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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND)	
EXCHANGE COMMISSION,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil No. 04 CV 4385
)	
)	COMPLAINT
FREDERICK DAVID JONES, and)	
MARK GODDEN,)	Jury Trial Demanded
)	
)	
Defendants.)	

Plaintiff, the United States Securities and Exchange Commission, alleges:

NATURE OF ACTION

1. This action arises from the defendants' violations of the federal insider trading laws. Specifically, defendants Frederick David Jones and Mark Godden, who served as officers of a subsidiary of Gerber Scientific, Inc. ("Gerber"), traded Gerber stock between June 1999 and April 2000 on the basis of material, non-public information.
2. Jones had profits, and avoided losses, totaling \$52,750 as a result of his insider trading. Godden avoided losses of \$64,375 as a result of his insider trading.

3. By engaging in insider trading as described in this Complaint, Jones and Godden each violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77q(a)], and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78j(b), 17 C.F.R. 240.10b-5].

4. Accordingly, the Commission seeks a judgment: (1) permanently enjoining defendants Jones and Godden under Section 20(b) of the Securities Act and Sections 21(d)(1) and 21(e) of the Exchange Act [15 U.S.C. §§ 77t(b), 78u(d)(1) and 78u(e)] from further violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act; (2) requiring them to disgorge their ill-gotten gains, with prejudgment interest under the Court’s inherent equitable powers; and (3) imposing monetary penalties against them under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

JURISDICTION and VENUE

5. This Court has jurisdiction over this action under Sections 20(b) and 22 of the Securities Act [15 U.S.C. §§ 77t(b), 77v], and Sections 21(d)(1), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1 and 78aa]. Venue is proper under Section 22 of the Securities Act, Section 27 of the Exchange Act, and 28 U.S.C. § 1391(d), because the trading described in this Complaint occurred on the New York Stock Exchange, and because the defendants are foreign nationals residing outside of the United States.

DEFENDANTS

6. Defendant Frederick David Jones, age 57, resides in Kingston Surrey, England. At all relevant times, Jones was the head of Spandex PLC (“Spandex”), a subsidiary of

Gerber, under the title of Group Managing Director. Gerber is a U.S. corporation with securities listed on the New York Stock Exchange.

7. Defendant Mark Godden, age 47, resides in Devon, England. At all relevant times, he was vice-president of marketing with Spandex.

OTHER RELEVANT ENTITIES

8. Gerber, at all relevant times, manufactured and sold products in the sign-making, specialty graphics, apparel and flexible materials, and optical lens processing industries, operating through its wholly-owned subsidiaries Spandex; Gerber Scientific Products, Inc.; Gerber Technology, Inc.; and Gerber Coburn Optical, Inc. Gerber was (and is) incorporated and headquartered in Connecticut, and its stock, at all relevant times, has been registered with the Commission under Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)] and has traded on the New York Stock Exchange under the symbol “GRB.”

FIRST CLAIM FOR RELIEF — Jones’s Violations of Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act

9. The Commission incorporates the allegations in paragraphs 1-8 as though fully set forth in this paragraph.

10. Jones, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or the facilities of a national securities exchange, and/or the mails: (a) employed devices, schemes, and/or artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operated

or would have operated as a fraud or deceit on other persons in violation of Exchange Act Section 10(b) and Exchange Act Rule 10b-5.

11. Jones, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would have operated as a fraud or deceit upon the purchaser of securities in violation of Section 17(a) of the Securities Act.

12. As an officer of Spandex and a corporate insider, Jones had a fiduciary duty, or other duty of trust or confidence owed directly, indirectly or derivatively to Gerber and its shareholders. This included a duty not to trade Gerber shares on the basis of material, non-public information.

13. Jones has admitted under oath that he knew from the time he began working for Spandex that he was not permitted to trade stock on the basis of material, non-public information.

14. As a Spandex officer and a corporate insider, Jones had access to material, non-public information about Gerber and its subsidiaries.

Jones obtains material inside information in June 1999, buys Gerber stock, and enjoys a profit

15. Jones learned in early June of 1999 that Gerber had decided to acquire the assets of Graphic-Cal Group, Australia's largest sign-making materials supplier.
16. This information about the acquisition was material, non-public information.
17. Shortly thereafter, on June 11, 1999, before the acquisition was made public, Jones purchased 5,000 shares of Gerber stock on the New York Stock Exchange at \$22.20 per share through his brokerage account in the United States for his personal benefit on the basis of the material, non-public information about the Graphic-Cal Group acquisition, and in breach of his fiduciary duty to Gerber and its shareholders.
18. Jones's brokerage account was carried by a firm in New York City.
19. Gerber did not publicly announce the Graphic-Cal acquisition until September 13, 1999. The price of Gerber stock closed that day at \$23.25 per share, over the previous day's closing price of \$22.94. Jones thus enjoyed a profit at that time of \$5,250.
20. Jones executed his purchase of Gerber stock (a) knowing that he was trading on the basis of material, non-public information, or (b) with reckless disregard as to whether the information on which he made the stock purchase was material and non-public.
21. Jones violated Section 10(b) and Rule 10b-5 of the Exchange Act when he purchased Gerber stock on June 11, 1999.

Jones obtains more material inside information and sells his stock in March of 2000 to avoid losses

22. Jones continued to be privy to material, non-public information about Gerber and its subsidiaries.

23. On February 17, 2000, Jones received a company e-mail stating that a new product known as Maxx, sold through Gerber's largest subsidiary, Gerber Scientific Products, was experiencing problems which had "the potential to get out of control."

24. On February 27, 2000, Jones received an e-mail from defendant Godden, telling him that Maxx, "suffers from a variety of problems," has "limited appeal and lots of competition," and that dealing with the Maxx problems "is going to be a resource hungry effort." The e-mail sums up by stating that "I don't think things are going to get better anytime soon and we would be well advised to organize our efforts to generate sales elsewhere."

25. Jones gave a presentation to members of Gerber management on March 7, 2000, where Jones disclosed that Spandex's pre-tax earnings for the company's third quarter of the fiscal year ended April 30, 2002 would be only \$3.6 million, below the company's own budgeted earnings for that quarter of \$4.8 million. During the presentation, Jones also forecast that Spandex's fourth quarter pre-tax earnings for that fiscal year would be only \$4 million, again below the company's budgeted figure of \$4.9 million.

26. On March 10, 2000, Jones learned through non-public company correspondence that Gerber Coburn Optical, Inc., another Gerber subsidiary, had experienced a \$390,000 loss in February of 2000.

27. On March 14, 2000, Jones received a non-public, company e-mail — which he opened on March 15 — stating that revenues, gross margins and operating income for Gerber’s largest subsidiary, Gerber Scientific Products, Inc., were below budget for February of 2000. The e-mail contents showed that operating income for Gerber Scientific Products for February 2000, including its subsidiary, Ultramark, was 97 percent below the company’s budget for that month.
28. The information detailed above which Jones possessed about the financial conditions of Gerber, Spandex, Gerber Coburn and Gerber Scientific Products was material, non-public information.
29. The same day Jones opened the company e-mail about Gerber Scientific Products — March 15, 2000 — Jones sold 5,000 Gerber shares at \$21 per share on the New York Stock Exchange for his personal benefit on the basis of his material, non-public information about Gerber and its subsidiaries, and in breach of his fiduciary duty to Gerber and its shareholders.
30. On April 26, 2000, Gerber announced that its fourth quarter results would likely be lower than expected. The Gerber stock closed that day at \$11.50 per share, down \$3.63 from the previous day’s close. Jones therefore avoided losses of \$47,500.
31. Jones executed his sale of Gerber stock (a) knowing that he was trading on the basis of material, non-public information, or (b) with reckless disregard as to whether the information on which he made the stock sale was material and non-public.
32. Jones violated Section 17(a) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act when he sold Gerber stock on March 15, 2000.

33. Jones will, unless restrained and enjoined, continue to engage in the transactions acts, practices and courses of business alleged in this complaint, or in similar transactions, acts, practices and courses of business, in violation of the federal securities laws.

SECOND CLAIM FOR RELIEF — Godden’s Violation of Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act

34. The Commission reincorporates the allegations in paragraphs 1-33 as though fully set forth in this paragraph.

35. Godden, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or the facilities of a national securities exchange, and/or the mails: (a) employed devices, schemes, and/or artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operated or would have operated as a fraud or deceit on other persons in violation of Exchange Act Section 10(b) and Exchange Act Rule 10b-5.

36. Godden, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would have operated as a

fraud or deceit upon the purchaser of securities in violation of Section 17(a) of the Securities Act.

37. As an officer of Spandex and a corporate insider, Godden had a fiduciary duty, or other duty of trust or confidence owed directly, indirectly or derivatively to Gerber and its shareholders. This included a duty not to trade Gerber shares on the basis of material, non-public information.

38. Godden knew at all relevant times, or was reckless in not knowing, that corporate insiders were prohibited from executing trades in the stock of their corporations on the basis of material, non-public information.

39. As an officer of Spandex and a corporate insider, Godden had access to material, non-public information about Gerber and its subsidiaries.

Godden receives his stock in Gerber

40. In 1998, Godden received 20,000 shares of Gerber stock.

41. The stock had a market value of approximately \$25 per share at the time he received it.

Godden obtains material inside information and sells stock in April 2000 to avoid losses

42. Between February 17 and April 18, 2000, Godden possessed material, non-public information about Gerber and its subsidiaries.

43. On February 17, 2000, Godden received a company e-mail stating that a new product known as Maxx, sold through Gerber's largest subsidiary, Gerber Scientific Products, was experiencing problems which had "the potential to get out of control."

44. On February 27, 2000, Godden sent an e-mail to defendant Jones detailing non-public information Godden had recently received from within Gerber about Maxx.

45. The e-mail stated that Maxx “suffers from a variety of problems,” has “limited appeal and lots of competition,” and that dealing with the Maxx problems “is going to be a resource hungry effort.” The e-mail stated that “I don’t think things are going to get better anytime soon and we would be well advised to organize our efforts to generate sales elsewhere.”

46. On March 15, 2000, Godden learned through a company e-mail that Gerber Scientific Products’ February 2000 revenues, gross margins and operating income were below budget.

47. On April 11, 2000, Godden applied to open a brokerage account in the United States.

48. On April 13, Godden learned through a company e-mail that (a) Gerber’s fourth quarter earnings would be worse than expected, (b) that the Gerber board of directors had outlined a “disastrous” fourth quarter earnings forecast per share; and (c) that the Gerber board of directors feared that Gerber’s stock price would drop several dollars per share as a consequence.

49. The information Jones possessed about the financial conditions of Gerber, Spandex and Gerber Scientific Products detailed above was material, non-public information.

50. On April 18, 2000, the day that his brokerage account was activated, Godden sold 10,000 of his Gerber shares on the New York Stock Exchange at \$17.94 per share for his

personal benefit on the basis of the material, non-public information described above, and in breach of his fiduciary duty to Gerber and its shareholders.

51. On April 26, 2000, Gerber announced that its fourth quarter results would likely be lower than expected. The Gerber stock closed that day at \$11.50 per share, down \$3.63 from the previous day's close. Godden thus avoided losses of \$64,375.

52. Godden sold his Gerber stock (a) knowing that he was trading on the basis of material, non-public information, or (b) with reckless disregard as to whether the information on which he made the stock sale was material and non-public.

53. As a consequence, Godden violated Section 17(a) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act.

54. Godden will, unless restrained and enjoined, continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, or in similar transactions, acts, practices and courses of business, in violation of the federal securities laws.

JURY DEMAND

The Commission demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court enter judgment:

a. permanently restraining and enjoining defendants, their agents, servants, employees, representatives, attorneys, affiliates and all persons in active concert or participation with them who receive actual notice of the Court's permanent injunction,

from future violations of Section 17(a) the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act;

b. imposing civil monetary penalties against defendants, under Section 21A of the Exchange Act;

c. requiring defendants to disgorge all profits, and the losses avoided, from the unlawful trading alleged in this complaint, with prejudgment interest; and

d. granting the Commission such further relief as justice requires.

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