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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

-against-

JONATHAN BECKER,

Defendant.

COMPLAINT

1:23-cv-08331

**JURY TRIAL DEMANDED**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendant Jonathan Becker (“Becker” or “Defendant”) alleges as follows:

**SUMMARY**

1. This case involves insider trading by Becker in the securities of Pandion Therapeutics, Inc. (“Pandion”) in advance of the February 25, 2021 announcement of a tender offer by Merck & Co., Inc. (“Merck”) to acquire Pandion (the “Announcement”).

2. On July 25, 2022, in this District, the Commission filed a Complaint against Seth Markin and his close friend Brandon Wong (the “July 2022 Complaint”).<sup>1</sup>

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<sup>1</sup> *SEC v. Markin, et al.*, 1:22-cv-06276-JHR (S.D.N.Y. July 25, 2022).

3. As alleged in the July 2022 Complaint, during the approximately three-and-a-half weeks leading up to the Announcement, Seth Markin misappropriated material nonpublic information about Merck's planned tender offer for Pandion (the "Pandion Deal") from his romantic partner, an associate at a major law firm (the "Law Firm") that represented Merck in the Pandion Deal (the "Associate"). While the Associate worked on the Pandion Deal, Seth Markin often stayed for multiple days at a time at the Associate's apartment. The Associate worked on the deal and engaged in frequent telephone calls regarding the deal from her apartment. In breach of his duty of trust and confidence to the Associate, Seth Markin used the information he obtained while staying in the Associate's apartment to purchase Pandion stock ahead of the Announcement and to tip his close friend Brandon Wong, who also purchased Pandion stock ahead of the Announcement.

4. Seth Markin also tipped material nonpublic information about the Pandion Deal to his cousin ("Markin's Relative") who then similarly purchased Pandion stock ahead of the Announcement.

5. Markin's Relative in turn unlawfully disclosed the material nonpublic information he received from Seth Markin to his then friend and roommate, Becker. Becker then traded on the information that Markin's Relative provided him. Becker knew, was reckless in not knowing, or consciously avoided knowing that the information had been obtained in breach of a duty.

6. When Pandion's stock price increased by over 133% on the day of the Announcement, Becker reaped ill-gotten gains of over \$266,000.

## **VIOLATIONS**

7. By virtue of the foregoing conduct and as alleged further herein, Defendant has 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 Exchange Act Section 14(e)

[15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

8. Unless Defendant is restrained and enjoined, Defendant will engage in the acts, practices, transactions, and courses of business set forth in this Complaint or in acts, practices, transactions, and courses of business of similar type and object.

#### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

9. The Commission brings this action pursuant to the authority conferred upon it by Exchange Act Sections 21(d) [15 U.S.C. § 78u(d)] and 21A(a) [15 U.S.C. § 78u-1(a)].

10. The Commission seeks a final judgment: (a) permanently enjoining Defendant from violating the federal securities laws and rules this Complaint alleges he has violated; (b) ordering Defendant to pay disgorgement and prejudgment interest pursuant to Exchange Act Sections 21(d)(5) and 21(d)(7) [15 U.S.C. §§ 78u(d)(5) and 78u(d)(7)]; (c) ordering Defendant to pay civil money penalties pursuant to Exchange Act Section 21A(a) [15 U.S.C. § 78u-1(a)]; and (d) ordering any other and further relief the Court may deem just and proper.

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to Exchange Act Section 27 [15 U.S.C. § 78aa].

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

13. Venue lies in this District under Exchange Act Section 27 [15 U.S.C. § 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within this District. At all relevant times, common stock of Pandion traded publicly on The Nasdaq Global Select Market, which is headquartered in New York, New York.

## DEFENDANT

14. **Becker**, age 33, is a resident of Weehawken, New Jersey and was a friend and roommate of Markin's Relative during the time period of the conduct alleged in this Complaint. Becker is employed as an elevator mechanic.

## RELEVANT INDIVIDUALS AND ENTITIES

15. **Seth Markin**, age 32, is a resident of Washington Crossing, Pennsylvania. Seth Markin was formerly in new agent training for the Federal Bureau of Investigation. During the insider trading alleged in this complaint, Seth Markin was employed by a federal contractor as a compliance analyst.

16. **Brandon Wong**, age 39, is a resident of New York, New York, and Seth Markin's close friend. During the insider trading alleged in this complaint, Brandon Wong was employed by a tutoring company in a technical support role.

17. **Markin's Relative**, age 32, is a resident of Weehawken, New Jersey and was a friend and roommate of Becker during the time period of the conduct alleged in this Complaint.

18. **Pandion** at all relevant times was a Delaware corporation with headquarters in Cambridge, Massachusetts. Pandion was a clinical-stage biopharmaceutical company that developed therapeutics for patients with autoimmune diseases. Prior to the completion of Merck's acquisition of Pandion in April 2021, Pandion's common stock was listed on The Nasdaq Global Select Market under the symbol PAND.

19. **Merck** is a New Jersey corporation with headquarters in Rahway, New Jersey (formerly headquartered in Kenilworth, New Jersey), and with common stock listed on the New York Stock Exchange. It is a global health care company with products that include prescription medicines, vaccines, biologic therapies, and animal health products.

## FACTS

### I. MERCK TOOK SUBSTANTIAL STEPS TO ACQUIRE PANDION BY TENDER OFFER

20. As alleged in the July 2022 Complaint, beginning in August of 2020, representatives of Merck and Pandion began meeting to discuss updates to Pandion's drug developments and to facilitate due diligence by Merck of Pandion pursuant to the parties' confidentiality agreement. In September 2020, executives at both companies met to discuss working together on advancing Pandion's products, culminating in an unaccepted proposal by Merck in October 2020 for a possible partnership agreement between the companies.

21. From November 2020 through January 2021, Merck continued its due diligence of Pandion, including accessing Pandion's virtual data room containing regulatory submissions and related information. By at least January 25, 2021, Merck had retained the Law Firm as counsel to represent Merck in developing and implementing its plan to acquire Pandion.

22. On or about February 5, 2021, Merck engaged an investment bank to provide investment banking services in anticipation of a potential deal with Pandion.

23. On or about February 7, 2021, Merck submitted a proposal to Pandion to acquire all of its common stock.

24. On or about February 9, 2021, Merck and Pandion reached agreement on a proposed acquisition price for Pandion's common stock of \$60 per share.

25. Also on or about February 9, 2021, Merck provided Pandion with an initial draft of a merger agreement, under which Merck would acquire Pandion's shares of common stock by tender offer.

## II. SETH MARKIN MISAPPROPRIATED MATERIAL NONPUBLIC INFORMATION FROM THE ASSOCIATE

26. As alleged in the July 2022 Complaint, beginning in or about October 2020 and through approximately May 2021 except for a few days in January 2021, Seth Markin was in a close romantic relationship with the Associate. Throughout their relationship, Seth Markin often stayed at the Associate's apartment for extended periods of time.

27. Because of the global pandemic, Seth Markin and the Associate frequently worked from the Associate's apartment during their relationship.

28. During their relationship, Seth Markin and the Associate shared confidences, including discussions about each other's families and plans of marriage.

29. As part of his relationship with the Associate, Seth Markin agreed, expressly or by implication, to treat information related to the Associate's work as confidential and not to trade on it, use it for personal benefit, or share it with others.

30. On or about January 31, 2021, the Associate joined the Law Firm's team of attorneys representing Merck on the Pandion Deal and became aware of Merck's efforts to acquire Pandion. The Associate continued working on the Pandion Deal through and beyond the date of the Announcement.

31. The Associate frequently worked on the Pandion Deal from her apartment, where Markin was often staying, and she kept a binder of documents concerning the Pandion Deal in the apartment.

32. Among the documents included in the binder was a printed copy of an internal Law Firm email, dated January 31, 2021, which indicated that Merck was considering the acquisition of Pandion and sought to move quickly. Additionally, the email disclosed a code name for the deal and

stressed that the deal was “highly confidential” and that those working on the deal must be “extremely careful” not to disclose information associated with the deal.

33. Starting on or before February 1, 2021, and continuing in the days leading up to the Announcement, Seth Markin misappropriated material nonpublic information about the Pandion Deal from the Associate, including that Merck planned to acquire Pandion, the target date when the acquisition would be publicly announced, and an estimated share price for the acquisition.

34. While working from home in January and February 2021, the Associate conducted work-related telephone calls, including on the Pandion Deal, from the Associate’s one-bedroom apartment. At times, Seth Markin was present in the Associate’s apartment when the Associate conducted such work-related calls.

35. Additionally, on multiple occasions in or about January and February 2021, without the Associate’s consent and while she could not observe him, Seth Markin reviewed the Associate’s binder of documents concerning the Pandion Deal.

36. As alleged in the July 2022 Complaint, between February 1, 2021, the day after the Associate was assigned to work on the Pandion Deal, and February 23, 2021, two days before the Announcement, Seth Markin purchased 2,270 shares of Pandion stock.

37. Further, as alleged in the July 2022 Complaint, in or about February 2021, Seth Markin tipped Brandon Wong the material nonpublic information about the Pandion Deal that Seth Markin had misappropriated from the Associate. The information he communicated to Wong included details about the nature of the transaction, the target date of the Announcement, and the expected transaction price.

38. Between February 10, 2021 and February 24, 2021, Brandon Wong purchased 35,382 shares of Pandion stock.

**III. MARKIN’S RELATIVE, TIPPED BY SETH MARKIN, UNLAWFULLY COMMUNICATED MATERIAL NONPUBLIC INFORMATION TO BECKER, WHO BOUGHT PANDION STOCK AHEAD OF THE ANNOUNCEMENT**

39. In or about February 2021, Seth Markin tipped his cousin material nonpublic information about the Pandion Deal that Seth Markin had misappropriated from the Associate.

40. One of the ways Seth Markin and Markin’s Relative communicated about the Pandion deal was via an encrypted messaging application that contained a “disappearing message” feature, which would automatically delete message content after a certain period. On or about Sunday, February 14, 2021, Seth Markin and Markin’s Relative communicated about Pandion using the encrypted messaging application. Seth Markin and Markin’s Relative also spoke by phone, including on February 14, 2021.

41. That same day, February 14, 2021, Seth Markin remarked in a message to Brandon Wong that he told Markin’s Relative about Pandion. In an encrypted message, Seth Markin told Brandon Wong, “Got [him] into 🐼,” to which Brandon Wong responded, “Ok now I don’t feel bad about keeping things from him and can talk to him about 🐼 later today.” Throughout February 2021, Seth Markin and Brandon Wong often referred to Pandion as “Panda” or by a 🐼 emoji in their communications.

42. Minutes after his call with Seth Markin on February 14, 2021, Markin’s Relative called his then friend and roommate, Defendant Becker. Throughout February 2021, in the days leading up to the Announcement, Markin’s Relative unlawfully communicated to Becker material nonpublic information that Seth Markin had conveyed to him about Pandion.

43. On or about February 14, 2021, via messaging application, when discussing an investment in stocks, Markin’s Relative told Becker that he was taking someone’s word, that this person was going to invest “[a] lot,” and that this person told Markin’s Relative “and a few close ppl



to invest everything.”

44. On or about February 15, 2021, via text message, Markin’s Relative and Becker conversed about an “opportunity” that Markin’s Relative had discussed with Seth Markin and Brandon Wong. During their conversation, Becker told Markin’s Relative that he “was up for a good half hour or so last night just thinking about the opportunity you mentioned,” to which Markin’s Relative responded, “Yea. I’m comfortable telling you and letting you bet big on it [because] of what both Seth and Brandon are doing and saying . . . .”

45. On or about Tuesday, February 16, 2021, through a messaging application, Markin’s Relative and Becker discussed “insider info” that Markin’s Relative had received from Seth Markin that involved a “huge announcement” and a stock price that would “triple” to “\$60.” In response to Becker’s question about whether Brandon Wong and Seth Markin were “fully invested,” Markin’s Relative told Becker that “Brandon went full on Thursday.”

46. Also, on or about February 16, 2021, via messaging application, Becker remarked to Markin’s Relative, “Wow. PAND is really taking off . . . How does he know when news will release?” Markin’s Relative responded, “(you know I don’t have the answer to that).” Becker then responded, “I will give you \$10,000 if you can get your cousin to say he is 100% certain he has insider info that news is coming out which will send the stock up.” The next day on or about Wednesday, February 17, 2021, via messaging application, in response to Becker’s questions about the information, Markin’s Relative told Becker, “My confidence is unshaken and neither is Brandon or seths [sic].”

47. On or about February 17, 2021, through the same messaging application, Markin’s Relative unlawfully continued to communicate to Becker updated material nonpublic information about Pandion that he had received from Seth Markin, particularly that the date of the Announcement had moved. During his conversation with Becker, Markin’s Relative told Becker

that the “news won’t be released till next week.” During the same conversation via the messaging application, Becker asked Markin’s Relative to confirm that that Seth “has inside info” and that the price is “going to triple.” In response, Markin’s Relative told Becker that Seth Markin and Wong were confident in the information.

48. Between February 16 and 23, 2021, Becker purchased 7,400 shares of Pandion stock based on material nonpublic information that Seth Markin had conveyed to Markin’s Relative who then communicated it to Becker. All of Becker’s purchases were made after Merck took substantial steps to acquire Pandion by tender offer.

49. On February 24, 2021, the day before the Announcement of the Pandion Deal, via messaging application, Becker told Markin’s Relative that the following day, the date of the Announcement, would be “a big day for us both.” “Happy day,” he added.

50. Becker purchased Pandion stock as alleged above while in possession, and on the basis of, material nonpublic information that was unlawfully communicated to him by Markin’s Relative.

51. Becker knew, was reckless in not knowing, or consciously avoided knowing that the information he received from Markin’s Relative was material and nonpublic.

52. Becker also knew, was reckless in not knowing, or consciously avoided knowing that Markin’s Relative provided him with material nonpublic information that was conveyed in breach of a duty of trust and confidence and for personal benefit.

53. Becker also knew or had reason to know that the material nonpublic information had been acquired directly or indirectly from an insider to the Pandion Deal negotiations – that is, from an employee or an agent of the target company, or the acquiring company, or an advisor to one of those companies in connection with the transaction.

**V. THE ANNOUNCEMENT AND DEFENDANTS' ILL-GOTTEN GAINS**

54. On February 25, 2021, before market open, Merck and Pandion announced that the companies had entered into a definitive agreement under which Merck would acquire Pandion. Under the agreement, Merck would initiate a tender offer to acquire all outstanding shares of Pandion for \$60 per share. Pandion's stock price closed at \$59.81 per share that day, an increase of \$34.18 per share or over 133% from the previous day's close of \$25.63 per share.

55. As a result of the price increase, Becker generated total ill-gotten gains of over \$266,000.

**FIRST CLAIM FOR RELIEF**

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

56. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 55.

57. Defendant, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly has (i) employed one or more devices, schemes, or artifices to defraud, (ii) made one or more untrue statements of a material fact or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and/or (iii) engaged in one or more acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

58. By reason of the foregoing, Defendant, directly or indirectly, singly or in concert, has violated and, unless enjoined, will again violate Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## SECOND CLAIM FOR RELIEF

### Violations of Exchange Act Section 14(e) and Rule 14e-3 Thereunder

59. The Commission re-alleges and incorporates by reference here the allegations in paragraphs 1 through 55.

60. By January 25, 2021, Merck (the “offering person”) took substantial steps to commence or did commence a tender offer for Pandion shares of stock but the proposed tender offer was not publicly announced during this time.

61. By at least February 16, 2021, Defendant possessed material nonpublic information received indirectly from the Associate, an employee of Merck’s counsel with respect to the tender offer, relating to the tender offer for Pandion; knew or had reason to know that this information was nonpublic; knew or had reason to know that this information was acquired directly or indirectly from (a) the offering person, (b) the issuer of the securities sought or to be sought by such tender offer, or (c) any officer, director, partner or employee or any other person acting on behalf of such offering person or such issuer; and purchased or sold, or caused to be purchased or sold, Pandion’s securities.

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

## PRAYER FOR RELIEF

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

### I.

Permanently enjoining Defendant and his agents, servants, employees and attorneys and all persons in active concert or participation with any of them from violating, directly or indirectly,

Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Exchange Act Section 14(e) [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3];

**II.**

Ordering Defendant to disgorge all ill-gotten gains Defendant received as a result of the alleged violations with prejudgment interest thereon pursuant to Exchange Act Sections 21(d)(5) and 21(d)(7) [15 U.S.C. §§ 78u(d)(5) and 78u(d)(7)];

**III.**

Ordering Defendant to pay civil monetary penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1];

**IV.**

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

Dated: New York, New York  
September 20, 2023

*/s/ Tracy Sivitz*

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