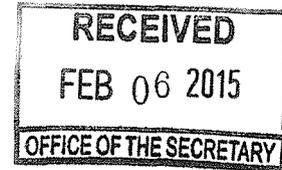


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

THOMAS D. MELVIN, CPA,

Respondent.

Administrative Proceeding
File No. 3-15659

**DIVISION OF ENFORCEMENT'S OPPOSITION
TO RESPONDENT'S PETITION FOR REVIEW**

Respondent Thomas D. Melvin, a certified public accountant, stole confidential information provided to him by a client and gave it to four of his friends and business associates so that they could make money in the stock market. As a result, the Commission filed a civil injunctive action against Melvin in the United States District Court for the Northern District of Georgia. *See SEC v. Melvin*, 1:12-cv-02984-CAP (N.D. GA)(the "Injunctive Action"). Melvin eventually settled that action, consenting to an injunction and to pay disgorgement, pre-judgment interest and a civil penalty. This administrative proceeding under Commission Rule of Practice 102(e)(3)(i)(A) followed. In an initial decision dated September 22, 2014, Chief Administrative Law Judge Brenda P. Murray (the

“ALJ”) concluded that Melvin should be disqualified permanently from practicing accountancy before the Commission.

Melvin has now petitioned the Commission to set aside the ALJ’s decision, claiming that the Order Instituting Proceedings (“OIP”) was untimely and that he should be barred for no more than three years. Because the ALJ properly rejected Melvin’s argument regarding the timeliness of the OIP, and because his egregious breach of client trust warranted a permanent disqualification, the ALJ’s initial decision should be affirmed.

I. FACTS

A. **Melvin Misappropriated Confidential Client Information and Tipped His Friends.**

Melvin, a 45 year old resident of Griffin, Georgia, is a certified public accountant. (Complaint (“Compl.”) ¶¶ 14, 37.)¹ In December 2009, Melvin was

¹ Pursuant to Commission Rule of Practice 102(e)(3)(iv), Melvin cannot contest the allegations of the Complaint in this proceeding. A copy of the Complaint is attached at Tab 1 of the accompanying Appendix, which includes the Complaint, Melvin’s consent to judgment, and the final judgment entered against Melvin in the Injunctive Action. These court filings were appropriate subjects of official notice pursuant to Commission Rule 323, and the Respondent has not challenged the propriety of their consideration in these proceedings. *See, In re Joseph P. Galluzzi*, Initial Decisions Release No. 187, 1001 SEC Lexis 1582, *8-9 (Aug. 7, 2001); *see also, In re Brownson*, Initial Decisions Release No. 182, 2001 SEC Lexis 537, *7-8 (Mar 23, 2001); and *In re Brad Haddy*, Initial Decisions Release No. 164, 2002 SEC Lexis 907, *7-8 (Jun 21, 2000).

contacted by a board member of Chattem, Inc. (Compl. ¶ 33). The board member was a long-time client of Melvin's. (Compl. ¶ 33.) The board member was aware of an imminent acquisition of Chattem, and he was seeking advice from Melvin on how to mitigate the personal tax liability that would accompany the forced exercise of several thousand Chattem options he owned. (Compl. ¶ 33.) The board member made clear to Melvin that the topic of conversation was confidential. (Compl. ¶ 34.) As a CPA, Melvin was obligated to keep confidential the information he obtained from his client. (Compl. ¶ 41.)

Disregarding the duty of confidentiality imposed on him by the Georgia State Board of Accountancy's Code of Professional Conduct, Melvin misappropriated the material non-public information disclosed to him by the board member and tipped that information to four friends and business associates, including his partner Jeffrey Rooks. (Compl. ¶ 43.) Those four bought Chattem securities on the basis of the material non-public information they obtained from Melvin and further tipped other individuals who also purchased Chattem securities. (Compl. ¶¶ 44-47.) At least ten people traded as a result of Melvin's breaches of his duty to the Chattem board member. (Compl. ¶ 1.) Melvin's direct and indirect tippees made hundreds of thousands of dollars in profits when the acquisition was

announced less than a month later. (Compl. ¶¶ 61, 80, 83, 94, 98, 107, 110, 123, 132, 138, 141.)

B. Melvin Consented to the Entry of an Injunction and the District Court Enjoined Melvin.

Nearly a year after the Commission filed the Injunctive Action, while represented by counsel, Melvin signed a “Consent of Defendant Thomas D. Melvin” (“Consent”). A copy of the Consent is attached at Tab 2 of the Appendix. On August 1, 2013, the Consent was filed with the District Court. In the Consent, Melvin waived service of the Final Judgment and agreed that its entry by the District Court would constitute notice to him of its terms and conditions. (Consent ¶¶ 1, 9.)

Also in the Consent, Melvin expressly stated that he understood that “in any disciplinary proceeding before the Commission based on the entry of the injunction” – such as the instant administrative proceeding – he would “not be permitted to contest the factual allegations of the complaint . . .” (Consent ¶ 10.). Melvin further acknowledged that the Consent “resolve[d] only the claims asserted” in the Injunctive Action and that “the Court’s entry of a permanent injunction may have collateral consequences under federal or state law.” (Consent ¶ 10.) Melvin entered into the Consent “voluntarily and represent[ed] that no

threats, offers, promises, or inducement of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce” Melvin to enter into the Consent. (Consent ¶ 6.)

On August 14, 2013, after the filing of the Consent, the District Court entered a Final Judgment (the “Judgment”) as to Defendant Melvin. A copy of the Judgment is attached at Tab 3 of the Appendix. The Judgment permanently enjoins Melvin from violations of Securities Exchange Act Section 10(b) and Rule 10b-5 thereunder and Section 14(e) and Rule 14e-3 thereunder. (Judgment ¶¶ I-II.)

C. The Commission Issued an Order Instituting the Instant Proceedings Against Melvin.

On December 20, 2013, the Commission issued an Order Instituting Public Administrative Proceedings and Imposing Temporary Suspension Pursuant to Rule 102(e)(3) of the Commission’s Rules of Practice. In addition to summarizing some of the core allegations in the Complaint, the OIP temporarily suspended Melvin from practicing before the Commission as an accountant pursuant to Rule 102(e)(3)(i)(A). (OIP at ¶ III.)

In response, Melvin petitioned the Commission to set aside the temporary suspension pursuant to Rule 102(e)(3)(ii). In an order dated March 20, 2014, the

Commission declined to lift the temporary suspension imposed in the OIP and ordered that the matter be set for a hearing pursuant to Rule 102(e)(3)(iii).

D. The Division of Enforcement Moved for Summary Disposition, and the ALJ Ruled in the Division's Favor.

On June 13, 2014, the Division of Enforcement sought leave to file a motion for summary disposition pursuant to Commission Rule of Practice 250. In opposition to the Division's motion, Respondent did not contest that he had been enjoined or the factual basis for the injunction. Instead, he made two arguments: (1) that the OIP was untimely under the Commission's Rules of Practice, and (2) that the Commission had entered into a "binding agreement" that he would not be suspended in excess of three years. The ALJ rejected both arguments in an Initial Decision dated September 22, 2014 and permanently disqualified Melvin from practicing accountancy before the Commission.

In his petition for review, Melvin reasserts his argument regarding the timeliness of the OIP, abandons his argument that he had a legally binding agreement with the Commission, but argues that, nevertheless, the Commission should honor the purported agreement.²

² As noted to the ALJ below in the Division's Reply in Support of Summary Disposition, counsel for the Commission vigorously disputes the accuracy of the content of Mr. Jarrard's affidavit, including the purported timing and content of

II. ARGUMENT

A. **The OIP was Timely.**

Rule 102(e)(3) states that an order of temporary suspension predicated on an injunction must be entered within 90 days of the date the order or final judgment containing the injunction has become effective “whether upon completion of review or appeal procedures *or because further review or appeal procedures are no longer available.*” SEC Rule of Practice 102(e)(3) (emphasis added). The Judgment was entered on August 14, 2013. According to Melvin, the OIP needed to issue within 90 days of that date, or by November 12, 2014. Under Federal Rule

statements made by the undersigned. Although counsel for the Commission told Mr. Jarrard that he personally would support a three-year suspension as part of a global settlement, he expressly told Mr. Jarrard that he had no authority to even recommend a settlement without approval by senior management and that ultimately any settlement recommendation would need to be approved by the Commission. Indeed, the email correspondence between the two on the dates during which the supposed oral agreement was reached makes clear that Commission approval of any settlement recommendation is required. Counsel for the Commission also told Mr. Jarrard that his client was free to settle the Injunctive Action while contesting the length of any suspension in an administrative hearing. Finally, counsel for the Commission never indicated to Mr. Jarrard that he would send papers regarding a recommended settlement of follow-on administrative proceedings because no such settlement recommendation was ever approved by management. Because these factual disputes were immaterial to the resolution of the Division’s Motion for Summary Disposition (as Respondent has conceded on appeal) the Division did not submit an affidavit attesting to the true sequence and substance of the communications, but the undersigned is more than willing to submit an affidavit should the Commission desire one.

of Appellate Procedure 4(a)(1)(B) (“FRAP 4”), however, the time to appeal from the Judgment did not expire until October 13, 2013. The ALJ determined that the OIP needed to issue within 90 days from that date, or by January 10, 2014. As noted above, the OIP issued on December 20, 2013. Thus, the issue for the Commission on this appeal is when federal court “appeal procedures” became “no longer available” to Melvin.

Melvin argues that, because he waived his right to appeal in his Consent, the Judgment was immediately effective and that an appeal under FRAP 4 was not practically “available” to him. Melvin’s contention is without merit.

The plain language of the rule supports the ALJ’s decision. Although he was almost certain to fail, Melvin was free to file a notice of appeal and challenge the Judgment at any point prior to the expiration of the time limit in FRAP 4. As the cases cited in Melvin’s brief make clear, it is not uncommon for litigants to appeal from judgments to which they have consented. *See Kean v. Adler*, 65 Fed. App’x. 408, 412 (3rd Cir. 2003) (vacating consent judgment); *Keefe v. Prudential Property & Casualty Ins. Co.*, 203 F.3d 218, 222-23 (3rd Cir. 2000) (permitting appeal from consent judgment and reversing district court); *Mock v. T.G. & Y. Stores Co.*, 971 F.2d 522, 526-27 (10th Cir. 1992) (rejecting appeal from a consent

judgment). Thus, appeal procedures were “available” to Melvin notwithstanding his consent to the Judgment.

Moreover, Courts interpreting statutes of limitations with provisions similar to the time limit in Rule 102(e)(3) have concluded that those statutes begin to run once the time to appeal expires, regardless of whether appeal rights have been waived or whether the litigant consented to the judgment. *See Hoa Hong Van v. Barnhart*, 483 F.3d 600, 607-610 (9th Cir. 2007) (holding that the Government’s consent to a judgment did not render it “final” pursuant to the Equal Access to Justice Act); *Gibraltar Cas. Co. v. Walters*, 185 F.3d 1103, 1105-06 (10th Cir. 1999) (“[W]e interpret the Colorado statute as permitting a contribution action within one year of the underlying judgment becoming final by lapse of the time for appeal, regardless of whether the parties have agreed to forego appellate proceedings.”); *cf. Al-Harbi v. I.N.S.*, 284 F.3d 1080, 1082-85 (9th Cir. 2002) (collecting cases regarding Equal Access to Justice Act limitation period).

Melvin’s proposed interpretation would create needless complexity in what is otherwise a straight-forward rule. Were Melvin correct, the time for filing OIPs would vary depending on whether an injunction was litigated or settled, and, if settled, depending on the specific terms and circumstances of the consent to judgment. Melvin relies on the general proposition that most consent judgments

cannot successfully be appealed, but as he notes, there are a number of exceptions to that rule. Melvin argues that *his* consent judgment does not fall within one of those circumstances, and therefore *he* could not have successfully appealed. Thus, Melvin asks the Commission to engage in a case-by-case analysis to determine when the time period in Rule 102(e)(3) begins.

Under Melvin's approach, the Commission must discern whether or not a particular consent injunction does (or, perhaps, might) fall within one of the classes of consent judgments that can be appealed. If so (or if the judgment was litigated), the clock in rule 102(e)(3) would not start ticking until the time for appeal in FRAP 4 expires, but if not, the clock would start ticking immediately upon the entry of the judgment in the District Court. There is no good reason to interpret the rule in such a complicated manner, particularly when the ALJ's interpretation will yield an easy-to-determine, concrete answer in every case and prevent "unnecessary confusion." *Hoa Hong Van*, 483 F.3d at 610.

Melvin cites a number of cases to bolster his position, but those cases actually support the decision of the ALJ. The first, *Hoa Hong Van v. Barnhart*, is nearly directly on point and fully accords with the ALJ's decision. 483 F.3d at 607-610 ("Because, in a number of circumstances, there is a potential for a party to appeal a judgment to which it consented there is a 'possibility' with respect to any

such individual judgment that it ‘is open to attack’ during the 60–day appeal period provided for in Rule 4(a). Accordingly, the 30–day filing period for all such judgments does not begin to run until the 60–day period in Rule 4(a) has actually lapsed, or, until an appeal has been completed.”). Indeed, in that case, the Court expressly rejected the “case-specific,” “*post-hoc*” approach urged by Melvin here. *Id.* at 609. And the rest of the cases are simply examples of appeals from consent judgments, which highlight that such appeals are a very real possibility. *See Kean*, 65 Fed. App’x. at 412; *Keefe*, 203 F.3d at 222-23; *Mock*, 971 F.2d at 526-27.

For all these reasons, the ALJ’s interpretation of Rule 102(e) is sound, and “appeal procedures” become “no longer available” when the time limit in FRAP 4 expires. Because the OIP issued fewer than 90 days after the expiration of the time to file a notice of appeal under FRAP 4, the OIP was timely and the decision of the ALJ should be affirmed.

B. The Duration of Melvin’s Disqualification Is Appropriate.

To determine whether a professional should be disqualified from practice under Rule 102(e), the Commission considers the following factors:

The egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the

likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979); see *In re Pattison, CPA*, Exchange Act Release No. 67900 at 23-24 (Sept. 20, 2012).

All of the *Steadman* factors weigh in favor of Melvin being disqualified. As noted by the ALJ, insider trading is an egregious violation of the securities laws. *SEC v. Ginsburg*, 362 F.3d 1292, 1304-05 (11th Cir. 2004); *SEC v. Gunn*, No. 3:08-cv-1013, 2010 WL 3359465 at *4 (N.D. Tex. 2010) ("Insider trading is a flagrant, deliberate, and serious violation of the federal securities laws; in no sense is it merely technical."). Melvin's violation was particularly egregious as it involved misappropriating confidential information from a long-time client who trusted him.

Although Melvin settled the Injunctive Action, he has never admitted wrongdoing, he did not cooperate in the Staff's investigation, and he litigated the Injunctive Action for nearly a year. In short, Melvin has done nothing to indicate that he appreciates the wrongfulness of his misconduct. Melvin also has made no assurances against future violations; indeed, he has not submitted a single sworn

statement in the investigation, in this proceeding or in the Injunctive Action.³ As a certified public accountant, it is likely that Melvin will have access to confidential client information if he is permitted to practice before the Commission, thus presenting him opportunities in the future to commit insider trading. Finally, although Melvin's violation involved one misappropriation of client information, it was not an "isolated" infraction as he passed the information along to four different people at four different times. Thus, Melvin chose to breach his client's trust on four different occasions, each one giving him a chance to reflect on his actions. Because all of the *Steadman* factors weigh in favor of disqualification, the ALJ's decision should be affirmed.

Melvin argues that his misconduct was less egregious than his friend and accounting partner Rooks (whom Melvin tipped about the deal) because Melvin did not trade himself and did not share in the profits of the illegal trading. Mr. Rooks, however, immediately confessed when questioned by investigators, acknowledged the wrongfulness of his actions and cooperated with both civil and criminal law enforcement authorities. Despite his cooperation, the Commission permanently

³ The only statement by Melvin (or, more particularly, a statement made on his behalf) that even hints at acceptance of responsibility or an assurance against future misconduct is the wishy-washy statement in his appeal brief that Melvin "has recognized the wrongful nature of what transpired." (Br. at 6.)

disqualified Mr. Rooks from practicing accountancy under Rule 102(e)(3). *See In re Rooks, CPA*, Exchange Act Release No. 67856 (Sept. 13, 2012). Melvin should not be treated more leniently than Rooks.

Finally, Melvin argues that the Commission should honor the purported oral “agreement” between his counsel and counsel for the Commission that Melvin would not be suspended for more than three years. As the ALJ correctly concluded, any statements made by Commission staff during informal settlement negotiations are not binding on the Commission and are irrelevant to the determination of what remedy is in the public interest. *Capital Funds, Inc. v. Securities and Exchange Commission*, 348 F.2d 582 (8th Cir. 1965) (“[I]t may be taken as settled that the Commission and its agents may not ‘waive’ violations of federal law, nor may estoppel be raised against the Commission.”); *see Commodity Futures Trading Comm’n v. Field*, 249 F.3d 592, 594 (7th Cir. 2001) (“It is well settled that a settlement on behalf of the United States may be enforced only if the person who entered into the settlement had actual authority to settle the litigation.”).

For all these reasons, the ALJ was correct to disqualify Melvin permanently from practicing accountancy, and her initial decision should be affirmed.

IV. CONCLUSION

For the foregoing reasons, the initial decision of the ALJ should be affirmed.

Respectfully submitted,

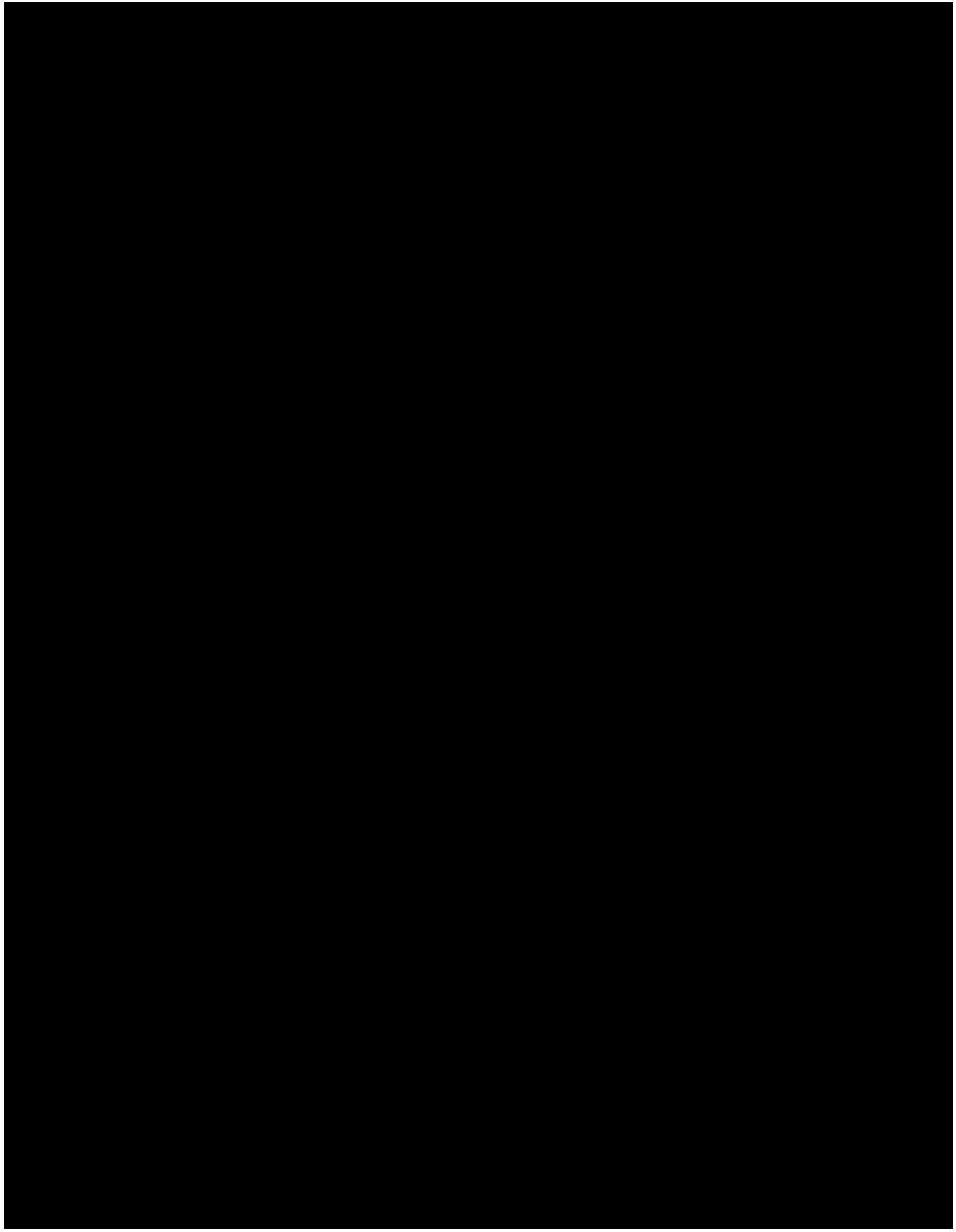
DIVISION OF ENFORCEMENT

By its Attorney:

A handwritten signature in black ink, appearing to read 'J A Mayes', written over a horizontal line.

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Dated: February 5, 2015.



TAB 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

Civil Action No.

v.

THOMAS D. MELVIN, JR., MICHAEL
S. CAIN, JOEL C. JINKS and PETER C.
DOFFING,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This litigation involves an insider trading scheme in which Thomas D. Melvin, Jr. ("Melvin"), a Griffin, Georgia based CPA, disclosed material non-public information about the pending tender offer for Chattem, Inc. ("Chattem") securities to four individuals, including defendants Michael S. Cain ("Cain") and Joel C. Jinks ("Jinks"). Those four individuals and six others, including defendant

Peter C. Doffing (“Doffing”), traded in the securities of Chattem based on that material non-public information, profiting by more than \$550,000.

2. On December 21, 2009, Sanofi-Aventis (“Sanofi”), a French pharmaceutical company, announced its intent to make a tender offer for Chattem, a Tennessee-based distributor of over-the-counter pharmaceutical products, at the price of \$93.50 per share (“Announcement”). Shares of Chattem closed 32.60% higher on the day of the Announcement than the prior trading day’s close of \$69.98 and volume increased more than 3,000% to 10.3 million shares.

3. In early December 2009, several weeks before the Announcement, an independent board member of Chattem who owned Chattem options that would automatically exercise in the event of an ownership change at Chattem, initiated a series of confidential conversations and meetings with his longtime accountant, Melvin, to discuss potential methods of ameliorating the effect of an acquisition of Chattem on his tax liability.

4. The Chattem board member told Melvin sufficient facts such that, given Melvin’s knowledge of the board member’s affairs, Melvin would have clearly known that the board member was discussing Chattem.

5. Melvin and the Chattem board member also discussed the price impact of the tender offer on the board member's options.

6. Melvin misappropriated material non-public information regarding the impending tender offer for Chattem securities.

7. Within days of his first meeting with the board member, Melvin disclosed material non-public information about the impending tender offer to four individuals, including Jinks and Cain. Those four individuals traded in Chattem securities based on the material non-public information disclosed by Melvin and tipped other individuals, including Doffing, who also traded.

8. Defendants have engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) & 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 & 240.14e-3].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) & 78u(e)] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in

this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

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

11. Defendants, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

12. Certain of the transactions, acts, practices, and courses of business constituting violations of the Exchange Act occurred in the Northern District of Georgia. Specifically, Melvin disclosed the material non-public information to Cain, Jinks and two other individuals in the Northern District of Georgia, and most of the individuals who traded based on the material non-public information disclosed by Melvin executed their trades in Chattem securities in the Northern District of Georgia. Moreover, all of the defendants are residents of the Northern District of Georgia.

13. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business

alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

THE DEFENDANTS

14. **Thomas D. Melvin, Jr.**, 45, a resident of Griffin, Georgia, is a principal at Melvin, Rooks, and Howell PC (“MRH”), an accounting firm headquartered in Griffin. He is a CPA who has been licensed in Georgia since 1993.

15. **Michael S. Cain**, 43, a resident of Griffin, Georgia, has been a registered representative associated with a Commission-registered broker-dealer, since November 2009. Melvin has been Cain’s accountant for over 15 years.

16. **Joel C. Jinks**, 51, a resident of Griffin, Georgia and one-time candidate for local sheriff, works as a general contractor. Melvin is Jinks’ longtime accountant and a close friend of Melvin’s.

17. **Peter C. Doffing**, 46, is an insurance broker who resides in Milner, Georgia, a suburb of Griffin. Since November 2009, Doffing has been employed at an insurance broker, which provides insurance and risk management services.

RELEVANT ENTITIES

18. **Chattem, Inc.** had, for over 125 years, manufactured and sold health and beauty products, toiletries, proprietary drugs and dietary supplements. By 2009 it was one of the largest distributors of over-the-counter pharmaceutical products in the world. Its product line included Cortizone 10, Unisom, Gold Bond, Aspercreme and IcyHot. Chattem's shares traded on the NASDAQ as CHTT.

19. **Sanofi-Aventis**, a French pharmaceutical company, describes itself as a "diversified global healthcare company engaged in the research, development, manufacture and marketing of healthcare products. [Its] business includes pharmaceuticals, comprising prescription drugs, consumer healthcare and generics; vaccines and animal health." American depository shares of this Paris-based company trade on the NYSE under the symbol SNY.

20. On December 21, 2009, Sanofi announced that it intended to make a tender offer for all of the shares of Chattem at \$93.50 per share, a 32.60% premium over the prior trading day's close. The transaction was approved and became effective March 11, 2010, with Chattem subsequently delisting and deregistering thereafter.

OTHER TRADERS

21. **R. Jeffrey Rooks**, 46, a resident of Griffin, Georgia, is a principal at MRH. He is a CPA who has been licensed in Georgia since 1992.

22. **C. Roan Berry**, 44, a resident of Jackson, Georgia, founded EnviroTech Environmental Services, Inc. ("EnviroTech") in 1996 and remains its majority owner. Melvin has been Berry's and EnviroTech's accountant for over 10 years, and Berry and Melvin are friends.

23. **Ashley J. Coots**, 35, resides in Jackson, Georgia, next door to Berry. He worked as the finance manager at a car dealership with Casey D. Jackson for six years until November 2009 when he began working for an insurer that provides services to car dealerships. Melvin has been his accountant since approximately 2005.

24. **Casey D. Jackson**, 43, is an Atlanta, Georgia, resident who, along with his family, owns a number of car dealerships in metropolitan Atlanta. Coots was employed from 2004 until November 2009 as the finance manager at a dealership managed by Jackson.

BACKGROUND OF SANOFI'S TENDER OFFER TO CHATTEM

25. On September 10, 2009, the CEOs of Sanofi and Chattem met to discuss “potential strategic relationships” between their companies.

26. By mid-November 2009, Sanofi had informed Chattem that it was “interested in acquiring Chattem . . . for a price in the range of \$85.00 – \$90.00 per share in cash” and Chattem had responded that although it was “willing to consider a potential transaction, there would need to be a meaningful improvement in the price offered.”

27. By the end of that month the companies had retained financial advisors and legal counsel, executed confidentiality and exclusivity agreements, held “telephonic due diligence meetings”, and were negotiating the terms of an agreement that provided for Sanofi to “pursue a two-step transaction in which a tender offer would be followed by a merger.”

28. On December 1, 2009, senior members of both entities’ management teams met “to conduct face-to-face due diligence meetings.”

29. Before the markets opened on December 21, 2009, Chattem announced that it had entered into a definitive agreement to be acquired by Sanofi.

30. Under that agreement, Sanofi agreed to make a \$1.9 billion tender offer for 100% of Chattem's outstanding shares, at a share price of \$93.50 per share. The acquisition price represented a 32.60% premium above the closing price of \$69.98 on the prior trading day, Friday, December 18, 2009.

31. On December 21, 2009, Chattem's share price closed at \$93.02 and trading volume increased by almost 3,270% to 10.3 million shares.

DISCLOSURE OF MATERIAL NON-PUBLIC INFORMATION

32. In November 2009, the members of Chattem's board of directors were advised of Sanofi's serious interest in acquiring Chattem. The board knew that as of November 20, 2009, Sanofi had formally notified Chattem in writing of its willingness to purchase all outstanding shares of Chattem at a price of at least \$90 per share, and that Chattem had retained various counsel and investment advisers to assist in the process.

33. In December 2009, one of the members of Chattem's board of directors had a series of conversations and meetings with his longtime accountant, Melvin. This board member, who owned approximately 50,000 Chattem options that would automatically be exercised in the event of an ownership change at Chattem, initiated these discussions in order to obtain Melvin's advice on

mitigating the personal tax liability that would accompany Sanofi's tender offer and the forced exchange of his holdings.

34. During these conversations and meetings, the board member made clear to Melvin that the topic of discussion was confidential. Both the board member and Melvin understood that the subject of the conversation was confidential and that the board member was disclosing the information solely for purposes of obtaining tax advice. The board member discussed with Melvin that the board member's options would likely increase in value by approximately \$20 to \$25 in the near future.

35. Melvin, who had been this board member's accountant for many years, was aware of this board member's role on the Chattem board and was aware of the unexercised Chattem options that this board member possessed.

36. Melvin knew that the board member was discussing Chattem when the board member disclosed material non-public information about the impending tender offer.

**MELVIN'S MISAPPROPRIATION OF
MATERIAL NON-PUBLIC INFORMATION**

37. Melvin is licensed as a CPA registered with the Georgia Board of Accountancy.

38. The Chattem board member was a client of Melvin and MRH, and as a client, Melvin owed the Chattem board member a duty of confidentiality.

39. The Chattem board member disclosed material non-public information about the pending tender offer for Chattem securities to Melvin solely to obtain professional services.

40. The Chattem board member disclosed material non-public information about the pending tender offer for Chattem securities to Melvin with the expectation that Melvin would keep the information confidential.

41. Pursuant to the Georgia State Board of Accountancy Code of Professional Conduct Rule 20-12-.11, Melvin could "not without the consent of his client disclose any confidential information pertaining to his client obtained in the course of performing professional services."

42. The Chattem board member did not consent to Melvin's disclosing the material non-public information about the pending tender offer for Chattem securities.

43. Disregarding the duty of confidentiality owed to his client and imposed on him by the Georgia State Board of Accountancy's Code of Professional Conduct, Melvin misappropriated the material non-public information disclosed to him by his client, a Chattem board member, and disclosed that material non-public information to Cain, Jinks, Rooks, and Berry.

44. Cain traded in Chattem securities based on the misappropriated information disclosed to him by Melvin. Cain also tipped Doffing and one other individual, both of whom traded in Chattem securities based on the information misappropriated by Melvin and disclosed to them by Cain.

45. Jinks traded in Chattem securities based on the misappropriated information disclosed to him by Melvin. Jinks also tipped one other individual, who traded in Chattem securities based on the information misappropriated by Melvin and disclosed to him by Jinks.

46. Berry traded in Chattem securities based on the misappropriated information disclosed to him by Melvin. Berry also tipped Coats, who tipped

Jackson and one other individual. Coots traded in Chattem securities based on the information misappropriated by Melvin and disclosed to Coots by Berry. Jackson and the other individual traded in Chattem securities based on the information misappropriated by Melvin and disclosed to them by Coots.

47. Rooks traded in Chattem securities based on the misappropriated information disclosed to him by Melvin. Rooks also tipped one other individual, who traded in Chattem securities based on the information misappropriated by Melvin and disclosed to him by Rooks.

48. Melvin is responsible for the trading of at least 10 individuals in Chattem securities based on material non-public information that Melvin misappropriated from a Chattem board member.

Melvin discloses material non-public information to Cain

49. Melvin called Cain within an hour of his Friday, December 4, 2009, discussion with the board member. Melvin advised Cain of the pending tender offer for Chattem securities. Cain began purchasing Chattem later in the day after his call with Melvin.

50. Melvin told Cain that Chattem was being acquired by another company in the near future.

51. Melvin told Cain that the purchase price for Chattem would be approximately \$90 per share.

52. Melvin told Cain that the source of the information about the pending acquisition of Chattem was a board member who was a client of Melvin's.

53. Cain knew or was reckless in not knowing that the information disclosed to him by Melvin about the pending tender offer for Chattem securities was material non-public information.

54. Melvin received a benefit from disclosing the material non-public information to Cain in the form of furthering both his personal and professional relationship with Cain.

55. Cain's first purchase of Chattem securities, \$51,222.30, was his largest single purchase of stock in 2009.

56. Prior to purchasing Chattem stock on December 4, 2009, Cain had not purchased a security since May 28, 2009.

57. On December 11, 2009, Melvin called Cain at 11:14 a.m., and Cain purchased additional Chattem securities later that afternoon.

58. Between December 4 and December 15, 2009, Cain purchased 1,500 shares of Chattem for a total principal cost of \$102,658.80.

59. There was only one other time in 2009 when Cain invested over \$100,000 in a single security.

60. Cain purchased Chattem securities based on the material non-public information about the pending tender offer for Chattem securities disclosed to him by Melvin.

61. After the Announcement, Cain sold his Chattem securities for a profit of \$36,680.10.

Cain tips Doffing and one other

62. Doffing and Cain are friends. The Doffing and Cain families travel together, and the Doffing and Cain children attend the same small parochial school.

63. Doffing is a volunteer for multiple charities organized by Cain.

64. Between December 4, 2009 and December 9, 2009, Cain advised Doffing of the pending tender offer for Chattem securities.

65. Cain told Doffing that Chattem was being acquired by another company in the near future.

66. Cain told Doffing that the purchase price for Chattem would be approximately \$90 per share.

67. Cain told Doffing that the source of the information about the pending acquisition of Chattem was a board member.

68. Doffing knew or was reckless in not knowing that the information disclosed to him by Cain about the pending tender offer for Chattem securities was material non-public information.

69. Cain received a benefit from disclosing material non-public information about Chattem to Doffing in the form of furthering his personal relationship with Doffing.

70. On December 9, 2009, Cain and Doffing exchanged six text messages that were followed by a text message from Cain to Doffing at 7:48 a.m. the next morning, December 10, 2009.

71. Doffing purchased 700 shares of Chattem in his 401(k) less than four hours after receiving the text from Cain.

72. In order to make this purchase of Chattem equities in his 401(k) account, Doffing liquidated an existing position at a \$121,000 loss.

73. On December 11, 2009, Melvin called Cain at 11:14 a.m. and Cain purchased Chattem later that afternoon. Before he initiated the trade, however, Cain called Doffing at 11:47 a.m.

74. To purchase option contracts for Chattem, Doffing transferred approximately \$25,000 to his TD Ameritrade account via ACH on Friday, December 11, 2009, hours after he spoke with Cain.

75. Unaware that an ACH would take three business days to clear, he started calling TD Ameritrade at approximately 6:10 on the morning of December 15, 2009.

76. Informed that he could not begin trading because his funds had not cleared, Doffing called TD Ameritrade multiple times that morning, escalating his calls until he found personnel at TD Ameritrade that would contact his personal bank to vouch for the funds and allow him to trade.

77. As soon as the transfer cleared on December 15, 2009, Doffing used the funds to purchase January 70 call options for Chattem. The January 70 call options were out-of-the-money call options.

78. Three days later, following a subsequent conversation with Cain, at a point in time when his TD Ameritrade account had a negative cash balance of (\$6,500), Doffing purchased even further out-of-the-money January 80 call options.

79. Doffing purchased Chattem securities based on the material non-public information about the pending tender offer for Chattem securities disclosed to him by Cain.

80. After the Announcement, Doffing sold his Chattem securities for a profit of \$378,979.32.

81. Cain caused another individual to purchase 250 shares of Chattem stock for a purchase price of \$17,269.53 based on the material non-public information disclosed to Cain by Melvin.

82. Cain received a benefit from causing this individual to trade in Chattem securities in the form of furthering his personal relationship with this individual.

83. After the Announcement, the individual tipped by Cain sold his shares of Chattem stock for a profit of \$5,877.35.

Melvin discloses material non-public information to Jinks

84. Jinks is one of Melvin's closest friends.

85. Melvin called Jinks, within two hours of his Friday, December 4, 2009 discussion with the board member. Melvin advised Jinks of the pending tender offer for Chattem securities.

86. Melvin told Jinks that Chattem was being acquired by another company in the near future.

87. Melvin told Jinks that the purchase price for Chattem would be approximately \$90 per share.

88. Melvin told Jinks that the source of the information about the pending acquisition of Chattem was a board member who was a client of Melvin's.

89. Jinks knew or was reckless in not knowing that the information disclosed to him by Melvin about the pending tender offer for Chattem securities was material non-public information.

90. Melvin received a benefit from disclosing the material non-public information to Jinks in the form of furthering his professional and personal relationship with Jinks.

91. On December 11, 2009, Jinks purchased 1,000 shares of Chattem for a total principal cost of \$67,959.35.

92. Other than purchasing shares of one of his former employers in his 401(k), Jinks made only two other equity purchases in the preceding five years, with his purchase of Chattem being by far the largest.

93. Jinks purchased Chattem securities based on the material non-public information about the pending tender offer for Chattem securities disclosed to him by Melvin.

94. After the Announcement, Jinks sold his Chattem securities for a profit of \$24,337.43.

Jinks tips another individual

95. Jinks caused another individual to purchase 1,000 Chattem January 70 call options at a principal cost of \$1,300 based on the material non-public information disclosed to Jinks by Melvin.

96. Jinks caused that same individual to purchase 1,000 Chattem January 75 call options at a principal cost of \$300 based on the material non-public information disclosed to Jinks by Melvin.

97. Jinks received a benefit from causing this individual to trade in Chattem securities in the form of furthering his personal and professional relationship with the individual.

98. After the Announcement, the individual tipped by Jinks sold his Chattem securities for a profit of \$38,802.71.

Melvin discloses material non-public information to Rooks

99. Rooks and Melvin were partners at MRH.

100. On or about Monday, December 7, 2009, Melvin told Rooks that a client, who was on the board of Chattem, had disclosed that Chattem was going to be acquired by another company for approximately \$90 per share.

101. Melvin told Rooks that Chattem was being acquired by another company in the near future.

102. Melvin told Rooks that the purchase price for Chattem would be approximately \$90 per share.

103. Melvin told Rooks that the source of the information about the pending acquisition of Chattem was a board member who was a client of Melvin's.

104. Rooks knew or was reckless in not knowing that the information disclosed to him by Melvin about the pending tender offer for Chattem securities was material non-public information.

105. Melvin received a benefit from disclosing the material non-public information to Rooks in the form of furthering his professional relationship with Rooks.

106. Rooks purchased \$16,000 in shares of Chattem stock based on the material non-public information about the pending tender offer for Chattem securities disclosed to him by Melvin.

107. After the Announcement, Rooks sold his shares of Chattem stock for a profit of \$6,020.39.

Rooks tips another individual

108. Rooks caused another individual to purchase 725 shares of Chattem stock for a purchase price of \$49,118.75 based on the material non-public information disclosed to him by Melvin.

109. Rooks received a benefit from causing this individual to trade in Chattem securities in the form of furthering his personal relationship with the individual.

110. After the Announcement, the individual tipped by Rooks sold his shares of Chattem stock for a profit of \$12,461.75.

Melvin discloses material non-public information to Berry

111. Melvin and Berry are close friends.

112. On or about Friday, December 4, 2009, after meeting with the Chattem board member, Melvin called Berry and advised him of the pending tender offer for Chattem securities.

113. Melvin told Berry that Chattem was being acquired by another company in the near future.

114. Melvin told Berry that the purchase price for Chattem would be approximately \$90 per share.

115. Melvin told Berry that the source of the information about the pending acquisition of Chattem was a board member who was a client of Melvin's.

116. Berry knew or was reckless in not knowing that the information disclosed to him by Melvin about the pending tender offer for Chattem securities was material non-public information.

117. Melvin received a benefit from disclosing the material non-public information to Berry in the form of furthering his personal and professional relationship with Berry.

118. On Monday, December 7, 2009, Berry purchased 1,700 shares of Chattem for a total principal cost of \$117,090.29.

119. Berry purchased the Chattem securities in a corporate account he controlled in the name of EnviroTech.

120. The investment in Chattem represented a historically disproportionate concentration of 13.4% of the total account.

121. Prior to the December 7, 2009, purchase of Chattem shares, the last purchase in the account of \$100,000 or more occurred in 2005.

122. Berry purchased Chattem securities based on the material non-public information about the pending tender offer for Chattem securities disclosed to him by Melvin.

123. After the Announcement, Berry sold his shares of Chattem stock for a profit of \$41,859.71.

Berry tips Coots

124. Berry and Coots are next-door neighbors.

125. Berry advised Coots of the pending tender offer for Chattem securities.

126. Berry told Coots that Chattem was being acquired by another company in the near future.

127. Berry told Coots that the purchase price for Chattem would be approximately \$90 per share.

128. Berry told Coots that the source of the information about the pending acquisition of Chattem was a board member who was a client of Melvin's.

129. Coots knew or was reckless in not knowing that the information disclosed to him by Berry about the pending tender offer for Chattem securities was material non-public information.

130. Berry received a benefit from disclosing the material non-public information to Coots in the form of furthering his personal relationship with Coots.

131. Between December 10 and December 14, 2009, Coots purchased 540 shares of Chattem for a total principal cost of \$37,136.20, based on the material non-public information Berry disclosed to Coots.

132. After the announcement, Coots sold his Chattem shares for a profit of \$13,231.80.

Coots tips Jackson and one other

133. Coots was the finance manager at a dealership managed by Jackson between 2004 and November 2009.

134. Coots told Jackson that Chattem was going to be purchased and that the price would rise to approximately \$90 per share.

135. Coots received a benefit from disclosing the material non-public information to Jackson in the form of furthering his professional relationship with Jackson.

136. Jackson knew or was reckless in not knowing that the information disclosed to him by Coots about the pending acquisition was material non-public information.

137. On December 14, 2009, Jackson purchased 100 shares of Chattem for a total principal cost of \$6,890 based on the material non-public information Coots disclosed to Jackson.

138. After the Announcement, Jackson sold his shares of Chattem for a profit of \$2,369.78.

139. Coots caused another individual to purchase 165 shares of Chattem stock for a purchase price of \$11,193.77 based on the material non-public information disclosed to him by Berry.

140. Coots received a benefit from causing this individual to trade in Chattem securities in the form of furthering his personal and professional relationship with the individual.

141. After the Announcement, the individual tipped by Coots sold his shares of Chattem stock for a profit of \$4,128.63.

COUNT I—INSIDER TRADING

**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]**

142. Paragraphs 1 through 141 are hereby re-alleged and are incorporated herein by reference.

143. During December 2009, Defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

144. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

145. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate 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].

COUNT II—INSIDER TRADING

Violations of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3]

146. Paragraphs 1 through 141 are hereby re-alleged and are incorporated herein by reference.

147. By December 4, 2009, substantial steps had been taken to commence a tender offer for the securities of Chatterm by Sanofi-Aventis, including, among others: (1) retaining financial advisors and legal counsel; (2) executing confidentiality and exclusivity agreements; (3) holding “telephonic due diligence meetings;” and (4) negotiating the terms of an agreement that provided for Sanofi to “pursue a two-step transaction in which a tender offer would be followed by a merger.”

148. At the time Defendants purchased Chatterm securities, they were in possession of material information regarding the tender offer for Chatterm securities by Sanofi-Aventis, which they knew or had reason to know was nonpublic, and which they knew or had reason to know was acquired directly or indirectly from an officer, director, partner, or employee or other person acting on behalf of the issuer.

149. By reason of the foregoing, Defendants violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants committed the violations alleged herein.

II.

A permanent injunction enjoining Defendants, their agents, servants, employees, and attorneys from violating, directly or indirectly, 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].

III.

A permanent injunction enjoining Defendants, their agents, servants, employees, and attorneys from violating, directly or indirectly, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

IV.

An order requiring the disgorgement by Defendants of all ill-gotten gains or unjust enrichment, including any received by their tippees, with prejudgment interest, to effect the remedial purposes of the federal securities laws.

V.

An order pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] imposing civil penalties against Defendants.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: August 28, 2012

Respectfully submitted,

/s/ Kristin B. Wilhelm

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TAB 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff, : Civil Action No.
: 1:12-CV-02984-CAP

v. :

THOMAS D. MELVIN, MICHAEL S.
CAIN, JOEL C. JINKS and PETER C.
DOFFING,

Defendants. :

CONSENT OF DEFENDANT THOMAS D. MELVIN

1. Defendant Thomas D. Melvin ("Melvin") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Melvin admits), Melvin hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Melvin from violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];
 - (b) permanently restrains and enjoins Melvin from violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder;
 - (c) orders Melvin to pay disgorgement in the amount of \$36,991.20 (of which he is jointly and severally liable with Michael S. Cain), plus prejudgment interest thereon in the amount of \$4,181.37 (of which he is jointly and severally liable with Michael S. Cain);
 - (d) orders Melvin to pay disgorgement in the amount of \$24,337.43 (of which he is jointly and severally liable with Joel C. Jinks), plus pre-judgment interest thereon in the amount of \$2,813.22 (of which he is jointly and severally liable with Joel C. Jinks);
- and

(e) orders Melvin to pay a civil penalty in the amount of \$108,930.05 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

3. Melvin agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Melvin pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Melvin further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Melvin pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Melvin waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Melvin waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Melvin enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the

Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Melvin agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Melvin will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Melvin waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of its terms and conditions. Melvin further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Melvin in this civil proceeding. Melvin acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Melvin waives any claim of

Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Melvin further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Melvin understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Melvin understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Melvin agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing

of this Consent, Melvin hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Melvin breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Melvin's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Melvin hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Melvin to defend against this action. For these purposes, Melvin agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

13. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Melvin (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or

subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Melvin's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (iv) consents to personal jurisdiction over Melvin in any United States District Court for purposes of enforcing any such subpoena.

14. Melvin agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Melvin agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 4-10-13

Thomas D. Melvin
Thomas D. Melvin

On April 10, 2013, Thomas D. Melvin, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Rachel E. Jones
Notary Public
Commission expires: July 19, 2015

TAB 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

Civil Action No.

1:12-CV-02984-CAP

v.

THOMAS D. MELVIN, MICHAEL S.
CAIN, JOEL C. JINKS and PETER C.
DOFFING,

Defendants.

FINAL JUDGMENT AS TO THOMAS D. MELVIN

The Securities and Exchange Commission having filed a Complaint and Defendant Thomas D. Melvin having entered a general appearance; consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person of such issuer, unless within a reasonable time prior to any such purchase or sale

such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
- (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the planning, financing,

preparation or execution of the activities of the issuer with respect to such tender offer; or

- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

Defendant is liable for disgorgement of \$36,991.20 (of which he is jointly and severally liable with Michael S. Cain) plus \$24,840.75 (of which he is jointly and severally liable with Joel C. Jinks) representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$4,181.37 (of which he is jointly and severally liable with Michael S. Cain) plus \$2,813.22 (of which he is jointly and severally liable with Joel C. Jinks), and a civil penalty in the amount of \$108,930.05 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$177,756.59 in four installments to the Commission according to the following schedule: (1) \$44,439.14, within 14 days of entry of this Final Judgment; (2) \$44,439.15, within 115 days of entry of this Final Judgment; (3) \$44,439.15, within 230 days of entry of this Final Judgment; and (4) \$44,439.15, within 345 days of entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch

[REDACTED]
[REDACTED]

and shall be accompanied by a letter identifying the case title, civil action number, and name of the Court; Thomas D. Melvin as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: August 14, 2013

/s/Charles A. Pannell, Jr.
UNITED STATES DISTRICT JUDGE