this action against Defendant Alan Posner, 36 Faith Lane, Danbury, CT 06810, and alleges:

SUMMARY

1. This case involves the illegal tipping of material nonpublic information (“inside information”) by George H. Holley, the co-founder of Home Diagnostics, Inc. (“HDI”), who was Chairman of HDI’s Board of Directors. In January 2010, Holley tipped Defendant, a longtime employee, information about an impending acquisition of HDI by another company. Although Holley owed a fiduciary duty to HDI and its shareholders to maintain the confidence of the inside information, he nevertheless

provided the information to Defendant with the intent that he purchase HDI stock on the basis of his tip. Defendant subsequently purchased HDI stock on the basis of the inside information from Holley.

2. On February 3, 2010, HDI publicly announced that it had signed a merger agreement with Nipro Corporation (“Nipro”) whereby Nipro would acquire all of HDI’s outstanding common stock in a tender offer for \$11.50 per share. The announcement caused an eighty-nine percent increase in the price of HDI’s common stock.

3. Following the merger announcement, Defendant sold his HDI shares, realizing a total profit of approximately \$67,910.

4. By engaging in the trading scheme describe herein, Defendant 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 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].

5. By this action, the Commission seeks: (a) to enjoin Defendant from further violating the securities laws in the future; (b) to compel the disgorgement of his unlawful profits with prejudgment interest; and (c) to impose a civil monetary penalty on Defendant.

JURISDICTION AND VENUE

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

7. Venue is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Defendant has consented to venue in this forum.

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

DEFENDANT

9. Defendant Alan Posner, age 58, resides in Danbury, CT. Posner is a longtime employee of U.S. Signs and Fabrication Corporation, a Connecticut-based company owned by Holley.

RELEVANT ENTITIES

10. Home Diagnostics, Inc. was a Delaware corporation with its principal place of business in Fort Lauderdale, Florida. HDI manufactured and marketed blood glucose monitoring systems and disposable supplies for diabetics. Prior to March 12, 2010, HDI was traded on NASDAQ under the symbol "HDIX." On February 3, 2010, HDI announced a merger agreement with Nipro whereby Nipro would acquire HDI via tender offer. On March 15, 2010, HDI merged with a wholly-owned subsidiary of Nipro.

11. Nipro Corporation is a Japanese company that manufactures and distributes medical devices and pharmaceutical products. Nipro's stock is traded on the Tokyo Stock Exchange and Osaka Stock Exchange.

FACTS

I. Holley's Access to Material Nonpublic Information Regarding the Merger

12. On or about June 12, 2009, representatives of Nipro met with members of HDI's management to discuss Nipro's interest in potentially acquiring HDI.

13. Thereafter, throughout the summer and fall of 2009, the companies engaged in confidential merger negotiations and took substantial steps towards the commencement

of a tender offer. These included the retention of a consulting firm by HDI; multiple high-level meetings between senior representatives of the two companies; a due diligence review; the sharing of nonpublic financial information; the execution of a confidentiality agreement; and the drafting of a merger agreement that provided for a tender offer. All of these substantial steps had been completed or initiated by December 22, 2009.

14. On or about December 21, 2009, Nipro formally offered to acquire HDI for \$11.50 per share. On or about December 22, 2009, the HDI board, with Holley participating, deemed the offer adequate and authorized management to proceed with the drafting of a merger agreement. The companies spent most of January 2010 finalizing the details of the merger agreement.

15. On or about February 2, 2010, the HDI board approved the final merger agreement with Nipro. Under the terms of the agreement, Nipro would acquire all of the outstanding shares of HDI common stock at a cash purchase price of \$11.50 per share, representing an approximately ninety percent premium to the closing price of HDI's common stock on February 2, 2010, and an approximately eighty-three percent premium to HDI's average closing price for the preceding ninety days.

16. In his capacity as HDI's Chairman of the Board of Directors, Holley received a stream of nonpublic information beginning in at least June 2009 concerning the merger negotiations between HDI and Nipro.

17. Between August 4, 2009, and February 2, 2010, Holley attended at least seventeen meetings at which the potential merger between HDI and Nipro was discussed.

18. Between December 22, 2009 and January 19, 2010, during which period Holley was tipping various of his friends and relatives to inside information, Holley

attended at least seven board meetings at which the status of the merger negotiations was discussed. For example, Holley attended a December 22, 2009 board meeting at which HDI's board authorized HDI's management to begin the drafting of a merger agreement on the basis of Nipro's proposed purchase price of \$11.50 per share.

19. In addition to attending board meetings, Holley received numerous documents between August 2009 and January 19, 2010 containing nonpublic information relating to the potential merger. Holley received many such documents in December 2009 and early-January 2010. For example, on December 4, 2009, and December 21, 2009, Holley received copies of offer letters from Nipro offering to purchase HDI for \$10.50 per share and \$11.50 per share respectively. In addition, on January 1, 2010, and January 12, 2010, Holley received drafts of a proposed merger agreement between HDI and Nipro.

20. Holley knew, or was reckless in not knowing, that as Chairman of the Board of Directors of HDI he had a fiduciary duty to maintain the confidentiality of all material, nonpublic information that he received relating to HDI. Holley was expressly made aware that he had a duty to maintain the confidentiality of material, nonpublic information that he received concerning HDI. For example, on or about March 11, 2009, HDI's General Counsel sent a memorandum to all members of the HDI board, including Holley, which warned them that material information about the company that had not been publicly disseminated should not be provided to anyone who was not required to have such information, and that there were severe penalties for violating this restriction.

II. Holley's Tipping and the Resulting Trading by Defendant

21. In early January 2010, Holley tipped Defendant to inside information about the proposed merger between HDI and Nipro and recommended that Defendant purchase

HDI stock. In tipping Defendant, Holley received a personal benefit by conferring a gift upon a friend and business relation. Holley referred to the tip as a “bonus” to Defendant.

22. On the basis of the information supplied by Holley, Defendant purchased 13,000 shares of HDI common stock between January 5 and January 12, 2010 for his own benefit. On March 4 and 5, 2010, Defendant sold all 13,000 HDI shares, realizing a profit of approximately \$67,910.

FIRST CLAIM FOR RELIEF

**(Violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)]
and Rule 10b-5 [17 C.F.R. § 240.10b-5])**

23. Paragraphs 1 through 22 are hereby realleged and incorporated by reference, as though fully set forth herein.

24. As described above, Defendant possessed and used material, nonpublic information received from Holley to purchase 13,000 shares of HDI securities. Defendant knew, or was reckless in not knowing, that the information from Holley was material, nonpublic information, and he knew or had reason to know that it was provided to him in breach of Holley’s fiduciary duty and duties of trust or confidence to HDI.

25. By his conduct described above, Defendant, in connection with the purchase or sale of securities, by the use of any means or instruments of interstate commerce or of the mails, or of any facility of any 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 course of business which operated or would operate as a fraud or deceit upon any persons, including purchasers or sellers of securities.

26. By engaging in the conduct described above, Defendant violated, and unless enjoined will again 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.

SECOND CLAIM FOR RELIEF

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

27. Paragraphs 1 through 26 are hereby realleged and incorporated by reference, as though fully set forth herein.

28. Before the public announcement of the tender offer for HDI, and after a substantial step or steps to commence the tender offer were taken, Defendant purchased HDI securities while in possession of material information relating to the tender offer and while knowing or having reason to know that the information he possessed 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.

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

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests a final judgment:

A. Permanently enjoining Defendant 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] and 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];

B. Ordering 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;

C. Ordering Defendant to pay a civil monetary penalty pursuant to Section 21A of the Exchange Act; and

D. Granting such other and further relief as the Court deems just and appropriate.

Dated: May 6, 2014

Of Counsel:

Antonia Chion
Yuri B. Zelinsky
Jason Litow

Local Counsel Designated
Pursuant to L.Civ.R. 101.1(f):

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Respectfully submitted,

s/ Kenneth W. Donnelly

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Securities and Exchange Commission

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.