

# JUDGE BAER

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09 CIV 5352

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION, )  
PLAINTIFF, )  
  )  
  )  
  )  
v. )  
  )  
PHILLIP MACDONALD, )  
MARTIN GOLLAN, and )  
MICHAEL GOODMAN, )  
  )  
DEFENDANTS. )  

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09 Civ. \_\_\_\_\_

**COMPLAINT**

**ECF CASE**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

**SUMMARY**

1. This case involves insider tipping and trading in multiple securities by three Canadian citizens, including the spouse of a former Merrill Lynch Canada, Inc. ("Merrill Canada")

administrative assistant. The trading resulted in more than \$1 million in ill-gotten gains. Between January and June 2005, defendant Michael Goodman learned information concerning proposed business combinations from confidential conversations with his wife, who had learned the information in the course of her employment at Merrill Canada.

2. Goodman breached a duty of trust and confidence to his wife by misappropriating the information, disclosing it to his friend and business associate, defendant Phillip Macdonald, and to another business associate, defendant Martin Gollan. Macdonald and Gollan then purchased securities of certain public traded companies on the basis of the material nonpublic information.

3. By engaging in the conduct set forth in this complaint, defendants Goodman and Macdonald each violated 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 [17 C.F.R. §§ 240.10b-5, 240.14e-3] promulgated thereunder, and defendant Gollan violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. Unless enjoined, the defendants will continue to engage in transactions, acts, practices, and courses of business similar to those alleged in this complaint.

4. The Commission seeks injunctions against future violations, disgorgement of ill-gotten gains, prejudgment interest thereon, and statutory civil monetary penalties.

## JURISDICTION

5. The 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), and 78aa].

## THE DEFENDANTS

6. Phillip Macdonald, age 48, resides in North York, Ontario, Canada and at all relevant times was a self-employed attorney.

7. Martin Gollan, age 63, resides in North York, Ontario, Canada and at all relevant times was employed as a scrap metal dealer.

8. Michael Goodman, age 36, resides in Thornhill, Ontario, Canada and at all relevant times was employed with a scrap metal company.

## THE TARGET COMPANIES

9. During the relevant period, the following companies were among target companies in contemplated business combinations that, when publicly announced, caused the prices of the companies' securities to increase. Merrill Canada or its corporate affiliate Merrill Lynch & Co., Inc., ("Merrill") provided advice to a company involved in each of these business combinations.

10. Creo, Inc. ("Creo") was a printer software manufacturer, with its principal offices in Burnaby, British Columbia, Canada. Its common stock was registered pursuant to Section 12(g) of the Exchange Act and traded on the Toronto Stock Exchange and the NASDAQ Global Market. On January 31, 2005, Eastman Kodak Co. ("Eastman Kodak") announced that it

would buy Creo. Merrill Canada acted as a sell-side adviser and rendered a fairness opinion to Creo in connection with the acquisition.

11. Masonite International Corporation (“Masonite”) was a building products company with its principal offices located in Mississauga, Ontario, Canada. Its common stock was registered pursuant to Section 12(b) of the Exchange Act and was traded on the Toronto and the New York Stock Exchanges. During the evening of February 17, 2005, Masonite announced that it had amended an agreement with Stile Acquisition Corp. (“Stile”), an affiliate of Kohlberg Kravis Roberts & Co., to provide for an increase in the price at which Stile would acquire all the outstanding common stock of Masonite to C\$42.25 per share, from C\$40.20 per share. Merrill acted as a financial adviser and rendered a fairness opinion to Masonite in connection with the acquisition.

12. Eon Labs, Inc. (“Eon”) was a generic pharmaceutical company incorporated in Delaware. Its corporate headquarters were located in Lake Success, New York. Its common stock was registered pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ Global Market. On February 21, 2005, Novartis International AG (“Novartis”) announced the acquisition of Hexal AG (“Hexal”) and a 67.7% stake in Hexal’s U.S. affiliate, Eon. In addition, pursuant to a merger agreement unanimously approved by the Eon Board of Directors and a special committee of independent directors, Novartis announced it would launch a tender offer to acquire the remaining 31.9 million fully diluted shares of Eon common stock for US\$31 per share. Merrill Lynch rendered a fairness opinion to Eon in connection with the tender offer.

13. Performance Food Group Company ("Performance") was a marketer and distributor of brand food and nonfood products to foodservice industry customers. It was incorporated in Tennessee, and its corporate headquarters were located in Richmond, Virginia. Its common stock was registered pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ Global Market. On February 23, 2005, Performance announced the signing of a definitive agreement for the sale of its fresh-cut produce business segment to Chiquita Brands International, Inc. for \$855 million. Merrill rendered a fairness opinion to Performance in connection with the sale.

14. Great Lakes Chemical Corporation ("Great Lakes") was a producer of certain specialty chemical applications and incorporated in Delaware. Its corporate headquarters were located in Indianapolis, Indiana. Its common stock was registered pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. On March 9, 2005, Crompton Corp. and Great Lakes announced that they had entered into a definitive merger agreement for an all-stock merger transaction. Merrill acted as a sell-side adviser and rendered a fairness opinion to Great Lakes in connection with the merger.

15. Shopko Stores, Inc. ("Shopko") was a retailer incorporated in Wisconsin. Its corporate headquarters were located in Green Bay, Wisconsin. Its common stock was registered pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. On April 8, 2005, Shopko announced that it had signed a definitive merger agreement to be acquired by an affiliate of Goldner Hawn Johnson & Morrison Incorporated. Merrill acted as a sell-side adviser and rendered a fairness opinion to Shopko in connection with the acquisition.

16. Electronics Boutique Holdings Corp. (“Electronics Boutique”) was a video game retailer incorporated in Delaware. Its corporate headquarters were located in West Chester, Pennsylvania. Its common stock was registered pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ Global Market. On April 18, 2005, GameStop Corp. announced that it intended to acquire Electronics Boutique. Merrill acted as an adviser to Electronics Boutique in connection with the acquisition.

17. Commercial Federal Corporation (“Commercial Federal”) was a savings and loan holding company incorporated in Nebraska. Its corporate headquarters were located in Omaha, Nebraska. Its common stock was registered pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. During the evening of June 13, 2005, BancWest announced that it was acquiring Commercial Federal for US\$34 per share. Merrill acted as a sell-side adviser to Commercial Federal in connection with the acquisition.

#### **ADDITIONAL RELEVANT ENTITIES**

18. Merrill is a Delaware corporation, with headquarters in New York, New York. It is a wealth management, capital markets, and advisory company with offices in 40 countries. It was acquired by Bank of America Corporation on January 1, 2009 and is a wholly owned subsidiary of Bank of America Corporation.

19. Merrill Canada is a Canadian corporation with headquarters in Toronto, Ontario. It is an affiliate of Merrill and a financial management and advisory company.

**Goodman Learns the Identities of the Target Companies**

20. Between January and June 2005, Goodman's wife was employed as an administrative assistant to certain managing directors at Merrill Canada in Toronto who were involved in advising clients on contemplated mergers, acquisitions, and tender offers. While so employed, Goodman's wife had access to information concerning those contemplated business combinations. As a part of her responsibilities, she received e-mails and had access to managing directors' mail, facsimile transmissions, and e-mails, including e-mails from Merrill employees in New York, New York. She also kept calendars for the managing directors, set up meetings, answered telephones, and booked travel. As a result, Goodman's wife learned the identities of a number of companies involved in contemplated, but as yet unannounced, business combinations.

21. During the period between January and June 2005, Goodman and his wife sometimes discussed what was happening at her job. During those conversations, Goodman's wife sometimes mentioned specific companies or individuals involved with business combinations that were confidential and non-public. Goodman and his wife spoke frequently by telephone during working hours. Goodman's wife expected that her husband would keep this information confidential and believed that her husband understood that the conversations concerning these companies were confidential.

**Goodman Tips Macdonald and Gollan**

22. Macdonald was a friend and business associate of Goodman. Macdonald became friends with Goodman after they met in a bar in 2002. Macdonald and others who frequented the

bar shared information about stocks. Goodman wanted to ingratiate himself with Macdonald. He recommended stocks to Macdonald, and Macdonald recommended stocks to him. Goodman also got Macdonald to invest money in a transaction in steel bins undertaken by Goodman and another individual.

23. Gollan was a business associate and mentor of Goodman. Goodman sold scrap metal to Gollan and met and talked with him on a regular basis about business and stocks.

24. Between January and June 2005, in violation of the duty of trust and confidence he owed to his wife, Goodman tipped Macdonald and Gollan about the identities of target companies involved in contemplated, but as yet unannounced, business combinations in which Merrill Canada or Merrill was involved. Those companies included Creo, Masonite, Eon, Performance, Great Lakes, Shopko, Electronics Boutique, and Commercial Federal. Goodman disclosed this information to Macdonald and Gollan with the knowledge that Macdonald and Gollan would use it for trading purposes.

25. Macdonald knew that Goodman's wife was the source of the information about the business combinations, and he knew that Goodman's wife had learned the information from her employment at Merrill Canada.

26. Gollan knew that Goodman's wife worked with a stock broker, and he repeatedly invested in target company securities Goodman recommended to him. Although Goodman may not have conveyed to Gollan that Goodman's wife was the source of the information, Goodman's tips to Gollan regarding the target companies came shortly before announcements of business

combinations involving those companies and resulted in immediate trading profits for Gollan. Thus, by the third or, at a minimum, the fourth time that Goodman tipped Gollan regarding one of the target companies, Gollan knew or should have known that the information conveyed to him had been obtained in breach of a fiduciary duty or a duty of trust and confidence.

**Macdonald and Gollan Purchase Target Companies' Securities**

27. After Goodman tipped Macdonald, Macdonald purchased the target companies' securities through Octagon Capital Corporation ("Octagon") and E\*Trade ("E-Trade") Canada, in brokerage accounts held in his own name, in the name of his wife, in trust for his son, and in the name of corporations he controlled. He also purchased the target companies' securities through an off-shore account in a corporation he controlled at Bank Leu in the Bahamas.

28. After Goodman tipped Gollan, Gollan purchased the target companies' securities through brokerage accounts at CIBC World Markets ("CIBC").

29. On several occasions, Goodman and his wife spoke by telephone on a day during which his wife had received e-mails or other communications referencing a possible business combination discussed in this complaint. On those occasions, soon after one of the phone calls, Goodman would communicate with Macdonald or Gollan, and shortly thereafter, Macdonald or Gollan would trade in the securities of the target company.

30. For example, on Friday, January 28, 2005, at 9:53 a.m., a director in Merrill Canada's Toronto office sent an e-mail to Goodman's wife concerning a fairness opinion meeting for "Project 29." ("Project 29" was the code name for the proposed Creo/Eastman Kodak

acquisition.) At 10:03 a.m., the director sent another e-mail to Goodman's wife, referencing an earlier e-mail from him to an employee in Merrill's New York office concerning the potential sale of Creo. Goodman subsequently called his wife at least twice that morning. That afternoon, his wife called him. Two minutes later, a call was placed from Goodman to Gollan. Approximately three minutes later, Gollan placed an order to purchase 3,500 shares of the common stock of Creo through an account at CIBC. Approximately thirty-two minutes after Gollan placed his order, Goodman called Macdonald. Beginning one minute after the call from Goodman and continuing for the next eighteen minutes, Macdonald placed orders to purchase 20,500 shares of Creo common stock through accounts at Octagon and 26,000 shares of Creo common stock through accounts at E-Trade. On Monday, January 31, 2005, the next business day, Eastman Kodak announced that it would buy Creo. The closing price of Creo increased from US\$14.36 and C\$17.89 on Friday, January 28, 2005, to US\$16.18 and C\$20.07 on Monday, January 31, 2005.

31. In another example, on Thursday, April 14, 2005, at 3:13 p.m., materials for a fairness opinion committee meeting concerning Electronics Boutique were e-mailed to one of Goodman's wife's supervisors. Goodman's wife had access to the e-mail. Seven minutes after the e-mail was sent, she called Goodman's cellphone from her cellphone. At 4:57 p.m., Goodman placed a two-minute call from his cellphone to her work phone. At 5:07 p.m., Goodman placed a call from his cellphone to Macdonald's cellphone. At 9:34 a.m. the following morning, Macdonald placed an order to purchase 500 shares of Electronics Boutique common stock through an account at E-Trade. Two minutes later, Goodman called Macdonald at home, from his cellphone. Fifteen minutes later, Macdonald began placing orders to purchase additional shares of Electronics

Boutique common stock. In all, Macdonald purchased a total of 24,673 shares of Electronics Boutique that day. Gollan also purchased common stock of Electronics Boutique that day. His trades also followed calls from Goodman. Gollan purchased a total of 4,500 shares of Electronics Boutique common stock that day. On Monday, April 18, 2005, the next business day, GameStop Corp. announced that it intended to acquire Electronics Boutique. The closing price of Electronics Boutique common stock increased from US\$41.12 on Friday, April 15, 2005, to US\$55.21 on Monday, April 18.

32. The prices of the other target companies' securities traded by Macdonald and Gollan also increased in response to the public announcements of proposed mergers or acquisitions discussed in this complaint.

33. All of the illegal trading in the target companies' securities occurred on U.S. exchanges. By placing orders for securities that were registered in the United States and that traded on U.S., but not Canadian, exchanges -- or, in the case of one target company security, directing that orders be executed on U.S. exchanges, when the security was traded on both U.S. and Canadian exchanges -- the defendants purposely availed themselves of the privilege of conducting business in the United States.

34. Although Macdonald traded Masonite securities only on Canadian exchanges, his trading in those securities is probative of his plan, motive, and intent with regard to his trading in other target company securities.

35. Macdonald made over \$900,000 in ill-gotten gains from his illegal trading in the target securities.
36. Gollan made over \$90,000 in ill-gotten gains from his illegal trading in the target securities.

**VIOLATIONS OF SECTION 10(b) OF  
THE EXCHANGE ACT [15 U.S.C. § 78j(b)]  
AND RULE 10b-5 [17 C.F.R. § 240.10b-5]**

37. Paragraphs 1 through 36 are realleged and incorporated herein by reference.
38. At all relevant times, Goodman knew, or was reckless in not knowing, that the information he possessed concerning the proposed but unannounced business combinations, which had been conveyed to him by his wife, was material and nonpublic. Goodman knew, or was reckless in not knowing, that he violated the duty of trust and confidence he owed to his wife by disclosing this information to Macdonald and Gollan. Goodman knew, or was reckless in not knowing, that Macdonald and Gollan would use the information for trading purposes.
39. At all relevant times, Macdonald knew, or should have known, that the information he possessed concerning the proposed but unannounced business combinations was material nonpublic information that had been conveyed to him by Goodman in breach of a duty of trust and confidence. On the basis of the information, Macdonald purchased securities of at least six of the target companies through U.S. exchanges.
40. Gollan purchased the securities of at least four of the target companies. By the time that he traded the third, or, at a minimum, the fourth target company security, Gollan knew,

or should have known, that the information he possessed concerning the proposed but unannounced business combinations was material nonpublic information that had been conveyed to him by Goodman in breach of a duty of trust and confidence. On the basis of the information, Gollan purchased those target company securities through U.S. exchanges.

41. By reason of the foregoing, Goodman, Macdonald, and Gollan each 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].

**VIOLATIONS 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]**

42. Paragraphs 1 through 36 are realleged and incorporated herein by reference.

43. Prior to the public announcement of the tender offer for Eon, and after a substantial step or steps to commence the tender offer had been taken, Goodman, while in possession of material information relating to the tender offer, which information he knew or had reason to know was nonpublic and had been acquired directly or indirectly from a person acting on behalf of the offering person; the issuer of the securities sought or to be sought by the tender offer; or an officer, director, partner, employee, or other person acting on behalf of the offering person or such issuer, communicated material nonpublic information relating to the tender offer to Macdonald under circumstances in which it was reasonably foreseeable that the communication was likely to result in the purchase of securities of Eon.

44. Prior to the public announcement of the tender offer for Eon, and after a substantial step or steps to commence the tender offer had been taken, Macdonald, while in possession of material information relating to the tender offer, which information he knew or had reason to know was nonpublic and had been acquired directly or indirectly from a person acting on behalf of the offering person; the issuer of the securities sought or to be sought by the tender offer; or an officer, director, partner, employee, or other person acting on behalf of the offering person or such issuer, purchased securities of Eon.

45. By reason of the foregoing, Goodman and Macdonald each directly or indirectly violated 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].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

- (a) permanently restrain and enjoin defendant Macdonald and each of his agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice, from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];
- (b) permanently restrain and enjoin defendant Gollan and each of his agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice, from violating 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];

- (c) permanently restrain and enjoin defendant Goodman and each of his agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice, from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];
- (d) order defendants Goodman and Macdonald to disgorge jointly and severally the ill-gotten gains derived from Macdonald's unlawful trading alleged herein, plus prejudgment interest thereon;
- (e) order defendants Goodman and Gollan to disgorge jointly and severally the ill-gotten gains derived from Gollan's unlawful trading alleged herein, plus prejudgment interest thereon;
- (f) order each of defendants Goodman, Macdonald, and Gollan to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (g) grant such other relief as the Court deems just and proper.

Dated: June 9, 2009

Respectfully submitted,



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