

JAN 11 2011

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CLAIRE C. CECCHI, U.S.M.J.

UNITED STATES OF AMERICA	:	CRIMINAL COMPLAINT
	:	
v.	:	
	:	Case No.: 11-4013
GEORGE HOLLEY and	:	
PHAIROT IAMNAITA	:	

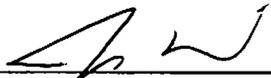
I, Jennifer Richardson, being duly sworn, state the following is true and correct to the best of my knowledge and belief. From in or about November 2009 through in or about December 2010, in the District of New Jersey and elsewhere, the defendants GEORGE HOLLEY and PHAIROT IAMNAITA did:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.

  
 \_\_\_\_\_  
 Jennifer Richardson, Special Agent  
 Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,

January 11, 2011 at  
Date

Newark, New Jersey  
City and State

HONORABLE CLAIRE C. CECCHI  
United States Magistrate Judge  
Name & Title of Judicial  
Officer

  
 \_\_\_\_\_  
 Signature of Judicial Officer

## **ATTACHMENT A**

knowingly and willfully combine, conspire, confederate and agree with each other and with others to commit offenses against the United States, to wit, securities fraud, that is using or employing by the direct and indirect use of the means and instrumentalities of interstate commerce and the mails, in connection with the purchase and sale of any security, any manipulative and deceptive device, including the purchase and sale of a security of an issuer on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, and derivatively, to the issuer of that security, the shareholder of that issuer, and to any other person who is the source of the material nonpublic information, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, in violation of Title 18, United States Code, Section 371.

## **ATTACHMENT B**

I, Jennifer Richardson, have been a Special Agent of the Federal Bureau of Investigation (“FBI”) for approximately one year, and I have been personally involved in the investigation of this matter. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained from other sources, including: a) statements made or reported by various witnesses with knowledge of relevant facts; b) my review of publicly available information relating to Home Diagnostics, Inc., GEORGE HOLLEY and PHAIROT IAMNAITA; and c) documents, including bank records, brokerage records, and business records obtained from various entities. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include every fact that I have learned during the course of the investigation. Where the content of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

### **Introduction**

As set forth in more detail below, there is probable cause to believe that GEORGE HOLLEY, in violation of his fiduciary duties and duties of trust and confidence to Home Diagnostics, Inc., disclosed material, nonpublic information (“Inside Information”) regarding the anticipated acquisition of Home Diagnostics, Inc. by Nipro Corporation to PHAIROT IAMNAITA, Investor #1, Investor #2, Investor #3, and others. This information enabled PHAIROT IAMNAITA, Investor #1, Investor #2, Investor #3 and others to reap substantial profits by purchasing Home Diagnostics, Inc.’s stock shortly before the acquisition was announced to the public and Home Diagnostic, Inc.’s stock increased in value approximately 89%.

### **Relevant Entities and Individuals**

1. At all times relevant to this Complaint unless otherwise indicated:
  - a. Defendant GEORGE HOLLEY, a resident of Norwalk, Connecticut, was the founder and Chairman of the Board of Home Diagnostics, Inc. GEORGE HOLLEY formerly served as Home Diagnostic, Inc.’s President and Chief Executive Officer. As the Chairman of the Board of Home Diagnostic, Inc., GEORGE HOLLEY participated in board meetings and management discussions, and was privy to inside company information concerning the company’s financials, business plans and potential sales/mergers. GEORGE HOLLEY had a duty not to disclose confidential information or material, nonpublic information he learned through his position with Home Diagnostics, Inc., or to use such information for his personal benefit or the benefit of others.
  - b. PHAIROT IAMNAITA was a citizen of Thailand whose principal residence was in Thailand. PHAIROT IAMNAITA was a close personal acquaintance of

GEORGE HOLLEY, who regularly socialized and vacationed with GEORGE HOLLEY and who had jointly invested with GEORGE HOLLEY in several business ventures in Thailand.

c. Home Diagnostics, Inc. was based in Fort Lauderdale, Florida, and was engaged in the business of developing, manufacturing and marketing diabetes management products, such as blood glucose monitoring systems. The stock of Home Diagnostics, Inc. was registered with the U.S. Securities and Exchange Commission, and was listed on the NASDAQ stock exchange under the ticker symbol "HDIX." Home Diagnostics, Inc.'s policies prohibited the unauthorized disclosure of Home Diagnostic, Inc.'s confidential information.

d. Nipro Corporation was based in Tokyo, Japan, and was engaged in the business of developing, manufacturing and selling pharmaceutical products and medical devices.

e. CW-1, a resident of New Jersey, was a long-time friend and business associate of GEORGE HOLLEY's.

f. Investor #1, a resident of New York and Arizona, was a long-time friend of GEORGE HOLLEY's.

g. Investor #2, a resident of Connecticut, was an employee of GEORGE HOLLEY's.

h. Investor #3, a resident of Illinois, was a family member of GEORGE HOLLEY's.

### **Nipro's Acquisition of HDIX**

2. According to documents and records produced by Home Diagnostics, Inc. ("HDIX"), in or about June 2009, representatives of Nipro Corporation ("Nipro") contacted HDIX and expressed interest in acquiring HDIX. From in or about June 2009 through in or about February 2010, representatives of Nipro and HDIX were engaged in negotiations relating to the potential acquisition of HDIX by Nipro. The documents and records produced by HDIX reveal that GEORGE HOLLEY was aware of the overtures made by Nipro toward HDIX at least as early as June 2009, and that he was routinely updated on the status of the ensuing negotiations.

3. On or about December 21, 2009, Nipro increased its prior offer to acquire HDIX and offered to pay a price of approximately \$11.50 per share of HDIX stock, which represented a substantial premium over market value. On or about December 22, 2009, HDIX's Board of Directors, including GEORGE HOLLEY, met to discuss this offer. Throughout January and early February 2010, senior executives at HDIX continued to advise the Board of Directors, and GEORGE HOLLEY, of the status of the negotiations with Nipro. On or about February 2, 2010, HDIX's Board of Directors formally approved the proposed agreement with Nipro.

4. The next day, on or about February 3, 2010, HDIX issued a press release announcing that Nipro had agreed to acquire all outstanding shares of HDIX common stock for a total amount of approximately \$215 million, the equivalent of approximately \$11.50 per share. On or about February 2, 2010, before the announcement, HDIX shares closed at a price of approximately \$6.50 per share. Following the announcement, on or about February 3, 2010, the price of HDIX stock rose to approximately \$11.45 per share, an increase of approximately 89%.

### **Object of the Conspiracy**

5. The object of the conspiracy was to obtain money by purchasing HDIX securities on the basis of material, nonpublic information gained by GEORGE HOLLEY through his position at HDIX.

### **Manner and Means of the Conspiracy**

6. Among the manner and means employed by GEORGE HOLLEY, PHAIROT IAMNAITA and their coconspirators to carry out the conspiracy and effect its unlawful objects were those set forth in paragraphs 7 through 26 below.

#### **Investor #1**

7. In or about early January 2010, GEORGE HOLLEY disclosed Inside Information to Investor #1 regarding the anticipated acquisition of HDIX by Nipro, including the fact that HDIX was currently negotiating with a company that wished to acquire HDIX and that the negotiations were going well.

8. Based in part on the Inside Information that GEORGE HOLLEY provided to Investor #1, on or about January 14, 2010 and on or about January 15, 2010, Investor #1 purchased approximately 2,000 shares of HDIX stock.

#### **Investor #2**

9. On or about January 4, 2010, GEORGE HOLLEY disclosed Inside Information to Investor #2 regarding the anticipated acquisition of HDIX by Nipro. GEORGE HOLLEY stated that HDIX was going to be purchased by another company and recommended to Investor #2 that he buy HDIX stock. GEORGE HOLLEY told Investor #2, who was an employee of another company controlled by GEORGE HOLLEY, to consider this Inside Information his bonus.

10. Based in part on the Inside Information that GEORGE HOLLEY provided to Investor #2, between on or about January 5, 2010 and on or about January 29, 2010, Investor #2 purchased approximately 12,900 shares of HDIX stock.

### **Investor #3**

11. On or about January 9, 2010, GEORGE HOLLEY called Investor #3 in Illinois and disclosed Inside Information to Investor #3 regarding the anticipated acquisition of HDIX by Nipro. GEORGE HOLLEY told Investor #3 that HDIX likely was going to be purchased and that it was a good opportunity to make money on the stock.

12. Based in part on the Inside Information that GEORGE HOLLEY provided to Investor #3, between on or about January 13, 2010 and on or about January 21, 2010, Investor #3 purchased approximately 12,700 shares of HDIX stock.

### **PHAIROT IAMNAITA**

13. In or about January 2010, GEORGE HOLLEY called Investor #1 and asked him if he would be willing to open a brokerage account on behalf of PHAIROT IAMNAITA. GEORGE HOLLEY told Investor #1 that GEORGE HOLLEY would fund the brokerage account.

14. After speaking with his financial advisor, Investor #1 called GEORGE HOLLEY and told him that he could not open a brokerage account on behalf of PHAIROT IAMNAITA because PHAIROT IAMNAITA was not a United States citizen.

15. Subsequently, GEORGE HOLLEY contacted CW-1 and asked CW-1 to assist PHAIROT IAMNAITA in opening a brokerage account. GEORGE HOLLEY told CW-1 that the brokerage account would be used to purchase shares of HDIX.

16. On or about January 15, 2010, CW-1 and PHAIROT IAMNAITA opened a joint brokerage account at Merrill Lynch (the "Merrill Lynch Account"). In the account opening documents, PHAIROT IAMNAITA, who was then a citizen and resident of Thailand, claimed to reside with CW-1 in New Jersey.

17. On or about January 12, 2010, GEORGE HOLLEY sent CW-1 in New Jersey a check in the approximate amount of \$121,700. On or about January 19, 2010, CW-1 used approximately \$120,000 of this amount to fund the Merrill Lynch Account.

18. After opening the Merrill Lynch Account and funding it with the approximately \$120,000 that GEORGE HOLLEY had given to him, CW-1 and PHAIROT IAMNAITA instructed their broker to use the entire \$120,000 to purchase shares of HDIX. Acting on these instructions, between on or about January 19, 2010 and on or about January 26, 2010, the broker purchased more than 18,000 shares of HDIX.

19. According to travel records reviewed by the FBI, between on or about January 15, 2010 and on or about January 23, 2010, during the time that the Merrill Lynch Account was

opened, funded, and used to purchase HDIX stock, GEORGE HOLLEY and PHAIROT IAMNAITA were traveling together in the United States.

**Defendants' Attempts to Cover Up the Insider Trading Conspiracy**

20. In or about 2010, following the public announcement of the acquisition of HDIX by Nipro, CW-1 met with GEORGE HOLLEY and PHAIROT IAMNAITA. According to CW-1, GEORGE HOLLEY and PHAIROT IAMNAITA joked about the ease with which PHAIROT IAMNAITA had made money on the HDIX trades. Also, GEORGE HOLLEY admitted to providing Inside Information regarding the acquisition of HDIX by Nipro to several other persons.

21. Also according to CW-1, CW-1 told GEORGE HOLLEY that CW-1 was concerned about committing insider trading and CW-1 mentioned Martha Stewart's conviction. In response, GEORGE HOLLEY remarked that insider trading cases were difficult to prove and that there was no written evidence that he had given inside information to PHAIROT IAMNAITA. In addition, GEORGE HOLLEY stated that he had sent a set of analyst reports to several of the people to whom he had provided Inside Information, and suggested that the reports provided an alibi for those persons' purchases of HDIX.

22. Also in or about 2010, following the public announcement of the acquisition of HDIX by Nipro, Merrill Lynch contacted CW-1 regarding the purchases of HDIX stock in the Merrill Lynch Account. Merrill Lynch sent to CW-1 in New Jersey a written questionnaire regarding the HDIX purchases. Among other things, the questionnaire asked whether CW-1 or PHAIROT IAMNAITA was related to anyone at HDIX, knew anyone at HDIX, or spoke to anyone at HDIX. According to CW-1, he discussed the questionnaire with PHAIROT IAMNAITA who told CW-1 to state that he had no connections to anyone at HDIX. In response, CW-1 falsely informed Merrill Lynch that neither he nor PHAIROT IAMNAITA had any connections to anyone at HDIX.

23. The questionnaire from Merrill Lynch also asked for the reason or reasons for the purchases of HDIX in the Merrill Lynch Account. According to CW-1, PHAIROT IAMNAITA told CW-1 to state that the purchases were based on PHAIROT IAMNAITA's review of analyst reports. Accordingly, CW-1 told Merrill Lynch that PHAIROT IAMNAITA decided to purchase HDIX stock based on his review of analyst reports.

24. According to Investor #2, in or about January 2010, GEORGE HOLLEY instructed Investor #2 that, if he were later questioned about his purchase of HDIX stock, he should state that he bought the stock based on his own independent research. Later that same day, GEORGE HOLLEY gave Investor #2 copies of several analyst and news reports that predated the announcement of the acquisition of HDIX by Nipro. Investor #2 understood that GEORGE HOLLEY gave him these reports so that, if asked, he could falsely claim that his purchase of HDIX stock was based on independent research and not on the Inside Information disclosed to him by GEORGE HOLLEY.

25. In or about December 2010, Special Agents of the FBI approached Investor #2 regarding his purchases of HDIX stock. After meeting with the FBI, Investor #2 informed GEORGE HOLLEY that he had been contacted by the FBI. The following day, GEORGE HOLLEY delivered another set of analyst reports, which also pre-dated the announcement of the acquisition of HDIX by Nipro, to Investor #2.

26. According to Investor #3, in or about November 2010, Investor #3 informed GEORGE HOLLEY that he had been contacted by law enforcement regarding his purchase of HDIX stock. In response, GEORGE HOLLEY reminded Investor #3 that he had previously sent him several analyst reports regarding HDIX. Investor #3 understood that GEORGE HOLLEY was suggesting that he lie to the authorities and tell them that he had purchased HDIX stock on the basis of the analyst reports and not on the basis of the Inside Information provided by GEORGE HOLLEY.

### **Overt Acts**

27. In furtherance of the conspiracy and in order to effect the objects thereof, defendants GEORGE HOLLEY and PHAIROT IAMNAITA and their coconspirators committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. On or about January 9, 2010, GEORGE HOLLEY called Investor #3 in Illinois and disclosed Inside Information to Investor #3 as described above. At the beginning of the call, GEORGE HOLLEY told Investor #3 that he was calling from a telephone line that was not traceable to GEORGE HOLLEY. Telephone records reviewed by the FBI reveal that GEORGE HOLLEY called Investor #3 from PHAIROT IAMNAITA's cellular telephone.

b. On or about January 12, 2010, GEORGE HOLLEY sent to CW-1 in New Jersey a check drawn on GEORGE HOLLEY's personal bank account in the approximate amount of \$121,700, which CW-1 used to fund the purchase of HDIX shares on behalf of PHAIROT IAMNAITA.

c. On or about January 19, 2010, using the funds from the check described in paragraph 27(b) above, CW-1 wired approximately \$120,000 from a bank account in New Jersey to the Merrill Lynch Account in California.

### **Summary of Trading and Profits**

28. As a result of GEORGE HOLLEY's breach of fiduciary duties and duties of trust and confidence owed to HDIX and the insider trading conspiracy described above, PHAIROT IAMNAITA, Investor #1, Investor #2, Investor #3 and others were able to purchase more than approximately 58,000 shares of HDIX in advance of the acquisition by Nipro, and reaped more than approximately \$290,000 in illicit profits.