

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.  
 :  
 v. : Crim. No. 13-  
 :  
 MICHAEL CASTELLI : 18 U.S.C. § 371  
 : 15 U.S.C. §§ 78j(b) and 78ff  
 : 17 C.F.R. § 240.10b-5  
 : 18 U.S.C. § 2

I N F O R M A T I O N

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

COUNT ONE

(Conspiracy to Commit Securities Fraud-Insider Trading)

Background

1. At all times relevant to this Information unless otherwise indicated:

a. Starting in or about September 2007, coconspirator John Lazorchak ("Lazorchak"), a resident of Long Valley, New Jersey, was employed by Celgene Corporation ("Celgene"). Beginning as early as 2008, he served as Director of Financial Reporting. At Celgene, Lazorchak performed financial accounting and reporting work pertaining to, among other things, mergers and acquisitions contemplated by the company. Lazorchak had a duty not to disclose confidential information and material, nonpublic information that he learned through his employment with Celgene (the

"Celgene Inside Information"), or to use such information for his personal benefit or the benefit of others.

b. Several years prior to joining Celgene, Lazorchak worked at Sanofi-Aventis, another New Jersey-based pharmaceutical company, and reported to coconspirator Mark Cupo ("Cupo"). After leaving Sanofi-Aventis, Lazorchak maintained contact with Cupo over the years. Lazorchak was also long-time friends with coconspirator Mark Foldy ("Foldy"), coconspirator Michael Pendolino ("Pendolino"), Coconspirator #1 ("CC-1"), Coconspirator #2 ("CC-2"), and Coconspirator #3 ("CC-3"), all of whom attended Colonia High School together in the 1980s.

c. Celgene was a global pharmaceutical company headquartered in Summit, New Jersey, engaged primarily in the research, development, and sale of treatments for cancer and inflammatory diseases. Celgene's stock was registered with the U.S. Securities and Exchange Commission ("SEC"), and was listed on the NASDAQ stock exchange under the ticker symbol "CELG."

d. Pharmion Corporation ("Pharmion") was a pharmaceutical company based in Boulder, Colorado, and was engaged in the business of developing, manufacturing, and marketing drugs for the treatment of blood diseases and cancer. Pharmion stock was registered with the SEC, and was listed on the NASDAQ stock exchange under the ticker symbol "PHRM." On or about November 19, 2007,

Celgene announced that it was acquiring Pharmion for approximately \$2.9 billion, constituting a premium of approximately 46%.

e. Abraxis BioScience Inc. ("Abraxis") was a pharmaceutical company based in Los Angeles, California, and was engaged in the business of developing, manufacturing and marketing drugs for the treatment of cancer and other critical illnesses. Abraxis stock was registered with the SEC, and was listed on the NASDAQ stock exchange under the ticker symbol "ABII." On or about June 30, 2010, Celgene announced that it was acquiring Abraxis for approximately \$2.9 billion, constituting a premium of approximately 17%.

f. Sanofi-Aventis ("Sanofi") was a global pharmaceutical company with U.S. headquarters in Bridgewater, New Jersey. Sanofi's stock was registered with the SEC, and publicly traded on the New York Stock Exchange under the ticker symbol "SNY."

g. Beginning in or about 2002, coconspirator Cupo, a resident of Morris Plains, New Jersey, was employed by Sanofi as Director of Accounting and Reporting. Cupo had a duty not to disclose confidential information and material, nonpublic information that he learned through his employment with Sanofi (the "Sanofi Inside Information"), or to use such information for his personal benefit or the benefit of others.

h. Chattem Inc. ("Chattem") was a manufacturing

company based in Chattanooga, Tennessee, specializing in consumer products and over-the-counter drugs. Chattem's stock was registered with the SEC, and was listed on the NASDAQ stock exchange under the ticker symbol "CHTT." On or about December 21, 2009, Sanofi announced that it was acquiring Chattem for approximately \$1.9 billion, constituting a premium of approximately 34%.

i. Stryker Corporation ("Stryker") was a medical technology company based in Kalamazoo, Michigan, engaged in the sale of various medical device products to the medical community, including implants used in joint replacement and trauma surgeries; surgical and emergency medical equipment; and neurosurgical, neurovascular, and spinal devices.

j. Coconspirator Foldy, a resident of Morris Plains, New Jersey, was a marketing executive at Stryker. Foldy had a duty not to disclose confidential information and material, nonpublic information that he learned through his employment with Stryker (the "Stryker Inside Information"), or to use such information for his personal benefit or the benefit of others.

k. Orthovita, Inc. ("Orthovita") was a leading manufacturer of synthetic bone grafts and a maker of "orthobiologics," which are proteins and other agents designed to boost the body's healing process from bone, cartilage, and soft tissue injuries or defects. Orthovita stock was registered with the

SEC, and was listed on the NASDAQ stock exchange under the ticker symbol "VITA." On or about May 16, 2011, Stryker announced its acquisition of Orthovita for approximately \$316 million, representing a premium of approximately 41%.

l. Coconspirator Lawrence Grum ("Grum"), a resident of Livingston, New Jersey, was the co-owner of a company specializing in the distribution of spa uniforms, slippers, robes, and other spa products to resorts and spas around the world.

m. Defendant MICHAEL CASTELLI ("CASTELLI"), a resident of Morris Plains, New Jersey, owned and operated a construction company called Mutual Builders. CASTELLI was a long-time friend and neighbor of coconspirator Cupo. CASTELLI and coconspirator Grum were trading partners and close friends, having known each other for most of their lives. CASTELLI introduced Grum to Cupo, and they all socialized with one another through their common membership in a wine-making club.

n. Coconspirator Pendolino was a chiropractor residing in Nashua, New Hampshire, and a high school friend of coconspirators Lazorchak, Foldy, CC-1, CC-2, and CC-3.

o. Coconspirator CC-1, a resident of Colonia, New Jersey, was a financial reporter/editor.

p. Coconspirator CC-2, a resident of Avenel, New Jersey, worked in the risk assessment department of a New York-based

hedge fund from in or about October 2006 to in or about March 2008.

q. Coconspirator CC-3, a resident of Leesburg, Virginia, worked for a government contractor.

### The Conspiracy

2. From in or about September 2007 through in or about July 2012, in the District of New Jersey and elsewhere, defendant

MICHAEL CASTELLI

did knowingly and willfully combine, conspire and agree with John Lazorchak, Mark Cupo, Lawrence Grum, Mark Foldy, Michael Pendolino, CC-1, CC-2, and CC-3 to commit offenses against the United States, namely, securities fraud, by using and 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 securities, manipulative and deceptive devices, including the purchases and sales of securities of issuers on the basis of material nonpublic information about those securities and issuers, in breach of a duty of trust and confidence that was owed directly, indirectly, and derivatively, to the issuers of those securities, the shareholders of those issuers, and to other persons who are 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, Section 240.10b-5.

### Object of the Conspiracy

3. The object of the conspiracy was to profit by purchasing securities on the basis of inside information gained through employment positions.

### Manner and Means of the Conspiracy

4. It was a part of the conspiracy that while at Celgene, coconspirator Lazorchak regularly obtained and disclosed Celgene Inside Information to coconspirator Cupo. The Celgene Inside Information pertained to, among other things: (a) Celgene's planned acquisitions, at a premium, of Pharmion (the "Celgene-Pharmion Deal") and Abraxis (the "Celgene-Abraxis Deal") (collectively, the "Celgene Acquisitions"); (b) Celgene's anticipated quarterly earnings results (collectively, the "Quarterly Earnings Inside Information"); and (c) the outcome of Celgene's application for European regulatory approval of the expanded use of Revlimid, a Celgene cancer drug (the "Regulatory News").

5. Once coconspirator Lazorchak gave coconspirator Cupo the Celgene Inside Information, Cupo then passed the information to defendant CASTELLI and coconspirator Grum. CASTELLI and Grum, in turn, then purchased shares for themselves and quickly sold those shares for a profit once the Celgene Acquisitions, Quarterly Earnings Inside Information, and Regulatory News were publicly announced. In exchange for the Celgene Inside Information, CASTELLI and Grum made

cash payments to Cupo, as the middleman, and Lazorchak, as the source of the information.

6. It was a further part of the conspiracy that in or about September 2007, coconspirator Lazorchak disclosed inside information pertaining to the then-confidential Celgene-Pharmion Deal to certain high school friends, namely coconspirators Foldy, Pendolino, CC-1, and CC-2.

7. After receiving inside information about the Celgene-Pharmion Deal from coconspirator Lazorchak, coconspirators Foldy and Pendolino purchased Pharmion stock in advance of the public announcement of the deal and, once the transaction was publicly announced, quickly sold those shares for a profit.

8. It was a further part of the conspiracy that in or about late winter/early spring of 2011, coconspirator Foldy acquired knowledge of inside information pertaining to his employer's then-confidential plans to acquire Orthovita (the "Stryker-Orthovita Deal") and passed the inside information on to coconspirators Lazorchak and CC-1.

9. Coconspirator Lazorchak, in turn, passed the Orthovita tip to coconspirator Pendolino and coconspirator Cupo, with the expectation that Pendolino himself and Cupo, on behalf of defendant CASTELLI and coconspirator Grum, would pay him for the information.



10. After receiving inside information related to the Stryker-Orthovita Deal from coconspirator Foldy, via coconspirators Lazorchak and Cupo, defendant CASTELLI and coconspirator Grum purchased thousands of shares of Orthovita. They then sold their entire holdings immediately after the public announcement, reaping hundreds of thousands of dollars in profits from the Orthovita transactions.

11. Coconspirator Pendolino also traded on the Orthovita tip that coconspirator Lazorchak had passed on to him. In addition, Pendolino passed the Orthovita-related inside information to others, tipping, for example, CC-3, who traded on the inside information for a profit.

12. In exchange for the Orthovita-related inside information, defendant CASTELLI and coconspirator Grum paid coconspirator Cupo thousands of dollars in cash to keep for himself, and a roughly equivalent cash amount to pay to coconspirator Lazorchak. Coconspirator Pendolino also made a cash payment to Lazorchak for passing on the Orthovita tip, and Pendolino himself reaped certain compensation from CC-3, who covered Pendolino's share of the rent/incidentals related to their week-long rental of a beach house in New Jersey. Lazorchak paid coconspirator Foldy approximately \$1,200 in cash for serving as the initial source of the Orthovita-related inside information.

13. Between in or about September 2007 and in or about June 2012, coconspirators Lazorchak, Cupo, Foldy, and others caused numerous insider trading transactions, yielding, in total, more than \$1.4 million in profits, which included hundreds of thousands of dollars in illicit profits earned personally by defendant CASTELLI and conspirator Grum, respectively.

14. In an effort to prevent their insider trading scheme from being detected, defendant CASTELLI and coconspirators Lazorchak, Cupo, Grum, Foldy and Pendolino relied on various means, including but not limited to: (a) defendant CASTELLI, coconspirator Grum, and others structuring the illicit payments for the inside information to coconspirators Lazorchak, Cupo, and Foldy as hand-to-hand cash transfers, frequently paid in installments, to avoid leaving a financial trail; (b) ensuring that coconspirators Lazorchak, Cupo, and Foldy did not engage in stock transactions in the instances where they were the source of the inside information; and (c) coconspirator Grum compiling binder(s) of market "research" to provide a false justification for his trades in an effort to conceal that they were based on material, nonpublic information.

#### Overt Acts

15. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the District of New Jersey and elsewhere:

a. In or about September 2007, defendant CASTELLI and coconspirator Grum obtained inside information of the Celgene-Pharmion Deal from coconspirator Lazorchak, via coconspirator Cupo, so that defendant CASTELLI and coconspirator Grum could conduct illicit trades based on the inside information and provide cash to coconspirators Cupo and Lazorchak.

b. Between in or about October 2009 and in or about April 2012, defendant CASTELLI and coconspirator Grum obtained inside information related to Celgene's quarterly earnings results from coconspirator Lazorchak, via coconspirator Cupo, so that defendant CASTELLI and coconspirator Grum could conduct illicit trades based on the inside information and provide cash to coconspirators Cupo and Lazorchak.

c. In or about May 2010, defendant CASTELLI and coconspirator Grum obtained inside information regarding the Celgene-Abraxis Deal from coconspirator Lazorchak, via coconspirator Cupo, so that defendant CASTELLI and coconspirator Grum could conduct illicit trades based on the inside information and provide cash to coconspirators Cupo and Lazorchak.

d. In or about February or March 2011, defendant CASTELLI and coconspirator Grum obtained inside information related to the Stryker-Orthovita Deal from coconspirator Lazorchak, via coconspirator Cupo, so that defendant CASTELLI and coconspirator

Grum could conduct illicit trades based on the inside information and provide cash to coconspirators Cupo and Lazorchak.

e. In or about June 2012, defendant CASTELLI and coconspirator Grum obtained inside information from coconspirator Lazorchak, via coconspirator Cupo, that European regulators had decided to reject Celgene's request for approval to expand the use of one of its cancer drugs, Revlimid, to treat newly diagnosed patients, so that defendant CASTELLI and coconspirator Grum could conduct illicit trades (in the form of short sales) based on the inside information and provide cash to coconspirators Cupo and Lazorchak.

f. Defendant CASTELLI and coconspirator Grum paid coconspirator Cupo tens of thousands of dollars in cash for, among other things, funneling tips to them from coconspirator Lazorchak regarding Celgene Inside Information and Stryker's plans to acquire Orthovita.

g. Defendant CASTELLI and coconspirator Grum also paid coconspirator Lazorchak, via coconspirator Cupo, tens of thousands of dollars in cash, plus certain gifts, for the Celgene Inside Information that he provided, as well as the tip regarding the Stryker-Orthovita Deal that Lazorchak obtained from coconspirator Foldy.

In violation of Title 18, United States Code, Section 371.

COUNT TWO  
(Conspiracy to Commit Securities Fraud-Insider Trading)

1. The allegations set forth in paragraph 1 of Count One of this Information are realleged and incorporated herein.

2. In or about December 2009, in the District of New Jersey and elsewhere, defendant

MICHAEL CASTELLI

did knowingly and willfully combine, conspire and agree with Mark Cupo, Lawrence Grum, and others to commit offenses against the United States, namely, securities fraud, by using and 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 securities, manipulative and deceptive devices, including the purchases and sales of securities of issuer Chattem Inc. on the basis of material nonpublic information about those securities and issuer, in breach of a duty of trust and confidence that was owed directly, indirectly, and derivatively, to the issuer of those securities, the shareholders of that issuer, and to other persons who are 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, Section 240.10b-5.

### Object of the Conspiracy

3. The object of the conspiracy was to profit by purchasing securities of Chattem on the basis of inside information that coconspirator Mark Cupo gained through his employment at Sanofi.

### Manner and Means of the Conspiracy

4. It was a part of the conspiracy that, in or about December 2009, coconspirator Cupo learned confidential, material nonpublic information that his employer was planning to acquire Chattem (the "Sanofi Inside Information"), and tipped defendant CASTELLI and coconspirator Grum about the pending deal.

5. It was a further part of the conspiracy that defendant CASTELLI and coconspirator Grum purchased Chattem stock before the deal was publicly announced and then - after the stock price increased - sold the stock and shared with coconspirator Cupo their illicit profits.

### Overt Acts

6. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the District of New Jersey and elsewhere:

a. In or about December 2009, defendant CASTELLI and coconspirator Grum obtained the Sanofi Inside Information from coconspirator Cupo, so that defendant CASTELLI and coconspirator Grum could engage in stock transactions based on the inside

information and share any resulting profits with Cupo.

b. On or about December 18, 2009, just three days before the public announcement of the Sanofi-Chattem deal, based on inside information from coconspirator Cupo, defendant CASTELLI and coconspirator Grum purchased, in total, thousands of shares of Chattem stock.

c. In return for the Sanofi Inside Information about the Chattem deal, defendant CASTELLI and coconspirator Grum paid coconspirator Cupo thousands of dollars in cash.

In violation of Title 18, United States Code, Section 371.

COUNTS THREE THROUGH SEVEN  
(Securities Fraud-Insider Trading)

1. The allegations set forth in paragraphs 1 and 4 through 15 of Count One and paragraphs 4 through 6 of Count Two of this Information are realleged and incorporated herein.

2. On or about the dates set forth below, in the District of New Jersey and elsewhere, defendant

MICHAEL CASTELLI,

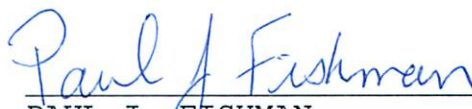
by use of the means and instrumentalities of interstate commerce, the mails, and facilities of national securities exchanges, directly and indirectly, knowingly and willfully used manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 in connection with the purchase and sales of securities by (a) employing devices, schemes, and artifices to defraud members of the investing public; (b) making untrue statements of material facts 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 a course of business which operated and would operate as a fraud and deceit upon persons, in that he executed and caused the execution of the securities transactions listed below based upon the material, nonpublic information coconspirators John Lazorchak, Mark Cupo, and Mark Foldy



obtained through their respective positions of employment and elsewhere:

COUNT	SECURITIES TRANSACTIONS
3	December 18, 2009: Castelli purchased approximately 1,000 shares of Chattem stock.
4	May 24, 2010-June 29, 2010: Castelli purchased approximately 11,326 shares of Abraxis stock.
5	April 25, 2011-May 11, 2011: Castelli purchased approximately 180,352 shares of Orthovita stock.
6	April 4, 2012-April 25, 2012: Castelli purchased approximately 315 Celgene put options; sold approximately 20 Celgene call options; and engaged in the short sale of approximately 7,000 shares of Celgene stock.
7	June 15, 2012-June 20, 2012: Castelli purchased approximately 180 Celgene put options.

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; and Title 18, United States Code, Section 2.

  
PAUL J. FISHMAN  
United States Attorney

CASE NUMBER: \_\_\_\_\_

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**UNITED STATES OF AMERICA**

**v.**

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**INFORMATION FOR**

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**PAUL J. FISHMAN**

*UNITED STATES ATTORNEY, NEWARK, NEW JERSEY*

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SHIRLEY U. EMEHELU  
ASSISTANT U.S. ATTORNEY  
NEWARK, NEW JERSEY  
973-353-6024

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