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9	UNITED STATES DIST	TRICT COURT
10	NORTHERN DISTRICT OF CALIFORNIA	
11	san francisco emision 8 5133	
12	SECURITIES AND EXCHANGE COMMISSION,	Case No.
13	Plaintiff,	COREDT A FAVE TOOD DEEDAWANDAWE
14	vs.	COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF
15	JONATHAN L. WILSON,	
16	Defendant.	
17	·	
18	Plaintiff Securities and Exchange Commission (the "Commission") alleges:	
19	SUMMARY OF THE ACTION	
20	1. This case involves unlawful insider trading by Defendant Jonathan L. Wilson	
21	("Wilson"), a former senior finance manager at McKesson Corporation ("McKesson"). In May 2005,	
22	Wilson misappropriated information from his supervisor about McKesson's planned tender offer for	
23	D&K Healthcare Resources, Inc. ("D&K"). Based on this information, Wilson purchased 17,530	
24	shares of D&K stock in 12 brokerage accounts belonging to his family members over a period of	
25	several weeks leading up to McKesson's public announcement, on July 11, 2005, that it would	
26	acquire D&K through a tender offer for \$14.50 per share. After McKesson's public announcement,	
27	the price of D&K's stock rose more than 68% from the previous day's closing price of \$8.50 to	
28	\$14.30 per share. As a result of his trading,	

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McKesson's employees from buying or selling securities of other companies if they acquired non-

copy of McKesson's Code of Business Conduct and Ethics ("Code"). The Code prohibited

As part of his employment with McKesson, Wilson annually reviewed and signed a

public information about such companies in the course of their employment. The Code also prohibited employees from having any ownership interest in any of McKesson's competitors.

RELEVANT ENTITIES

- 8. McKesson Corporation is a Delaware corporation with headquarters in San Francisco, California. It is a Fortune 500 healthcare services company in the business of distributing pharmaceutical products and providing software, consulting and outsourcing services worldwide. At all relevant times, McKesson's securities have been registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §781(b)] and have been publicly-traded on the New York Stock Exchange under the symbol "MCK."
- 9. Until August 2005, D&K Healthcare Resources, Inc. was a Delaware corporation with headquarters in St. Louis, Missouri. D&K operated as a wholesale distributor of pharmaceuticals, healthcare and beauty products to pharmacies and other healthcare providers, primarily in the Midwest and Southern United States. Until its acquisition by McKesson in August 2005, D&K's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. §781(g)] and were publicly-traded on the NASDAQ under the symbol "DKHR."

FACTS

A. McKesson's Tender Offer for D&K

10. In late February 2005, McKesson initiated discussions with D&K about a potential merger between the two companies. In March 2005, McKesson took significant steps to acquire D&K through a tender offer. On or about March 24, 2005, the companies signed a confidentiality agreement, and McKesson submitted a written expression of interest to acquire D&K. On or about April 18, 2005, McKesson entered into a non-binding expression of interest with D&K. During the week of April 25, 2005, McKesson and D&K entered into an exclusivity agreement prohibiting D&K from soliciting other bidders. Around that same time, McKesson also began performing due diligence concerning D&K. McKesson instructed all employees with any knowledge of the anticipated tender offer to refer to the potential acquisition solely by the code name "Project Spirit," thus keeping the anticipated tender offer strictly confidential.

- Between May 9 and May 13, 2005, McKesson sent several employees from its finance department, including Wilson's supervisor, to St. Louis, Missouri to conduct on-site due diligence of D&K's operations.
- 12. During the last two weeks of May 2005 and the first week of June 2005, McKesson and D&K engaged in discussions about the details of the acquisition.
- 13. During the week of July 4, 2005, McKesson and D&K negotiated the final terms of the tender offer. On or about July 8, 2005, McKesson's and D&K's boards of directors approved the tender offer.
- 14. Before the stock market opened on July 11, 2005, McKesson and D&K publicly announced the acquisition through a tender offer for \$14.50 per share. That day, D&K's share price rose approximately 68% from the previous day's closing price of \$8.50, rising to \$14.30 per share.
 - 15. On August 30, 2005, McKesson completed its acquisition of D&K.

B. <u>Defendant Wilson Misappropriated Material Non-public Information About</u> <u>McKesson's Tender Offer For D&K And Traded On That Information</u>

- 16. Wilson worked in an open office cubicle on the 19th floor of McKesson's San Francisco, California headquarters, in close proximity to his supervisor's office cubicle. Wilson's and his supervisor's cubicles were close enough such that Wilson could easily overhear his supervisor's telephone conversations.
- 17. Throughout April and May 2005, Defendant Wilson's supervisor worked on the D&K acquisition several hours each day, including in his office cubicle. In his office cubicle, he conducted meetings about D&K, reviewed documents pertaining to D&K, and participated in telephone conferences concerning D&K. Some of these telephone conferences were conducted by speakerphone.
- 18. Wilson's supervisor kept documents D&K in plain view on his desk. Moreover, he made few if any efforts to conceal these documents when he was away from his office cubicle.
- 19. Wilson's proximity to his supervisor's cubicle enabled Wilson to learn of McKesson's plans to acquire D&K.

- 20. Starting on May 6, 2005, Wilson began purchasing shares of D&K stock in brokerage accounts belonging to several family members.
- 21. Several of Wilson's family members allowed him to control and direct all stock trading in their brokerage accounts. These family members provided Wilson with the passwords for their brokerage accounts, entrusting Wilson with discretion over their finances.
- 22. While Wilson never purchased shares of D&K for his personal accounts, between May 6 and July 11, 2005, he purchased 17,530 shares of D&K stock in 12 brokerage accounts belonging to his family members.
- 23. Prior to May 2005, Wilson never owned shares of D&K stock, nor had he purchased such shares for his family.
- 24. Between May and July, 2005, Wilson deposited \$9,000 of his own funds in one of his father's brokerage accounts, which he used to purchase shares of D&K stock in the brokerage account.
- 25. In June 2005, one of Wilson's brothers deposited \$2,538 into one of Wilson's father's brokerage accounts, which Wilson used to purchase additional shares of D&K stock in the brokerage account.
- 26. The unrealized gains from Wilson's purchases of D&K stock in his family members' brokerage accounts total \$117,045.87.

COUNT ONE

Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 Thereunder [17 C.F.R. §240-10b-5]

- 27. The Commission realleges and incorporates by reference Paragraphs 1 through 26.
- 28. Wilson's purchase of 17,530 shares of D&K stock between May 6 and July 11, 2005 was based on material, non-public information that Wilson misappropriated from McKesson and his supervisor in violation of the duties of trust and confidence that he owed McKesson.
- 29. Wilson knew, or was reckless in not knowing, that the information he misappropriated was material and non-public. His purchase of securities based on such information constituted a breach of a duty of trust and confidence that he owed to McKesson.

- 30. Defendant Wilson owed a duty of trust and confidence to McKesson not to trade in D&K Securities, either directly or indirectly, based on material, non-public information he obtained as a result of his employment. Wilson breached that duty by purchasing 17,530 shares of D&K stock between May 6, 2005 and July 11, 2005 based upon material, non-public information.
- 31. By engaging in the conduct described above, Wilson, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange, with scienter:
 - (a) employed devices, schemes, or artifices to defraud;
 - (b) made untrue statements of material facts 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 acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.
- 32. As a result of the activities described above, Wilson has violated, and unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

COUNT TWO

Violations of Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and Rule 14e-3 Thereunder [17 C.F.R. §240.14e-3]

- 33. The Commission realleges and incorporates by reference Paragraphs 1 through 30.
- 34. After McKesson had taken substantial steps to commence a tender offer for D&K's stock, Defendant Wilson purchased shares of D&K stock while in possession of material information relating to the tender offer that he knew or had reason to know was non-public, and knew or had reason to know had been acquired, directly or indirectly, from the offering company, McKesson, or an officer, director, partner, employee or other person acting on McKesson's behalf.

1	35. As a result of the activities described above, Wilson has violated, and unless restrained	
. 2	and enjoined, will continue to violate Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and	
3	Rule 14e-3 thereunder [17 C.F.R. §240.14e-3].	
4	PRAYER FOR RELIEF	
5	WHEREFORE, the Commission respectfully requests that this Court:	
6	I.	
7	Issue an Order of Permanent Injunction restraining and enjoining Defendant Wilson from	
8	directly or indirectly violating Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-	
9	5 thereunder [17 C.F.R. §240.10b-5];	
10	п.	
11	Issue an Order of Permanent Injunction restraining and enjoining Defendant Wilson from	
12	directly or indirectly violating Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and Rule 14e-3	
13	thereunder [17 C.F.R. §240.14e-3];	
14	III.	
15	Order Defendant Wilson to disgorge any ill-gotten gains derived from his unlawful insider	
16	trading described herein, plus prejudgment interest;	
17	IV.	
18	Order Defendant Wilson to pay civil penalties pursuant to Section 21A of the Exchange Act	
19	[15 U.S.C. §78u-1];	
20	V.	
21	Retain jurisdiction of this action in accordance with the principles of equity and the Federal	
22	Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that	
23	may be entered, or to entertain any suitable application or motion for additional relief within the	
24	jurisdiction of this Court; and	
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Grant such other relief as this Court may determine to be just and appropriate.

DATED: November 12, 2008 Respectfully Submitted,

U.S. SECURITIES AND EXCHANGE COMMISSION

By one of their attorneys:

Jonathan S. Polish Anne C. McKinley Richard G. Stoltz

Attorneys for Plaintiff