

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81677 / September 21, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18196

In the Matter of

JOEL P. ZINGERMAN,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Joel P. Zingerman (“Zingerman” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of Zingerman's insider trading in the securities of Puma Biotechnology, Inc. ("Puma") in advance of Puma's announcement of positive drug trial results.

2. Beginning in April 2012, Zingerman worked as a consultant for Puma, a biotechnology company focused on developing a drug called "neratinib" for the treatment of cancer. At the outset of Zingerman's engagement, he signed a consulting agreement that required him to use Puma's confidential information solely in connection with the consulting services he provided and prohibited him from using such information for his own benefit.

3. In July 2014, through his work for Puma, Zingerman learned material, nonpublic information about, among other things, a Phase III clinical trial involving neratinib (the "3004 trial") and Puma's planned actions to obtain registration for neratinib with the U.S. Food & Drug Administration (the "FDA"). On the morning of July 22, 2014, Zingerman traded on the basis of that information, and in breach of his duty of confidentiality to Puma, when he bought 325 shares of Puma stock. Later that day, after the market closed, Puma announced positive results from the 3004 trial. The next day, July 23, 2014, Puma's stock price nearly quadrupled and the value of Zingerman's Puma shares increased by approximately \$56,605.

4. By engaging in this conduct, Zingerman violated 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].

Respondent

5. **Joel P. Zingerman**, age 54, resides in Carlsbad, California. Zingerman has worked as a consultant for companies in the pharmaceutical industry, including Puma.

Relevant Entity

6. **Puma Biotechnology, Inc.** is a Delaware corporation with its headquarters in Los Angeles, California. Puma works on licensing and developing drugs for the treatment of cancer. A primary focus of Puma's work is developing a drug called neratinib. At all relevant times, Puma's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under the ticker symbol "PBYI."

Background

7. On April 5, 2012, Puma and Zingerman executed a consulting agreement. Under the consulting agreement, Zingerman was to provide chemistry and manufacturing controls ("CMC") services related to, among other things, drug product development for neratinib. The consulting agreement also required that Zingerman use Puma's confidential information "solely in connection with" the consulting services provided, and prohibited Zingerman from using such information for his own benefit.

8. During his work for Puma, Zingerman learned confidential information regarding the 3004 trial and Puma's plans to register neratinib with the FDA. For example, on July 10, 2014,

Zingerman attended a Puma CMC team meeting in which the attendees discussed material, nonpublic information, including that Puma recently completed the data “soft lock” for the 3004 trial (*i.e.*, finalized the data from the trial that would be analyzed to determine whether neratinib was effective) and that the 3004 trial results would be announced to the public around the end of July 2014.

9. On July 15, 2014, Zingerman received an internal Puma e-mail discussing certain “key decisions and confirmations” related to Puma’s planned New Drug Application (“NDA”) to obtain registration for neratinib with the FDA. The e-mail discussed material, nonpublic information, including Puma’s plan and timeline for manufacturing neratinib registration lots (*i.e.*, tablets for the drug registration process) and completing other tasks needed to submit an NDA.

10. On the afternoon of July 21, 2014, Zingerman had three telephone calls with a senior Puma employee: a 2-minute call at 4:05pm PT, a 1-minute call at 4:37pm PT, and a 10-minute call at 4:46pm PT. At the time of those calls, the senior Puma employee knew that Puma had scheduled a confidential, all-employees meeting for the next day (July 22, 2014) in which the 3004 trial results likely would be shared with all Puma employees – beyond the small group of senior employees who already knew the positive results.

11. The next morning, on July 22, 2014, Zingerman bought 325 shares of Puma stock in his individual retirement account (“IRA”) at \$59.26/share, for a total cost of \$19,259.50. This was the first time Zingerman ever purchased Puma securities and the first time he purchased any securities since at least 2012. Further, Zingerman invested nearly 30% of the total balance in his IRA to buy this Puma stock. Zingerman purchased Puma stock on the basis of material, nonpublic information about Puma and in breach of his duty of confidentiality to Puma.

12. On the afternoon of July 22, 2014, Puma’s stock price closed at \$59.03/share. Shortly after the market closed, Puma publicly announced the positive results from the 3004 trial. The next day, July 23, 2014, Puma’s stock price nearly quadrupled and closed at \$233.43/share. Thus, by the time the market closed on July 23, 2014, the value of Zingerman’s Puma shares increased by approximately \$56,605.

Violations

13. As a result of the conduct described above, Zingerman violated 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], which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Joel P. Zingerman shall cease and desist from committing or causing any violations and any future violations of 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].

B. Respondent shall, pursuant to the installment plan set forth in paragraph C below, pay disgorgement of \$56,605, prejudgment interest of \$5,718, and a civil money penalty of \$56,605, for a total amount of \$118,928, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

C. Respondent shall pay disgorgement of \$56,605, prejudgment interest of \$5,718, and civil penalties of \$56,605, to the Securities and Exchange Commission. Payment shall be made in the following installments:

1. \$29,732 within 14 days of the entry of the Order;
2. \$29,732 within 180 days of the entry of the Order;
3. \$29,732 within 270 days of the entry of the Order; and
4. \$29,732 within 360 days of the entry of the Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Zingerman as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5720.

D. Amounts ordered to be paid as civil money penalties pursuant to the Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, Respondent shall not argue that Respondent is entitled to, nor shall Respondent benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that Respondent shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary