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11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

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

17 **Plaintiff,**

18 **vs.**

19 **ROBERT LOZUK**

20 **Defendant.**

Case No. **'18CV1765 LAB BGS**

COMPLAINT

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

22 **SUMMARY**

23 1. In July 2016, Robert Lozuk (“Lozuk”) engaged in insider trading in the
24 securities of Sequenom, Inc. (“Sequenom”), a San Diego life sciences company that
25 provides molecular diagnostic testing services, with an emphasis on noninvasive prenatal
26 testing. Lozuk, a high-level officer at Sequenom, breached a duty he owed to his
27 employer when he knowingly provided his friend-tippees (“Individual A”) with material
28 nonpublic information relating to Laboratory Corporation of American Holding’s
 (“LabCorp”) bid to acquire Sequenom through a tender offer. Individual A then used the
 material nonpublic information to place illegal trades in Sequenom stock before the

1 public announcement of the acquisition.

2 2. On July 21, 2016, less than a week before the merger announcement,
3 Lozuk knowingly tipped Individual A, who was not a Sequenom employee, about the
4 merger. Lozuk knew that the information was material nonpublic information when he
5 told Individual A. On the basis of Lozuk's tip, Individual A purchased \$18,000 worth of
6 Sequenom stock between July 22 and 25, 2016, at prices ranging from \$0.86 to \$0.88 per
7 share.

8 3. On July 27, 2016, LabCorp and Sequenom issued a joint press release
9 announcing the merger agreement by which LabCorp would acquire all of the
10 outstanding shares of Sequenom in a cash tender offer of \$2.40 per share, or \$371
11 million. That day, the price of Sequenom stock increased 176%. Immediately following
12 the announcement, Individual A sold all of his Sequenom shares, reaping ill-gotten gains
13 of \$26,643.80

14 4. By engaging in the conduct described in this Complaint, Lozuk violated
15 Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15
16 U.S.C. §§ 78j(b), 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-
17 5, 240.14e-3].

18 **JURISDICTION AND VENUE**

19 5. The SEC brings this action pursuant to Sections 21(d), 21(e), and 21A of
20 the Exchange Act to enjoin the acts, practices, and courses of business alleged in this
21 Complaint, and to obtain civil money penalties, an order barring Lozuk from acting as an
22 officer or director of a public company, and such other and further relief as the Court
23 may deem just and appropriate [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1].

24 6. The Court has jurisdiction over this action pursuant to Sections 21(d),
25 21(e), 21A, and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and
26 78aa(a)].

27 7. Defendant, directly or indirectly, made use of the means or
28 instrumentalities of interstate commerce, of the mails, or of the facilities of a national

1 securities exchange in connection with the transactions, acts, practices and courses of
2 business alleged in this complaint.

3 8. Venue is proper in this district pursuant to Section 27(a) of the Exchange
4 Act [15 U.S.C. § 78aa(a)] because certain of the transactions, acts, practices and courses
5 of conduct constituting violations of the federal securities laws occurred within this
6 district. In addition, venue is proper in this district because Defendant Robert Lozuk
7 resides in this district.

8 **THE DEFENDANT**

9 9. **Robert Lozuk**, age 39, lives in Carlsbad, California and between June
10 2015 and October 2016 was the Senior Vice President of Commercial Operations at
11 Sequenom, where he was employed since October 2012.

12 **RELEVANT ENTITIES AND INDIVIDUAL**

13 10. **Sequenom, Inc.** is a Delaware corporation headquartered in San Diego,
14 California. Sequenom is a life sciences company that provides molecular diagnostic
15 testing services, with an emphasis on noninvasive prenatal testing. Sequenom was
16 acquired in a 2016 tender offer by LabCorp, and is now a wholly-owned subsidiary of
17 LabCorp. Sequenom's common stock was formerly registered with the SEC pursuant to
18 Section 12(b) of the Exchange Act, and was traded on the NASDAQ (ticker: SQNM).

19 11. **Laboratory Corporation of America Holdings**, is a Delaware
20 corporation headquartered in Burlington, North Carolina. The common stock of
21 LabCorp is registered with the SEC pursuant to Section 12(b) of the Exchange Act and is
22 traded on the New York Stock Exchange (ticker: LH).

23 12. **Individual A** is a childhood friend of Lozuk.

24 **FACTUAL ALLEGATIONS**

25 13. Sequenom is a life sciences company that provides molecular diagnostic
26 testing services, with an emphasis on noninvasive prenatal testing. On June 8, 2016,
27 Sequenom's board of directors instructed a large investment bank to contact LabCorp
28 and a few other companies to assess their interest in acquiring Sequenom, which was

1 subject to a large amount of outstanding debt. Sequenom engaged in due diligence and
2 entered into negotiations with LabCorp, and on July 20, 2016, representatives of
3 Sequenom and LabCorp agreed upon an acquisition price of \$2.40 per share.

4 14. At the time of the acquisition, Lozuk was the Senior Vice President of
5 Commercial Operations at Sequenom, and a direct report to the CEO. In addition to the
6 duties imposed on Lozuk as an officer and director of Sequenom, Lozuk was also subject
7 to Sequenom's written policy, applicable to all Sequenom employees, preventing insider
8 trading and its code of conduct. Further, Lozuk had signed a confidentiality letter in
9 October 2015 acknowledging his obligation not to disclose to anyone, including certain
10 other co-workers, material nonpublic information regarding Sequenom's efforts to
11 address the company's outstanding debt obligations. Ultimately, the board of directors
12 decided to seek an outside buyer. By at least June 8, 2016, Lozuk became aware of the
13 potential for an outside company to acquire Sequenom.

14 15. On July 21, 2016, Lozuk attended a concert with Individual A. Having
15 signed the October 2015 confidentiality letter, Lozuk knew that he owed a duty to
16 Sequenom not to provide any material nonpublic information regarding the contemplated
17 LabCorp-Sequenom deal to Individual A. Nevertheless, while at the concert, Lozuk told
18 Individual A that LabCorp was about to purchase Sequenom. At the time of the tip,
19 Sequenom's shares were trading close to \$1. Individual A knew that Lozuk was
20 providing this material nonpublic information in breach of a duty Lozuk owed to
21 Sequenom.

22 16. On July 27, 2016, the companies announced that LabCorp, through its
23 wholly owned subsidiary Savoy Acquisition Corp., would acquire all of the outstanding
24 shares of Sequenom in a cash tender offer for \$2.40 per share, or \$371 million including
25 Sequenom's net indebtedness. After the announcement of the merger, Sequenom's stock
26 price increased 176% to \$2.35 per share. The total daily trading volume increased from
27 363,087 on the day before the announcement to 40,718,435 on the day of the
28 announcement – an increase of 11,214.5% in one trading day.

1 the light of the circumstances under which they were made, not
2 misleading; and/or

3 (c) engaged in acts, practices, or courses of business which operated
4 or would operate as a fraud or deceit upon other persons,
5 including purchasers and sellers of securities.

6 23. By engaging in the foregoing conduct, Lozuk violated Section 10(b) of the
7 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

8 **SECOND CLAIM FOR RELIEF**

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

10 24. The SEC re-alleges and incorporates by reference Paragraphs 1 through 20
11 above as if they were fully set forth herein.

12 25. By engaging in the conduct described above, Lozuk, prior to the public
13 announcement of the tender offer, and after a substantial step or steps to commence the
14 tender offer had been taken, while in possession of material information relating to the
15 tender offer, which information he knew or had reason to know was nonpublic and had
16 been acquired directly or indirectly from the offering company, the issuing company, or
17 any officer, director, partner, employee, or other person acting on behalf of the offering
18 or issuing company, purchased or caused to be purchased or sold or caused to be sold the
19 securities sought or to be sought by such tender offer.

20 26. By reason of the actions alleged herein, Lozuk violated and, unless
21 restrained and enjoined, will continue to violate Section 14(e) of the Exchange Act [15
22 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3]

23 **PRAYER FOR RELIEF**

24 WHEREFORE, the SEC respectfully requests that the Court:

25 **I.**

26 Issue a judgment permanently enjoining Lozuk, and his officers, agents, servants,
27 employees and attorneys, and those persons in active concert or participation with any of
28 them, who receive actual notice of the judgment by personal service or otherwise, and

1 each of them, from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C.
2 §§ 78j(b), 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5,
3 240.14e-3].

4 **II.**

5 Order Defendant to pay a civil penalty under Section 21A of the Exchange Act
6 [15 U.S.C. § 78u-1].

7 **III.**

8 Prohibit Lozuk, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §
9 78u(d)(2)] from acting as an officer or director of any issuer that has a class of securities
10 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is
11 required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §
12 78o(d)] for a period of five years.

13 **IV.**

14 Retain jurisdiction of this action in accordance with the principles of equity and
15 the Federal Rules of Civil Procedure in order to implement and carry out the terms of all
16 orders and decrees that may be entered, or to entertain any suitable application or motion
17 for additional relief within the jurisdiction of this Court.

18 **V.**

19 Grant such other and further relief as this Court may determine to be just and
20 necessary.

21
22 Dated: July 31, 2018

/s/ Adrienne D. Gurley

ADRIENNE D. GURLEY

Attorney for Plaintiff

Securities and Exchange Commission