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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>05 Civ. 308 (SRC)</b>
	:	
<b>-against-</b>	:	
	:	
<b>CHARLES E. JANNETTI and</b>	:	<b>COMPLAINT</b>
<b>KEVIN DEBBS,</b>	:	
	:	
<b>Defendants.</b>	:	

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Plaintiff, Securities and Exchange Commission (“Commission”), for its Complaint against Defendants Charles E. Jannetti (“Jannetti”) and Kevin Debbs (“Debbs”) (collectively the “Defendants”) alleges as follows:

**SUMMARY**

1. This action involves illegal insider trading by the Defendants, who sold stock in Osteotech, Inc. (“Osteotech”) in September 2002 after learning material nonpublic information about contamination problems in Osteotech’s production facilities. After the Defendants obtained this nonpublic information, they sold all the shares of Osteotech they owned, avoiding losses they would have incurred had they held the shares until after Osteotech publicly disclosed the shut down of its production facilities due to

the contamination problems discussed there. Through their stock sales, Debbs avoided losses of \$12,920 and Jannetti avoided losses of \$9,040.

2. By virtue of the conduct alleged herein, Jannetti and Debbs have engaged, directly or indirectly, in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 15 C.F.R. § 240.10b-5. Accordingly, the Commission seeks a permanent injunction against further violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; disgorgement of all ill-gotten gains plus prejudgment interest thereon; and civil penalties.

### **JURISDICTION AND VENUE**

3. The Commission brings this action pursuant to its authority under Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), to enjoin the Defendants from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, for disgorgement of the losses avoided and prejudgment interest thereon, and for civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d)(3). The Commission also brings this action pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1, for civil penalties against the Defendants under the Insider Trading and Securities Fraud Enforcement Act of 1988. The Commission also seeks such other relief as the Court may deem appropriate.

4. The Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein. Certain of the alleged transactions, acts, practices, and courses of business occurred in the District of New Jersey, including, but not limited to, the Defendants' placement of their sell orders to liquidate their Osteotech shares. Accordingly, this Court has jurisdiction over this action, and venue is proper in this district, pursuant to Sections 20(b) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77v(a), and Sections 21(d), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u-1, and 78aa.

#### **RELEVANT INDIVIDUALS AND ENTITY**

##### **A. Defendants**

5. **Charles E. Jannetti**, 56, of Howell, New Jersey, was the director of human resources at Osteotech at the time of the conduct alleged herein.

6. **Kevin Debbs**, 40, of Atlantic Highlands, New Jersey, was an employee in Osteotech's engineering group at the time of the conduct alleged herein.

##### **B. Entity**

7. **Osteotech**, a biotechnology company, is a Delaware corporation based in Eatontown, New Jersey, which produces, develops, and markets products primarily to the orthopedic, spinal, neurological, and dental surgery markets. Osteotech's securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act and its shares trade on the NASDAQ National Market.

## **FACTUAL ALLEGATIONS**

### **Osteotech Identifies Production Facility Problems**

8. On August 26, 2002 Osteotech identified potential sterilization problems in its Eatontown, New Jersey production facility (“Eatontown facility”). The company immediately ceased production at the facility and transferred all production to its backup facility in Shrewsbury, New Jersey (“Shrewsbury facility”). Because Osteotech had sufficient backup facilities and the company determined that the Eatontown facility’s sterilization problems and subsequent shutdown would not materially affect the company’s ability to meet its production quotas and quarterly projections, the company made no public announcement of the problems.

9. In the early morning of September 26, 2002, Osteotech employees became aware of sterilization problems at the company’s Shrewsbury facility. At approximately 3:00 p.m. that afternoon, Osteotech management halted new production at the facility until investigation of the sterilization problem could be completed. On September 26, 2002, Osteotech shares closed at a price of \$9.20 per share.

### **Jannetti and Debbs Learn of Osteotech’s Problems And Sell Osteotech Stock**

10. As employees of Osteotech, the Defendants had a duty to both Osteotech and its shareholders not to trade in the company’s stock while in possession of material nonpublic information about the company.

11. On September 26, 2002, Debbs learned of the production problems at the Shrewsbury facility. While in possession of this material, nonpublic information, Debbs sold his entire 3,281 share position in Osteotech stock that afternoon for approximately

\$29,850, avoiding \$12,920 in losses that would have occurred had he held his shares through the company's announcement concerning its sterilization problems in its production facilities.

12. On September 26, 2002, Jannetti learned of the production problems at the Shrewsbury facility. The following morning, September 27, 2002, while in possession of the material, nonpublic information, Jannetti arranged for all of his 2,000 Osteotech shares to be sold for approximately \$19,296, avoiding \$9,040 in losses that would have occurred had he held his shares through the company's announcement concerning its sterilization problems in its production facilities.

#### **Osteotech's Announcement and the Market's Reaction**

13. On September 30, 2002, Osteotech management decided to publicly disclose its production facility problems. At the market open, the company announced that it would close its last remaining production facility at Shrewsbury, resulting in the suspension of its base tissue segment operations. In its announcement, the company disclosed that closing the facility would affect its annual earnings by \$2 million, lowering its earnings guidance from \$93.5 million to \$91.5 million. After this announcement on September 30, 2002, Osteotech shares closed at a price of \$5.16 per share.

14. The information that Osteotech had production facility problems at Shrewsbury was material.

#### **CLAIM FOR RELIEF**

##### **Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder**

15. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 14.

16. The Defendants, directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by use of the mails, or of any facility of any national securities exchange, in the offer or sale, and in connection with the purchase or sale, of Osteotech securities: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of, or otherwise made, untrue statements of material fact or omitted 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) engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of Osteotech securities and upon other persons, as more fully described in paragraphs 1 through 14 above.

17. When the Defendants sold their Osteotech shares on September 26 and 27, 2002, they knew or acted in reckless disregard of the fact, that: (1) they possessed non-public information concerning Osteotech's production facilities; and (2) they breached a duty of trust and confidence that they owed to Osteotech and its shareholders.

18. By reason of the foregoing, the Defendants, singly or in concert, directly or indirectly, violated, and unless enjoined will again violate, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### **RELIEF SOUGHT**

**WHEREFORE**, Plaintiff respectfully requests a Final Judgment:

A. Permanently enjoining the Defendants, their agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from

future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5;

B. Ordering the Defendants to disgorge, jointly and severally, the losses avoided by their sale of Osteotech securities and to pay prejudgment interest thereon;

C. Ordering the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Sections 21(d) and 21A of the Exchange Act, 15 U.S.C. § 78u(d)(3) and § 78u-1; and

D. Granting such other relief as the Court shall deem just and proper.

Dated: New York, New York  
January 13, 2005

Respectfully submitted,

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