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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

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14 SECURITIES AND EXCHANGE COMMISSION,
15 Plaintiff,
16 v.
17 JOSEPH N. AZAR,
18 Defendant.

Case No.
COMPLAINT

19 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

20 **SUMMARY OF THE ACTION**

21 1. This action involves insider trading by Defendant Joseph Azar. On at least two
22 occasions, Azar purchased stock after learning from his friend Michael Kara that the company
23 was the target of a potential acquisition. Michael Kara received the information from his brother
24 Maher Kara, who at the time was an employee of the Investment Banking Division of Citigroup
25 Global Markets, Inc. ("Citigroup").

26 2. First, in March 2006, Michael Kara tipped Azar about a plan to acquire drug-
27 maker Andrx Corporation. Azar purchased Andrx stock based on the tip, spending more than
28 \$120,000. Following the March 13, 2006 announcement that Andrx would be acquired, Azar's

1 trades resulted in illegal profits of \$18,473. Second, in March 2007, Michael Kara tipped Azar
2 about an upcoming acquisition involving Biosite, Inc., a medical device company. Two days
3 before the acquisition was announced, Azar purchased Biosite stock, spending more than
4 \$200,000. Following the March 25, 2006 announcement that Biosite would be acquired, these
5 trades resulted in illegal profits of \$108,525.

6 JURISDICTION AND VENUE

7 3. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of
8 the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1].

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

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

14 6. Venue in this District is proper pursuant to Section 27 of the Exchange Act
15 [15 U.S.C. § 78aa] because a substantial part of the acts and transactions constituting the
16 violations alleged in this Complaint occurred within the Northern District of California, and
17 because the Defendant resides or transacts business in the district.

18 INTRADISTRICT ASSIGNMENT

19 7. Under Civil Local Rule 3-2, this civil action should be assigned to the San
20 Francisco or Oakland Divisions, because a substantial part of the events or omissions which give
21 rise to the claim occurred in Alameda County and Contra Costa County.

22 DEFENDANTS

23 8. **Joseph N. Azar**, age 49, is a resident of Pleasanton, California. He works as a
24 civil engineer.

25 RELEVANT ACQUISITION TARGETS

26 9. **Biosite, Inc.** (“Biosite”) was a Delaware corporation with its principal place of
27 business in San Diego, California. During the relevant time period, Biosite common stock was
28

1 listed on the NASDAQ Global Market. Prior to its acquisition in 2007, Biosite developed and
2 sold diagnostic medical tests.

3 10. **Andrx Corporation** ("Andrx") was a Delaware corporation with its principal
4 place of business in Davie, Florida. During the relevant time period, Andrx common stock was
5 listed on the NASDAQ National Market System. Prior to its acquisition in 2006, Andrx was a
6 pharmaceutical company specializing in generic drugs.

7 **FACTUAL ALLEGATIONS**

8 **A. Maher Kara's access to nonpublic information**

9 11. Maher Kara was employed by Citigroup as an investment banker from 1999 to
10 April 2007, and specialized in healthcare companies beginning in 2002. Maher Kara learned
11 about confidential upcoming transactions and other confidential information regarding
12 Citigroup's clients through his position in the Healthcare Group. As an employee of Citigroup
13 with access to confidential information, Maher Kara was subject to restrictions regarding
14 confidential information he obtained in the course of his employment.

15 **B. Trading in the securities of Andrx Corporation**

16 12. In December 2005, an international drug company engaged Citigroup's
17 Investment Banking Division to advise the company in negotiations to acquire Andrx
18 Corporation, a pharmaceutical company based in Florida. The drug company's planned
19 acquisition of Andrx and its engagement of Citigroup was confidential and not publicly
20 disclosed. Maher Kara was aware that Citigroup's client was actively seeking to acquire Andrx.
21 By February 24, 2007, Citigroup's client had taken the following steps toward its planned
22 acquisition of Andrx, including (1) engaging legal and financial advisors; (2) negotiating with
23 Andrx management and board of directors regarding an offer price; (3) making a formal written
24 offer to acquire Andrx; and (4) securing financing commitments for the proposed acquisition.

25 13. On or before February 24, 2006, Maher Kara misappropriated material nonpublic
26 information, in breach of his duty of confidentiality to Citigroup, by tipping his brother Michael
27 Kara about the planned Andrx acquisition. Maher Kara tipped Michael Kara to confer a benefit
28 on himself or to provide a gift to his brother.

1 14. On or before March 6, 2006, Michael Kara tipped his friend Joseph Azar with
2 material nonpublic information regarding Andrx. At the time he tipped Azar about the planned
3 acquisition of Andrx, Michael Kara knew or was reckless in not knowing that Maher Kara
4 disclosed the information in breach of a duty of confidentiality. Michael Kara tipped Azar about
5 the plan to acquire Andrx to confer a benefit on himself or to provide a gift to Azar.

6 15. On March 6, 2006, Azar made his first purchase of Andrx securities, purchasing
7 2,500 shares of Andrx stock, spending more than \$120,000 on the trades. At the time he made
8 these trades, Azar was in possession of material nonpublic information regarding Andrx and
9 knew or was reckless in not knowing that this information was obtained in breach of a duty of
10 confidentiality. Azar also knew or had reason to know that the information was nonpublic, and
11 knew or had reason to know that the information originated from the offering company, the
12 target company, or any person working on their behalf.

13 16. On Sunday, March 12, 2006, the Andrx board of directors voted to reject the
14 acquisition offer made by Citigroup's client, instead accepting a competing acquisition offer
15 from Watson Pharmaceuticals, Inc. The agreement between Andrx and Watson Pharmaceuticals
16 was publicly announced on Monday, March 13, 2006. After the acquisition was announced,
17 Andrx stock closed on March 13 at \$23.73 per share, up from the \$21.59 closing price on Friday,
18 March 10, an increase of 10 percent.

19 17. Azar's Andrx trading resulted in illegal profits of \$18,473 after the acquisition
20 was publicly announced.

21 **C. Trading in the Securities of Biosite, Inc.**

22 18. In March 2007, bankers from Citigroup's Investment Banking Healthcare Group
23 learned that one of its clients, Beckman Coulter Inc., a medical equipment company based in
24 Fullerton, California, was in advanced discussions with an acquisition target and would seek
25 financing for the acquisition from Citigroup. The planned acquisition of Biosite and Beckman
26 Coulter's work with Citigroup was confidential and not publicly disclosed. Maher Kara was
27 aware that Citigroup's client was seeking to acquire Biosite. At least as of March 19, 2007,
28 Beckman Coulter had taken the following steps toward its planned acquisition of Biosite,

1 including (1) entering into a confidentiality agreement; (2) engaging legal and financial advisors;
2 (3) negotiating with Biosite management and board of directors regarding a tender offer price;
3 and (4) securing financing commitments for the proposed acquisition.

4 19. Maher Kara misappropriated material nonpublic information, in breach of his
5 duty of confidentiality to Citigroup, by tipping his brother Michael Kara about the planned
6 Biosite acquisition. Maher Kara tipped Michael Kara to confer a benefit on himself or to provide
7 a gift to his brother.

8 20. On March 22, 2007, Michael Kara provided Azar with material nonpublic
9 information about the plan to acquire Biosite. At the time he tipped Azar, Michael Kara was in
10 possession of material nonpublic information regarding Biosite, and he knew or was reckless in
11 not knowing that Maher Kara disclosed this information in breach of a duty of confidentiality.
12 Michael Kara tipped Azar about the plan to acquire Biosite to receive a personal benefit or to
13 confer a gift of the information to Azar.

14 21. On March 23, 2007, Azar purchased 3,700 shares of Biosite stock, spending more
15 than \$200,000 on the trades. At the time he made these trades, Azar was in possession of
16 material nonpublic information regarding Biosite and knew or was reckless in not knowing that
17 this information was obtained in breach of a duty of confidentiality. Azar also knew or had
18 reason to know that the information was nonpublic, and knew or had reason to know that the
19 information originated from the offering company, the target company, or any person working
20 on their behalf.

21 22. On Sunday, March 25, 2007, Beckman Coulter announced that it had reached an
22 agreement with the management of Biosite to acquire the company in a tender offer at a price of
23 \$85 per share. The price of Biosite shares rose 51 percent from a \$55.45 closing price on Friday,
24 March 23 to close at \$83.80 per share on Monday, March 26, with the trading volume on March
25 26 more than 38 times the trading volume on March 23.

26 23. Azar's Biosite trading resulted in potential profits of \$108,525 after the
27 acquisition was publicly announced.
28

1 **FIRST CLAIM FOR RELIEF**

2 *Violation of Section 10(b) of the Exchange Act and Rule 10b-5*

3 24. Paragraph nos. 1 through 23 are re-alleged and incorporated herein by reference.

4 25. The Defendant, while in the possession of material nonpublic information
5 regarding Andrx and Biosite traded in the securities of those companies.

6 26. The Defendant knew or was reckless in not knowing that the information he
7 possessed at the time of the trading was obtained through the breach of a duty of confidentiality
8 or trust.

9 27. The Defendant received tips of material nonpublic information from a person that
10 received a benefit, either financial, reputational, or social, from the tips.

11 28. The Defendant committed the alleged acts or omissions in connection with the
12 purchase or sale of securities, and by the use of means or instrumentalities of interstate
13 commerce, of the mails, or the facilities of a national securities exchange.

14 29. Based on the above conduct and the factual allegations contained in this
15 Complaint, the Defendant violated, and unless restrained and enjoined will continue to violate,
16 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R.
17 § 240.10b-5].

18 **SECOND CLAIM FOR RELIEF**

19 *Violation of Section 14(e) of the Exchange Act and Rule 14e-3*

20 30. Paragraph nos. 1 through 23 are re-alleged and incorporated herein by reference.

21 31. The Defendant was in possession of material information relating to a tender
22 offer, which information he knew or had reason to know was nonpublic, which information he
23 knew or had reason to know had been acquired directly or indirectly from (1) the offering entity
24 or person; (2) the issuer of the securities to be sought by such tender offer; or (3) any officer,
25 director, partner, employee or any other person acting on behalf of the offering entity or person
26 or the issuer. While in possession of this material nonpublic information relating to a tender
27 offer, the Defendant purchased, sold, or caused to be purchased or sold, securities of the issuer
28 sought to be acquired in the proposed tender offer.

