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Oct 17, 2023

THOMAS G. BRITTON
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

BRIAN RUBIN

Case No. **1:23-CR-00552**

Violations: Title 15, United States
Code, Sections 78j(b) and 78ff(a); Title
17, Code of Federal Regulations,
Section 240.10b-5

JUDGE SEEGER
MAGISTRATE JUDGE GILBERT

The ACTING UNITED STATES ATTORNEY charges:

1. At times material to this Information:

a. Defendant BRIAN RUBIN was a resident of Deerfield, Illinois.

RUBIN was married to Individual A, who was employed by Company A as an account access director for its operations in the Midwest region of the United States.

b. Company A was a biotechnology company headquartered in the state of Colorado. Company A's stock traded on the NASDAQ stock exchange.

c. Company B was a pharmaceutical company headquartered in the state of New York.

d. In and between April 2019 and May 2019, Individual A learned through her employment at Company A of Company A's successful development of certain products and that Company A was going to be acquired by Company B, resulting in the loss of Individual A's employment. This information that Individual A learned about Company A's successful development of certain products and Company B's acquisition of Company A was material and nonpublic.

e. Company A had a written policy expressly forbidding employees from misusing or disclosing confidential information and from trading stock on the basis of material, nonpublic information learned as part of their job, which included information about positive clinical trial results and acquisitions.

f. RUBIN owed duties of confidence and trust to Individual A as her spouse. RUBIN knew that Individual A expected that RUBIN would maintain the confidentiality of any material nonpublic information RUBIN obtained from Individual A, and understood that he could not use or share any confidential information he obtained or learned from Individual A that had been entrusted to her through her employment with Company A.

g. A call option to purchase a stock provided the holder the right, but not the obligation, to purchase a certain number of shares of a stock at a particular price on a specific date in the future. A call option was “out of the money” if the strike price of the option was higher than the stock price at the time the option was purchased.

h. A put option allowed the seller of the put option to hold an open position wherein the seller agreed to purchase the stock at a given price in the future even if the stock price declined in value below that price. A put option was “out of the money” if the strike price of the option was below the stock price at the time the option was purchased. In exchange for agreeing to buy the stock, the put option seller received a premium from the buyer until the option expired.

2. Beginning no later than May 2019, and continuing through June 2019, in the Northern District of Illinois, Eastern Division, and elsewhere,

BRIAN RUBIN,

defendant herein, directly and indirectly, by the use of a means and instrumentality of interstate commerce, willfully used and employed, in connection with the purchase and sale of securities, a manipulative and deceptive device and contrivance, in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing a device and scheme to defraud; and (b) engaging in an act, practice, and a course of business which operated and would operate as a fraud and deceit upon any person, which scheme is further described below.

3. It was part of the scheme that, in breach of the duties of trust and confidence that RUBIN owed to Individual A, RUBIN misappropriated for his own benefit certain material nonpublic information that he obtained from Individual A, and that he knew Individual A learned as a result of her employment, including material nonpublic information about Company A being acquired. RUBIN, while in possession of this material nonpublic information, purchased options in Company A's stock, and as a result made illegal profits of approximately \$90,450.

4. It was further part of the scheme that throughout the months of May and June 2019, RUBIN, while in possession of the material nonpublic information, and in breach of his duty to Individual A, purchased out of the money call options and sold out of the money put options in Company A's stock. These transactions would be profitable only if the price of Company A's stock increased. Conversely, if Company

A's stock price declined, RUBIN would have owed money to the holders of the put options that he sold. On June 17, 2019, after the public announcement of the acquisition by Company B of Company A, the value of Company A's stock increased.

5. It was further part of the scheme that, after the price of Company A's stock increased, RUBIN exercised the call options that he held in Company A's stock and made a profit of approximately \$90,450.

6. On or about May 9, 2019, in the Northern District of Illinois, Eastern Division, and elsewhere,

BRIAN RUBIN,

defendant herein, in connection with the purchase and sale of a security, willfully used and caused the use of a means and instrumentality of interstate commerce, namely, the internet, to enter an order to purchase 25 call option contracts in Company A's stock;

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5.

Signed by Jason Yonan on behalf of the
ACTING UNITED STATES ATTORNEY