

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
- v. - :
:
DANIEL RIVAS, :
:
Defendant. :
:
- - - - - X

SEALED INFORMATION

17 Cr. ____

17 CRIM 492

COUNT ONE
(Conspiracy to Commit Securities Fraud and
Fraud in Connection with Tender Offers)

The United States Attorney charges:

Background

The Defendant and the Investment Bank

1. At all times relevant to this Information, the Investment Bank was the investment banking advisory arm of a global bank with offices in Manhattan, New York. From in or about August 2013 through in or about May 2017, DANIEL RIVAS, the defendant, was employed as a technology consultant in the Investment Bank's Research and Capital Markets Technology Group. In this role, RIVAS had access to an internal, proprietary system maintained by the Investment Bank (the "Deal Tracking System") containing material, non-public information about potential and unannounced merger and acquisition transactions, including tender offers, involving the Investment Bank (the "Inside Information").

2. The Investment Bank's written policies prohibited the unauthorized disclosure of confidential information, which included the Inside Information. DANIEL RIVAS, the defendant, had a duty, among other obligations, to maintain the confidentiality of all of the Investment Bank's confidential information, including the Inside Information. During his tenure at the Investment Bank, RIVAS reviewed and certified his duties of loyalty and confidence to the Investment Bank.

Relevant Acquisition Targets

3. At all times relevant to this Information:

a. Covance, Inc. ("Covance") was a drug development and testing services company based in Princeton, New Jersey. Covance's securities were traded under the symbol "CVD" on the New York Stock Exchange ("NYSE").

b. Thoratec Corporation ("Thoratec") was a developer and manufacturer of proprietary medical devices based in Pleasanton, California. Thoratec's securities were traded under the symbol "THOR" on the NASDAQ Stock Exchange (the "NASDAQ").

c. EMC Corporation ("EMC") was a multinational provider of cloud computing products and services based in Hopkinton, Massachusetts. EMC's securities were traded under the symbol "EMC" on the NYSE.

d. MedAssets, Inc. ("MedAssets") was a healthcare company based in Alpharetta, Georgia. MedAssets securities were traded under the symbol "MDAS" on the NASDAQ.

e. Airgas, Inc. ("Airgas") was a gas, welding and safety products company based in Wayne, Pennsylvania. Airgas securities were traded under the symbol "ARG" on the NYSE.

f. Alere, Inc. ("Alere") was a point-of-care diagnostics company based in Waltham, Massachusetts. Alere securities were traded under the symbol "ALR" on the NYSE.

g. ADT Corporation ("ADT") was an alarm monitoring company based in Boca Raton, Florida. ADT securities were traded under the symbol "ADT" on the NYSE.

h. Tumi Holdings, Inc. ("TUMI") was a designer, manufacturer and retailer of premium travel products based in South Plainfield, New Jersey. TUMI securities were traded under the symbol "TUMI" on the NYSE.

i. St. Jude Medical, Inc. ("St. Jude") was a children's research hospital based in Memphis, Tennessee. St. Jude securities were traded under the symbol "STJ" on the NYSE.

j. Monsanto Company ("Monsanto") was a global agriculture company based in St. Louis, Missouri. Monsanto securities were traded under the symbol "MON" on the NYSE.

k. Elizabeth Arden, Inc. ("Elizabeth Arden") was a global cosmetics company based in Manhattan, New York. Elizabeth Arden securities were traded under the symbol "RDEN" on the NYSE.

l. Interactive Intelligence, Inc. ("Interactive") was a telecommunications software and cloud developer based in Indianapolis, Indiana. Interactive securities were traded under the symbol ININ on the NASDAQ.

m. Twitter, Inc. ("Twitter") was a social network company headquartered in San Francisco, California. Twitter securities were traded under the symbol "TWTR" on the NYSE.

n. Cabela's, Inc. ("Cabela's") was a retail outdoor outfitter based in Sidney, Nebraska. Cabela's securities were traded under the symbol "CAB" on the NYSE.

o. Brocade Communications Systems, Inc. ("Brocade") was a network provider based in San Jose, California. Brocade securities were traded under the symbol "BRCD" on the NASDAQ.

p. LifeLock Inc. ("LifeLock") was an identity theft protection company based in Tempe, Arizona. LifeLock securities were traded under the symbol "LOCK" on the NYSE.

q. Macy's, Inc. ("Macy's") was a retail company based in Cincinnati, Ohio. Macy's securities were traded under the symbol "M" on the NYSE.

r. Mead Johnson Nutrition Company ("Mead Johnson") was a nutrition company based in Glenview, Illinois. Mead Johnson securities were traded under the symbol "MJN" on the NYSE.

s. Panera Bread Company ("Panera") was an American chain of fast casual restaurants based in St, Louis, Missouri. Panera securities were traded under the symbol "PNRA" on the NASDAQ.

Relevant Tender Offer Targets

t. NPS Pharmaceuticals ("NPS Pharma") was a biopharmaceutical company based in Bedminster, New Jersey. NPS Pharma securities were traded under the symbol "NPSP" on the NASDAQ.

u. ZS Pharma, Inc. ("ZS Pharma") was a development stage biopharmaceutical company based in Coppell, Texas. ZS Pharma securities were traded under the symbol "ZSPH" on the NASDAQ.

v. The Fresh Market, Inc. ("Fresh Market") was a supermarket chain based in Greensboro, North Carolina. Fresh Market securities were traded under the symbol TFM on the NASDAQ.

w. Auspex Pharmaceuticals ("Auspex") was a pharmaceutical company based in La Jolla, California. Auspex securities were traded under the symbol "ASPX" on the NASDAQ.

x. Diamond Resorts International, Inc. ("Diamond Resorts") was a hospitality company based in Las Vegas, Nevada.

Diamond Resorts securities were traded under the symbol "DRII" on the NYSE.

y. Outerwall, Inc. ("Outerwall") was a retail products and services company based in Bellevue, Washington. Outerwall securities were traded under the symbol "OUTR" on the NASDAQ.

z. Medivation, Inc. ("Medivation") was a biopharmaceutical company based in San Francisco, California. Medivation securities were traded under the symbol "MDVN" on the NASDAQ.

aa. Raptor Pharmaceutical Corporation ("Raptor") was a pharmaceutical company based in Novato, California. Raptor securities were traded under the symbol "RPTP" on the NASDAQ.

bb. Infoblox, Inc. ("Infoblox") was a network services company based in Santa Clara, California. Infoblox securities were traded under the symbol "BLOX" on the NYSE.

cc. Nimble Storage Inc. ("Nimble") was a flash storage technology company based in San Jose, California. Nimble securities were traded under the symbol "NMBL" on the NYSE.

dd. Air Methods Corporation ("Air Methods") was an air medical industry company based in Englewood, Colorado. Air Methods securities were traded under the symbol "AIRM" on the NASDAQ.

The Insider Trading Scheme

4. From at least August 2014, through at least in or about April 2017, DANIEL RIVAS, the defendant, and others known and

unknown, devised and carried out an insider trading scheme in which he misappropriated material, non-public information from the Investment Bank's Deal Tracking System, in breach of his fiduciary duties and other duties, and passed the information along to friends so that they could utilize it to make profitable securities trades.

5. On more than fifty occasions between 2014 and 2017, DANIEL RIVAS, the defendant, provided Inside Information about contemplated but unannounced merger and acquisition deals and tender offers involving clients and prospective clients of the Investment Bank to co-conspirators that used that information to purchase and sell securities. In total, the insider trading scheme resulted in illicit profits of more than \$5 million through insider trading in more than two dozen securities.

Statutory Allegations

6. From in or about August 2014 through in or about April 2017, in the Southern District of New York and elsewhere, DANIEL RIVAS, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit offenses against the United States, to wit, (a) securities fraud, in violation of 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; and (b) fraud in connection with a tender offer, in violation of Title 15,

United States Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.14e-3(a) and 240.14e-3(d).

Objects of the Conspiracy

7. It was a part and object of the conspiracy that DANIEL RIVAS, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2 by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting 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 (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, in violation of Title 15, United States Code, Sections 78(j)(b) and 78ff.

8. It was a further part and an object of the conspiracy that DANIEL RIVAS, the defendant, and others known and unknown, willfully and knowingly would and did engage in fraudulent, deceptive, and manipulative acts and practices in connection with certain tender offers, in that after offering persons had taken

substantial steps to commence certain tender offers, RIVAS and others, while in possession of material information relating to such tender offers, which information they knew and had reason to know was non-public and which they knew and had reason to know had been acquired directly and indirectly from the offering persons for the particular tender offers, the issuer of the securities sought and to be sought by such tender offers, and an officer, director, partner, and employee and other person acting on behalf of the offering persons and such issuers, in violation of Title 17, Code of Federal Regulations, Sections 240.14e-3(a) and 240.14e-3(d): (a) purchased and sold and caused to be purchased and sold; and (b) communicated such material, non-public information under circumstances in which it was reasonably foreseeable that such communication would likely result in the purchase and sale, of such securities and securities convertible into and exchangeable for such securities and options and rights to obtain and to dispose of such securities and options, without such information and its source having been publicly disclosed by press release and otherwise within a reasonable time prior to such purchase and sale, in violation of Title 15, United States Code, Sections 78n(e) and 78ff.

Overt Acts

9. In furtherance of the conspiracy, and to effect the illegal objects thereof, DANIEL RIVAS, the defendant, and others

known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about October 26, 2014, RIVAS, while in Manhattan, viewed confidential information maintained by the Investment Bank in the Deal Tracking System regarding a potential acquisition of Covance ("CVD").

b. On or about October 27, 2014, a co-conspirator not named as a defendant herein ("CC-1") placed an order for 500 shares of CVD.

c. On or about February 9, 2016, RIVAS, while in Manhattan, viewed confidential information maintained by the Investment Bank regarding a potential acquisition of ADT.

d. On or about February 10, 2016, at approximately 10:08 EST, CC-1 spoke by telephone with another co-conspirator not named as a defendant herein ("CC-2") regarding Inside Information that RIVAS had provided CC-1.

e. On or about February 10, 2016, at 10:13 a.m. EST, CC-2 placed an order for 2100 shares of ADT on behalf of an individual not named herein.

f. On or about March 24, 2016, RIVAS, while in Manhattan, viewed confidential information maintained by the Investment Bank regarding a potential acquisition of St. Jude ("STJ").

g. On or about March 24, 2017, a co-conspirator not named as a defendant herein ("CC-3") placed an order for 339 shares of STJ.

h. On or about July 25, 2016, RIVAS, while in Manhattan, viewed confidential information maintained by the Investment Bank regarding a potential acquisition of Medivation ("MDVN").

i. On or about July 28, 2016 a co-conspirator not named as a defendant herein ("CC-4") placed an order for 20 MDVN call options with an expiration date of September 16, 2016.

j. On or about March 28, 2017, RIVAS, while in Manhattan, viewed confidential information maintained by the Investment Bank regarding Panera ("PNRA").

k. Between March 29, 2017 and March 31, 2017, two other co-conspirators not named as defendants herein ("CC-5" and "CC-6") collectively purchased approximately 215 shares of PNRA.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Conspiracy to Commit Wire Fraud)

The United States Attorney further charges:

10. The allegations contained in paragraphs 1 through 5 and 9 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

11. From in or about August 2014 through in or about April 2017, in the Southern District of New York and elsewhere, DANIEL RIVAS, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States, to wit, wire fraud, in violation of Title 18, United States Code, Section 1343.

12. It was a part and an object of the conspiracy that DANIEL RIVAS, the defendant, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

(Title 18, United States Code, Section 1349.)

COUNT THREE
(Securities Fraud)

The United States Attorney further charges:

13. The allegations contained in paragraphs 1 through 5 and 9 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

14. From at least in or about August 2014 through at least in or about April 2017, in the Southern District of New York and elsewhere, DANIEL RIVAS, the defendant, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, used and employed, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 and 240.10b5-2, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting 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 (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, RIVAS misappropriated material, non-public information from the Investment Bank and passed that information along to friends so that they could utilize it to make profitable trades in the securities of the companies set forth in Paragraphs 3a through 3dd herein.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Sections 240.10b-5 &
240.10b5-2; and Title 18, United States Code, Section 2.)

COUNT FOUR
(Fraud in Connection with Tender Offers)

The United States Attorney further charges:

15. The allegations contained in paragraphs 1 through 5 and 9 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

16. From in or about August 2014 through in or about April 2017, in the Southern District of New York and elsewhere, DANIEL RIVAS, the defendant, willfully and knowingly engaged in fraudulent, deceptive, and manipulative acts and practices in connection with certain tender offers, in that after offering persons had taken substantial steps to commence certain tender offers, RIVAS, while in possession of material information relating to such tender offers, which information he knew and had reason to know was non-public and which he knew and had reason to know had been acquired directly and indirectly from the offering persons for the particular tender offers, the issuers of the securities sought and to be sought by such tender offers, and an officer, director, partner, and employee and other person acting on behalf of the offering persons and such issuers, in violation of Title 17, Code of Federal Regulations, Sections 240.14e-3(a) and 240.14e-3(d): (a) purchased and sold and caused to be purchased and sold; and (b) communicated such material, non-public information under circumstances in which it was reasonably

foreseeable that such communication would likely result in the purchase and sale, of such securities and securities convertible into and exchangeable for such securities and options and rights to obtain and to dispose of such securities and options, without such information and its source having been publicly disclosed by press release and otherwise within a reasonable time prior to such purchase and sale, to wit, RIVAS misappropriated material, non-public information from the Investment Bank relating to tender offers involving the companies set forth in Paragraphs 3t through 3dd herein and passed that information along to friends so that they could utilize it to make profitable securities trades.

(Title 15, United States Code, Sections 78n(e) & 78ff; Title 17, Code of Federal Regulations, Sections 240.14e-3(a) & 240.14e-3(d); and Title 18, United States Code, Section 2.)

COUNT FIVE

(False Representation in a Matter Within the Jurisdiction of the Executive Branch of the Government of the United States)

The United States Attorney further charges:

17. The allegations contained in paragraphs 1 through 5 and 9 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

18. On or about April 10, 2017, in the Southern District of New York, DANIEL RIVAS, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly falsified, concealed and covered up by trick, scheme and device a material fact, and made

a materially false, fictitious and fraudulent statement and representation, to wit, during an ongoing federal law enforcement investigation, RIVAS made false statements to Special Agents of the United States Federal Bureau of Investigation about his involvement in and knowledge of the misappropriation of information from the Investment Bank, in response to questions by federal law enforcement.

(Title 18, United States Code, Section 1001.)

FORFEITURE ALLEGATION

19. As a result of committing the offenses alleged in Counts One through Four of this Information, DANIEL RIVAS, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Assets Provision

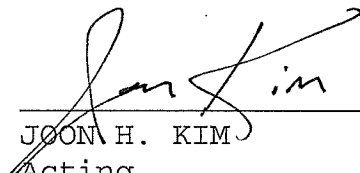
20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;

- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c) to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)



JOON H. KIM
Acting
United States Attorney