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11 U.S. Securities and Exchange Commission

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 **SECURITIES AND EXCHANGE**
16 **COMMISSION,**

17 **Plaintiff,**

18 **vs.**

19 **FRANKLIN M. CHU,**

20 **Defendant.**

Case No.

COMPLAINT

21
22
23 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this action pursuant to Sections 21(d),
26 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1 & 78aa]
27 and Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b),
28 77t(d), and 77v(a)]. Defendant, directly or indirectly, made use of the means or

1 instrumentalities of interstate commerce, the mails, or the facilities of a national
2 securities exchange, in connection with the conduct alleged in this Complaint.

3 2. Venue is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.
4 § 78aa] and Section 22(a) of the Securities [15 U.S.C. § 77v(a)] because certain of the
5 transactions or acts constituting the violations occurred within the Central District of
6 California.

7 **SUMMARY OF THE ACTION**

8 3. This case involves unlawful insider trading by Franklin M. Chu, MD
9 (the “Defendant” or “Chu”) of San Bernardino Urological Associates Medical Group
10 Inc., in the securities GTx Inc. (“GTx”), a biopharmaceutical company. Chu was a
11 lead medical investigator in the clinical trials of Capesaris, a drug GTx developed for
12 the treatment of prostate cancer. Pursuant to clinical trial agreements with GTx, Chu
13 had a duty not to use confidential information about the Capesaris clinical trials for
14 any purpose other than rendering services under the clinical trials agreements. On
15 Friday February 17, 2012, Chu learned from GTx material, nonpublic information
16 that the Food and Drug Administration (“FDA”) was placing a hold on the Capesaris
17 clinical trials because of concerns of an increased risk of blood clots in patients
18 participating in the clinical trials. Immediately after learning this confidential
19 information, and in breach of his duty to GTx, Chu sold 16,000 shares of GTx stock
20 that he held in three personal accounts, at an average sale price of \$5.82 per share.
21 On the following Tuesday, February 21, 2012, after GTx publicly announced the
22 FDA hold on the Capesaris clinical trials, the market price of GTx stock dropped over
23 36% and closed at \$3.69 per share. As a result of trading on material, nonpublic
24 information about the FDA hold prior to the public announcement, Chu avoided
25 trading losses of approximately \$34,081.

26 4. By engaging in the conduct alleged in this Complaint, Chu violated the
27 antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934
28 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §

1 240.10b-5], and Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15
2 U.S.C. § 77q(a)] . The Commission seeks in this action a permanent injunction,
3 disgorgement, and a civil penalty.

4 **DEFENDANT**

5 5. **Franklin M. Chu**, age 62, resides in Riverside, California. Chu is a
6 medical doctor. Chu is a principal and president of Franklin M. Chu MD, Inc., a
7 medical practice based in San Bernardino, California, which does business under the
8 name San Bernardino Urological Associates Medical Group Inc. (hereinafter
9 “SBUA”).

10 **RELATED ENTITY**

11 6 **GTx Inc. (“GTx”)** is a biopharmaceutical company incorporated in
12 Delaware and based in Memphis, Tennessee. GTx’s stock is registered with the
13 Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)], and
14 its shares trade on the NASDAQ.

15 **FACTS**

16 7. Beginning in early 2011, GTx entered into a series of Clinical Trial
17 Agreements (“CTAs”) with SBUA for the Phase II clinical trials of Capesaris, a drug
18 GTx developed to treat advanced prostate cancer. The purpose of the clinical trials
19 was to test the safety and efficacy of Capesaris in anticipation of GTx applying for
20 FDA approval of the drug.

21 8. Chu was the lead investigator for the Capesaris clinical trials at SBUA.
22 Pursuant to the CTAs between GTx and SBUA, GTx paid compensation to SBUA for
23 each patient the medical practice enrolled in the study. The CTAs contained strict
24 confidentiality provisions. In particular, as a medical investigator for the Capesaris
25 clinical trials, Chu was prohibited from using confidential information about the
26 clinical trials for any purpose other than rendering services under the CTAs.

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28 ///

1 9 At 10:15 a.m.¹ on Friday February 17, 2012, GTx executives had a
2 teleconference with the FDA. This telephone conference followed reports by GTx to
3 the FDA of an increased risk of blood clots in patients participating in the Capesaris
4 clinical trials. During that call the FDA informed GTx that it was placing an
5 immediate hold on the Capesaris clinical trials. After this call, GTx executives made
6 plans to notify the doctors and medical practices participating in the clinical trials of
7 the FDA hold so patients could be promptly taken off Capesaris. Working from a
8 list, GTx split this responsibility among three GTx executives, the Chief Executive
9 Officer, the Chief Medical Officer, and the Clinical Trial Coordinator.

10 10. At approximately 2:54 p.m. that day, GTx's CEO left a voice mail on
11 Chu's cell phone and requested that Chu call him back immediately. At
12 approximately 3:13 p.m., after finishing a surgery and while at the hospital in
13 Riverside, California, Chu listened to the CEO's voice mail and called him back.
14 During that call, the GTx CEO informed Chu that the FDA had placed a hold on the
15 Capesaris clinical trials and that the company would issue a press release about the
16 hold on either February 20 or 21. Chu knew, or was reckless in not knowing, that this
17 was material and nonpublic information, and that he had a duty not to trade on it.

18 11. Immediately after learning this material, nonpublic information about the
19 FDA hold on Capesaris clinical trials, Chu logged on to his brokerage accounts using
20 an application on his smart phone and, in breach of his duty to GTx, sold 16,000
21 shares of GTx stock that he held across three separate accounts. Chu's sell orders
22 were executed between 3:21 and 3:42 p.m. on February 17, 2012, at an average sale
23 price of \$5.82 per share, for total proceeds of \$93,120.

24 12. The following Tuesday, February 21, 2012, GTx issued a press release
25 prior to the opening of the market, announcing that the FDA had placed a hold on the

26
27 ¹ As certain telephone calls, trading, and other events relevant to this Complaint
28 occurred in different time zones, for simplicity all times referenced herein are to
Eastern Standard Time.

1 Capesaris clinical trials. After this public announcement, which was the first trading
2 day following Chu's February 17 sale of GTx stock, the market price of GTx stock
3 dropped over 36% and closed at \$3.69 per share. As a result of trading on material,
4 nonpublic information ahead of the public announcement, Chu avoided trading losses
5 of approximately \$34,081.

6 **FIRST CLAIM FOR RELIEF**

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

8 13. The Commission re-alleges and incorporates by reference paragraphs 1
9 through 12 above.

10 14. Defendant, by engaging in the conduct described above, directly or
11 indirectly, in connection with the purchase or sale of securities, by use of the means
12 or instrumentalities of interstate commerce, or the mails, or the facilities of a national
13 securities exchange:

- 14 a. employed devices, schemes, or artifices to defraud;
- 15 b. made untrue statements of material fact or omitted to state
16 material facts necessary in order to make the statements made, in
17 light of the circumstances under which they were made, not
18 misleading; and/or
- 19 c. engaged in acts, practices, or courses of business which operate or
20 would operate as a fraud or deceit upon any persons, including
21 purchasers or sellers of the securities.

22 15. By engaging in the foregoing conduct, Defendant violated, and unless
23 enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §
24 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

25 **SECOND CLAIM FOR RELIEF**

26 **Violations of Section 17(a) of the Securities Act**

27 16. The Commission re-alleges and incorporates by reference in paragraphs
28 1 through 12 above.

1 17. Defendant, by engaging in the conduct described above, in the offer or
2 sale of securities by use of means or instruments of transportation or communication
3 in interstate commerce or by use of the mails, directly or indirectly:

- 4 a. employed a device, scheme, or artifice to defraud;
5 b. obtained money or property by means of an untrue statement of
6 material fact or an omission to state a material fact necessary in
7 order to make the statements made, in light of the circumstances
8 under which they were made, not misleading; and/or
9 c. engaged in a transaction, practice, or course of business which
10 operates or would operate as a fraud or deceit upon the purchaser.

11 18. By engaging in the foregoing conduct, Defendant violated, and unless
12 enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. §
13 77q(a)].

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Commission respectfully requests that the Court enter
16 Final Judgment:

17 **I.**

18 Permanently restraining and enjoining Defendant from, directly or indirectly,
19 engaging in conduct in violation of Section 10(b) of the Exchange Act [15 U.S.C. §
20 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and from engaging in
21 conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

22 **II.**

23 Ordering Defendant to disgorge, with prejudgment interest, ill-gotten gains
24 received as a result of the conduct alleged in this Complaint;

25 **III.**

26 Ordering Defendant to pay a civil penalty pursuant to Section 21A of the
27 Exchange Act [15 U.S.C. § 78u-1]; and

28 ///

1 IV.

2 Granting such other and further relief as this Court may deem just and
3 necessary.

4
5 DATED: *May 19*, 2014

Respectfully submitted,

6 **Securities and Exchange Commission**

7 By its attorneys,

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Complaints and Other Initiating Documents

[5:14-cv-00995 Securities and Exchange Commission v. Chu](#)

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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The following transaction was entered by Van Havermaat, David on 5/19/2014 at 7:29 AM PDT and filed on 5/19/2014

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Docket Text:

COMPLAINT No Fee Required - US Government, filed by Plaintiff Securities and Exchange Commission. (Attorney David J Van Havermaat added to party Securities and Exchange Commission(pty:pla))(Van Havermaat, David)

5:14-cv-00995 Notice has been electronically mailed to:

David J Van Havermaat vanhavermaatd@sec.gov, berryj@sec.gov, cavallones@sec.gov, irwinma@sec.gov, LAROFiling@sec.gov

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