

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

ROBERT SPALLINA

RECEIVED

v.
JUN 09 2016

AT 8:30
WILLIAM T. WALSH
CLERK

Hon.

Crim. No. *15-16-269 (AET)*

15 U.S.C. §§ 78j(b) and 78ff

17 C.F.R. § 240.10b-5

18 U.S.C. § 2

INFORMATION

COUNT ONE

(Securities Fraud)

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

Background

1. At all times relevant to this Information:

a. Defendant ROBERT SPALLINA was an attorney who resided in Florida.

b. The NASDAQ Stock Market, or "NASDAQ," was the largest electronic equity securities trading market in the United States and was the second largest equities-based exchange in the world based on market capitalization. NASDAQ did not have a central trading floor. Instead, it relied on computer servers to facilitate all trading activity. Since at least 2006, NASDAQ maintained computer servers in or around Carteret, New Jersey.

c. Gilead Sciences Inc. ("Gilead") was a biotechnology company based in Foster City, California, and was engaged in the business of developing,

manufacturing and marketing antiviral drugs to treat patients infected with HIV, hepatitis B and influenza. Gilead's stock was registered with the U.S. Securities and Exchange Commission ("SEC"), and was publicly traded on the NASDAQ stock exchange.

d. Pharmasset Inc. ("Pharmasset") was a pharmaceutical company based in Princeton, New Jersey, and was engaged in the business of developing, manufacturing and marketing antiviral drugs. From in or about April 2007 through in or about January 2012, Pharmasset's stock was registered with the SEC, and was listed on the NASDAQ stock exchange under the ticker symbol "VRUS."

e. The "Director" served as a member of Pharmasset's Board of Directors during the relevant time period, and was a client of defendant SPALLINA.

The Pharmasset Inside Information

2. On or about September 2, 2011, Gilead made an initial offer to acquire Pharmasset for \$100 per share in cash. Thereafter, in or about November 2011, Gilead increased its offer for Pharmasset to the \$130 per share range. Both of these offers constituted material nonpublic information and were communicated to Pharmasset's board of directors and key executives, including the Director.

3. On or about November 8, 2011, during an estate planning meeting with defendant SPALLINA and, in the context of seeking estate planning advice,

the Director confidentially informed defendant SPALLINA that Pharmasset was going to be sold and discussed the approximate sale price (the "Pharmasset Inside Information").

4. After receiving the Pharmasset Inside Information on November 8, 2011, as discussed above, defendant SPALLINA: (a) purchased shares of Pharmasset on November 8, 2011; (b) purchased additional shares of Pharmasset on November 9, 2011; and (c) passed the Pharmasset Inside Information to two other individuals (the "Tippees"), each of whom purchased shares and/or options of Pharmasset.

5. At approximately 7:00 a.m. on November 21, 2011, Gilead publicly announced that it had entered into an agreement to acquire Pharmasset for approximately \$11 billion, or \$137 per share in cash. The purchase price represented an approximately 89% premium over Pharmasset's closing price of \$72.67 on November 18, 2011. In response to the announcement, Pharmasset's stock price increased to \$134.14 per share at the close of trading on November 21, 2011. Prior to the November 21, 2011 public announcement, Gilead's offers to acquire Pharmasset and its impending acquisition of Pharmasset at \$137 were not generally known to the public.

6. On or about November 21, 2011, following the public announcement of Gilead's acquisition of Pharmasset, defendant SPALLINA and the Tippees sold Pharmasset shares and options they had purchased between November 8, 2011, and November 18, 2011, for total illegal profits of approximately \$200,000.

7. In trading on and passing the Pharmasset Inside Information to others, defendant SPALLINA violated (i) fiduciary and other duties of trust and confidence he owed to the Director; and (ii) expectations of confidentiality held by the Director.

Securities Fraud

8. From on or about November 8, 2011, through on or about November 21, 2011, in the District of New Jersey and elsewhere, defendant

ROBERT SPALLINA

did 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, Section 240.10b-5, 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, namely by executing and causing others to

execute the securities transactions described in paragraphs 4 and 6, in whole or in part, on material nonpublic information

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

FORFEITURE ALLEGATION

1. The allegations contained in Count One of this Information are realleged and incorporated by reference as though set forth in full herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

2. Upon conviction of the offense charged in Count One of this Information, defendant SPALLINA 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 the offense, and all property traceable to such property.

3. If by any act or omission of defendant SPALLINA any of the property subject to forfeiture herein:

- 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 subdivided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by 28 U.S.C. § 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).



PAUL J. FISHMAN
United States Attorney

CASE NUMBER: _____

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