



Department of Justice



**United States Attorney Laura E. Duffy
Southern District of California**

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CONTACT: DEBRA HARTMAN
PHONE: (619) 557-5610

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**FORMER SEQUENOM PATENT AGENT AND AGENT'S BROTHER
PLEAD GUILTY TO CONSPIRACY TO COMMIT INSIDER TRADING**

SAN DIEGO – A former Sequenom Inc. patent agent and his brother pleaded guilty today to conspiring to trade stock options in Sequenom, Inc. using inside information, announced U.S. Attorney Laura E. Duffy. Patent agent, Aaron Scalia, of San Diego and his brother, Stephen Scalia, of Baltimore entered their guilty pleas to conspiring to commit securities fraud before U.S. Magistrate Judge Ruben B. Brooks. Their guilty pleas are subject to final acceptance by U.S. District Court Judge Barry Ted Moskowitz.

Sequenom is a publicly-traded biotechnology company headquartered in San Diego. According to court documents and admissions during the defendants' guilty pleas, the company employed Aaron Scalia as a patent agent in the company's legal department, where he had regular contact with scientists working on Sequenom's confidential and proprietary intellectual property. In this capacity, Aaron Scalia also had special access to the scientists' work product and facilities. As a Sequenom employee, Aaron Scalia had a duty to refrain from disclosing any confidential information he learned during the course of his employment, and had been warned against using company information to engage in insider trading.

According to court documents, from October 2008 through 2009, Aaron Scalia disclosed material nonpublic information about Sequenom to his brother on two occasions, knowing that the inside information would be used to purchase stocks or stock options. In both instances Stephen Scalia passed the inside information to his college friend, Brett Cohen, who then tipped off his uncle, David Myers, who actually purchased securities using the inside information for a gross profit of over \$600,000.

According to his plea, Aaron Scalia admitted passing along the first tips in October and November 2008, when Sequenom's senior executives were exploring the possibility of acquiring EXACT Sciences Corporation. As a member of the team performing secret due diligence on EXACT Sciences and its intellectual property, Aaron Scalia obtained confidential non-public

information about EXACT Sciences and Sequenom's efforts to acquire the company. During a series of phone calls Aaron Scalia tipped off his brother to Sequenom's efforts to acquire EXACT Sciences. Stephen Scalia, in turn, passed on this stock tip to Cohen.

According to court documents, during one of his email discussions with Cohen about the tip, Stephen Scalia used a coded reference to the insider trading activity depicted in the motion picture "Wall Street." Cohen tipped off Myers, who used this inside information to purchase approximately \$20,000 worth of stock in EXACT Sciences. In January 2009, Sequenom publicly announced an acquisition offer for EXACT Sciences, sending the latter company's stock price surging approximately 50%, and increasing its trading volume than 450%. Myers reaped approximately \$34,000 from this stock tip, and later gave a \$4,000 cash payment to Stephen Scalia in recognition of the valuable information.

According to admissions made during their guilty pleas, the second insider trading activity took place on April 29, 2009. On that date, Aaron Scalia suspected serious problems with the commercial development of Sequenom's genetic screening test, and anticipated the release of negative information about the company after the close of stock trading. Aaron Scalia left Sequenom's offices that day, and from his home telephone placed a series of calls to his brother in Maryland. Aaron Scalia tipped off Stephen that Sequenom was holding a mandatory employee meeting after the close of trading, at which it was expected that senior management would announce very negative news about the company. With Aaron Scalia's agreement, Stephen Scalia passed the inside information about Sequenom to Cohen and Myers so that Myers could purchase Sequenom securities.

That same day, Myers used the inside information provided by Aaron Scalia to purchase approximately \$40,000 worth of "put options" that would increase in value if Sequenom's share price declined. After the market closed on April 29, 2009, Sequenom issued a press release announcing a delay in its testing and launch of the prenatal diagnostic test that the company had previously touted to investors and analysts. Sequenom contended that "employee mishandling of R&D test data and results" rendered the previously-released results unreliable, and announced that the company was opening an internal investigation. Investors and analysts reacted negatively to this information, and by the close of trading on April 30, 2009, Sequenom's stock price had declined more than 70% from the previous day's close, on an increase of over 600% in trading volume. When Myers sold his stock options he realized approximately \$612,000 in gross proceeds from the insider trading. Myers later delivered approximately \$10,000 in cash to Stephen Scalia in exchange for the valuable inside information he had received through Cohen.

Myers and Cohen will next appear in court on May 13, 2011, before U.S. District Court Judge Barry T. Moskowitz for sentencing.

In December 2010, Cohen and Myers pleaded guilty to an information charging conspiracy to commit securities fraud in *United States v. David Myers and Brett Cohen*, Case No. 10cr4832-BTM (S.D. Cal.). Sentencing in their case is currently scheduled for April 29, 2011.

The criminal case is being prosecuted by Assistant U.S. Attorneys Eric Beste and Joseph Orabona and is the result of an investigation by the FBI, San Diego Division.

U.S. Attorney Duffy thanked the U.S. Securities and Exchange Commission, Division of Enforcement, for its assistance and coordination in these insider trading cases.

This case was brought in coordination with the President's Financial Fraud Enforcement Task Force, which includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general, and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets and recover proceeds for victims of financial crimes. The task force is also making the public aware of resources available to protect against these types of fraud and how to report fraud when it occurs. To learn more about investment scams, how to take steps to protect yourself from scams or how to report investment fraud if you believe you have been victimized, the task force recommends that you visit its website, www.StopFraud.gov.

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