

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
:

SEALED INFORMATION

- v. - :
:

17 Cr. __

JAMES MOODHE, :
:

Defendant. :
:

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17 CRIM 491

COUNT ONE

**(Conspiracy to Commit Securities Fraud and
Fraud in Connection with a Tender Offer)**

The United States Attorney charges:

Background

The Defendant and Other Relevant Individuals and Entities

1. At all times relevant to this Information, JAMES MOODHE, the defendant, worked as the Treasurer and Assistant Controller for a global interdealer brokerage firm (the "Interdealer Broker") with offices in, among other places, Jersey City, New Jersey. In his position at the Interdealer Broker, MOODHE was familiar with insider trading policies, including those requiring employees to maintain the confidentiality of non-public information.

2. At all times relevant to this Information, JAMES MOODHE, the defendant, had three adult children, including a daughter not identified by name herein (the "Daughter") who also worked at the Interdealer Broker. In or about 2013, the Daughter who, at the

time lived with MOODHE, entered into a romantic relationship with a co-conspirator not named as a defendant herein ("CC-1"). As the romantic relationship between the Daughter and CC-1 became more serious, MOODHE developed a relationship with CC-1, which included spending time together at MOODHE's house in New York. In or about 2015, the Daughter and CC-1 moved into a house together in New Jersey. Thereafter, MOODHE began visiting the couple on a nearly daily basis, typically in the morning, when he would pick up the Daughter and drive her to work.

3. From in or about August 2013 through in or about May 2017, CC-1 was employed as a technology consultant in the investment bank advisory arm of a global bank with offices in Manhattan, New York (the "Investment Bank"). In this role, CC-1 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").

4. Since at least in or about 2014, JAMES MOODHE, the defendant, maintained control over certain brokerage accounts, the majority of which he operated as self-directed online accounts. At certain times relevant to this Information, MOODHE also maintained certain brokerage accounts with a broker, a co-conspirator not named as a defendant herein ("CC-2"), who has

worked for more than twenty years as a financial advisor for a global commercial and investment bank headquartered in Manhattan, New York. CC-2 and MOODHE have known each other for more than a decade and MOODHE considered CC-2 a friend.

Relevant Acquisition Targets

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

l. 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.

m. 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.

n. 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

o. 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.

p. 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.

q. 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.

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

s. 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.

t. 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.

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

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

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

x. 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

6. From at least August 2014, through at least in or about April 2017, JAMES MOODHE, the defendant, and others known and unknown, carried out a multi-million dollar insider trading scheme in which MOODHE and others traded on Inside Information he obtained from CC-1, his daughter's boyfriend. MOODHE participated in the

scheme knowing that the information CC-1 provided to him was material, non-public information which CC-1 had misappropriated from his employer, the Investment Bank, so that MOODHE could utilize it to execute profitable trades, which he repeatedly did.

7. On more than two dozen occasions, between 2014 and 2017, JAMES MOODHE, the defendant, used Inside Information he received from CC-1 about contemplated but unannounced merger and acquisition deals and tender offers involving clients and prospective clients of the Investment Bank to purchase and sell securities in brokerage accounts controlled by MOODHE. MOODHE also shared the Inside Information he received from CC-1 with others, including a broker, CC-2, so that CC-2 could execute profitable trades on behalf of his financial advisory clients as well as for himself. In total, the Insider Trading scheme resulted in illicit profits of more than \$5 million, including more than \$3 million in profits for MOODHE, CC-2 and CC-2's clients.

Statutory Allegations

8. From in or about August 2014 through in or about April 2017, in the Southern District of New York and elsewhere, JAMES MOODHE, 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

9. It was a part and object of the conspiracy that JAMES MOODHE, 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.

10. It was a further part and an object of the conspiracy that JAMES MOODHE, 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, MOODHE 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 such 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

11. In furtherance of the conspiracy, and to effect the

illegal objects thereof, JAMES MOODHE, 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, CC-1, 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, MOODHE placed an order for 500 shares of CVD.

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

d. On or about February 10, 2016, at approximately 10:08 EST, MOODHE spoke by telephone with CC-2.

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 a client not named herein.

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

COUNT TWO
(Conspiracy to Commit Wire Fraud)

The United States Attorney further charges:

12. The allegations contained in paragraphs 1 through 7 and 11 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

13. From in or about August 2014 through in or about April 2017, in the Southern District of New York and elsewhere, JAMES MOODHE, 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.

14. It was a part and an object of the conspiracy that JAMES MOODHE, 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:

15. The allegations contained in paragraphs 1 through 7 and 11 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

16. 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, JAMES MOODHE, 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, MOODHE made and caused others to make profitable trades in the securities of companies set forth in paragraphs 5a through 5x.

(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:

17. The allegations contained in paragraphs 1 through 7 and 11 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

18. From in or about August 2014 through in or about April 2017, in the Southern District of New York and elsewhere, JAMES MOODHE, 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, MOODHE, 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 such 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, MOODHE utilized material non-public information he knew CC-1 had misappropriated from the Investment Bank in connection with specified tender offers involving the companies set forth in paragraphs 5o through 5x herein to execute profitable securities trades and passed the information along to others so that they could execute 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:

19. The allegations contained in paragraphs 1 through 7 and 11 of this Information are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

20. On or about April 10, 2017, in the Southern District of New York, JAMES MOODHE, 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, MOODHE made false statements to Special Agents of the United States Federal Bureau of Investigation about his involvement in and knowledge of insider trading based on the misappropriation of information from the Investment Bank, in response to questions by federal law enforcement officers.

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

FORFEITURE ALLEGATION

21. As a result of committing the offenses alleged in Counts One through Four of this Information, JAMES MOODHE, 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

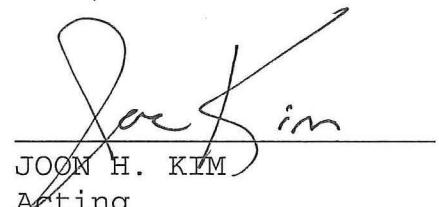
22. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- 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