IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	**Civil Action No.**
v.	:	
C. ROAN BERRY,	:	
Defendant.	:	

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This litigation involves an insider trading scheme in which Thomas D. Melvin, Jr. ("Melvin"), a Griffin, Georgia based CPA, disclosed material non-public information about the pending tender offer for Chattem, Inc. ("Chattem") securities to four individuals, including defendant C. Roan Berry ("Berry"). Those four individuals and six others traded in the securities of Chattem based on that material non-public information, profiting by more than $550,000.

2. On December 21, 2009, Sanofi-Aventis ("Sanofi"), a French pharmaceutical company, announced its intent to make a tender offer for Chattem, a Tennessee-based distributor of over-the-counter pharmaceutical products, at the price of $93.50 per share ("Announcement"). Shares of Chattem closed 32.60% higher on the day of the Announcement than the prior trading day's close of $69.98 and volume increased more than 3,000% to 10.3 million shares.

3. In early December 2009, several weeks before the Announcement, an independent board member of Chattem who owned Chattem options that would automatically exercise in the event of an ownership change at Chattem, initiated a series of confidential conversations and meetings with his longtime accountant, Melvin, to discuss potential methods of ameliorating the effect of an acquisition of Chattem on his tax liability.

4. The Chattem board member told Melvin sufficient facts such that, given Melvin's knowledge of the board member's affairs, Melvin would have clearly known that the board member was discussing Chattem.

5. Melvin and the Chattem board member also discussed the price impact of the tender offer on the board member's options.

6. Melvin misappropriated material non-public information regarding the impending tender offer for Chattem securities.

7. Within days of his first meeting with the board member, Melvin disclosed material non-public information about the impending tender offer to Berry. Berry traded in Chattem securities based on the material non-public information disclosed by Melvin and tipped one other individual who also traded.

8. Defendant has engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) & 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 & 240.14e-3].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) & 78u(e)] to enjoin Defendant from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

10. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), & 78aa].

11. Defendant, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

12. Certain of the transactions, acts, practices, and courses of business constituting violations of the Exchange Act occurred in the Northern District of Georgia. Specifically, Melvin disclosed the material non-public information to Berry in the Northern District of Georgia, and Berry executed his trades in Chattem securities in the Northern District of Georgia. Moreover, Berry is a resident of the Northern District of Georgia.

13. Defendant, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

THE DEFENDANT

14. **C. Roan Berry**, 44, a resident of Jackson, Georgia, founded EnviroTech Environmental Services, Inc. ("EnviroTech") in 1996 and remains its

majority owner. Melvin has been Berry's and EnviroTech's accountant for over 10 years, and Berry and Melvin are friends.

RELEVANT ENTITIES

15. **Chattem, Inc.** had, for over 125 years, manufactured and sold health and beauty products, toiletries, proprietary drugs and dietary supplements. By 2009 it was one of the largest distributors of over-the-counter pharmaceutical products in the world. Its product line included Cortizone 10, Unisom, Gold Bond, Aspercreme and IcyHot. Chattem's shares traded on the NASDAQ as CHTT.

16. **Sanofi-Aventis**, a French pharmaceutical company, describes itself as a "diversified global healthcare company engaged in the research, development, manufacture and marketing of healthcare products. [Its] business includes pharmaceuticals, comprising prescription drugs, consumer healthcare and generics; vaccines and animal health." American depository shares of this Paris-based company trade on the NYSE under the symbol SNY.

17. On December 21, 2009, Sanofi announced that it intended to make a tender offer for all of the shares of Chattem at $93.50 per share, a 32.60% premium over the prior trading day's close. The transaction was approved and became

effective March 11, 2010, with Chattem subsequently delisting and deregistering thereafter.

THE TIPPER AND OTHER TRADER

18. **Thomas D. Melvin, Jr**., 45, a resident of Griffin, Georgia, is a principal at Melvin, Rooks, and Howell PC ("MRH"), an accounting firm headquartered in Griffin. He is a CPA who has been licensed in Georgia since 1993.

19. **Ashley J. Coots**, 35, resides in Jackson, Georgia, next door to Berry. He worked as the finance manager at a car dealership for six years until November 2009 when he began working for an insurer that provides services to car dealerships. Melvin has been his accountant since approximately 2005.

BACKGROUND OF SANOFI'S TENDER OFFER TO CHATTEM

20. On September 10, 2009, the CEOs of Sanofi and Chattem met to discuss "potential strategic relationships" between their companies.

21. By mid-November 2009, Sanofi had informed Chattem that it was "interested in acquiring Chattem . . . for a price in the range of $85.00 – $90.00 per share in cash" and Chattem had responded that although it was "willing to consider

a potential transaction, there would need to be a meaningful improvement in the price offered."

22. By the end of that month the companies had retained financial advisors and legal counsel, executed confidentiality and exclusivity agreements, held "telephonic due diligence meetings", and were negotiating the terms of an agreement that provided for Sanofi to "pursue a two-step transaction in which a tender offer would be followed by a merger."

23. On December 1, 2009, senior members of both entities' management teams met "to conduct face-to-face due diligence meetings."

24. Before the markets opened on December 21, 2009, Chattem announced that it had entered into a definitive agreement to be acquired by Sanofi.

25. Under that agreement, Sanofi agreed to make a $1.9 billion tender offer for 100% of Chattem's outstanding shares, at a share price of $93.50 per share. The acquisition price represented a 32.60% premium above the closing price of $69.98 on the prior trading day, Friday, December 18, 2009.

26. On December 21, 2009, Chattem's share price closed at $93.02 and trading volume increased by almost 3,270% to 10.3 million shares.

DISCLOSURE OF MATERIAL NON-PUBLIC INFORMATION

27. In November 2009, the members of Chattem's board of directors were advised of Sanofi's serious interest in acquiring Chattem. The board knew that as of November 20, 2009, Sanofi had formally notified Chattem in writing of its willingness to purchase all outstanding shares of Chattem at a price of at least $90 per share, and that Chattem had retained various counsel and investment advisers to assist in the process.

28. In December 2009, one of the members of Chattem's board of directors had a series of conversations and meetings with his longtime accountant, Melvin. This board member, who owned approximately 50,000 Chattem options that would automatically be exercised in the event of an ownership change at Chattem, initiated these discussions in order to obtain Melvin's advice on mitigating the personal tax liability that would accompany Sanofi's tender offer and the forced exchange of his holdings.

29. During these conversations and meetings, the board member made clear to Melvin that the topic of discussion was confidential. Both the board member and Melvin understood that the subject of the conversation was confidential and that the board member was disclosing the information solely for

purposes of obtaining tax advice. The board member discussed with Melvin that the board member's options would likely increase in value by approximately $20 to $25 in the near future.

30. Melvin, who had been this board member's accountant for many years, was aware of this board member's role on the Chattem board and was aware of the unexercised Chattem options that this board member possessed.

31. Melvin knew that the board member was discussing Chattem when the board member disclosed material non-public information about the impending tender offer.

MELVIN'S MISAPPROPRIATION OF MATERIAL NON-PUBLIC INFORMATION

32. Melvin is licensed as a CPA registered with the Georgia Board of Accountancy.

33. The Chattem board member was a client of Melvin and MRH, and as a client, Melvin owed the Chattem board member a duty of confidentiality.

34. The Chattem board member disclosed material non-public information about the pending tender offer for Chattem securities to Melvin solely to obtain professional services.

35. The Chattem board member disclosed material non-public information about the pending tender offer for Chattem securities to Melvin with the expectation that Melvin would keep the information confidential.

36. Pursuant to the Georgia State Board of Accountancy Code of Professional Conduct Rule 20-12-.11, Melvin could "not without the consent of his client disclose any confidential information pertaining to his client obtained in the course of performing professional services."

37. The Chattem board member did not consent to Melvin's disclosing the material non-public information about the pending tender offer for Chattem securities.

38. Disregarding the duty of confidentiality owed to his client and imposed on him by the Georgia State Board of Accountancy's Code of Professional Conduct, Melvin misappropriated the material non-public information disclosed to him by his client, a Chattem board member, and disclosed that material non-public information to Berry.

39. Berry traded in Chattem securities based on the misappropriated information disclosed to him by Melvin. Berry also tipped Coots. Coots traded in

Chattem securities based on the information misappropriated by Melvin and disclosed to Coots by Berry.

Melvin discloses material non-public information to Berry

40. Melvin and Berry are close friends.

41. On or about Friday, December 4, 2009, after meeting with the Chattem board member, Melvin called Berry and advised him of the pending tender offer for Chattem securities.

42. Melvin told Berry that Chattem was being acquired by another company in the near future.

43. Melvin told Berry that the purchase price for Chattem would be approximately $90 per share.

44. Melvin told Berry that the source of the information about the pending acquisition of Chattem was a board member who was a client of Melvin's.

45. Berry knew or was reckless in not knowing that the information disclosed to him by Melvin about the pending tender offer for Chattem securities was material non-public information.

46. Melvin received a benefit from disclosing the material non-public information to Berry in the form of furthering his personal and professional relationship with Berry.

47. On Monday, December 7, 2009, Berry purchased 1,700 shares of Chattem for a total principal cost of $117,090.29.

48. Berry purchased the Chattem securities in a corporate account he controlled in the name of EnviroTech.

49. The investment in Chattem represented a historically disproportionate concentration of 13.4% of the total account.

50. Prior to the December 7, 2009, purchase of Chattem shares, the last purchase in the account of $100,000 or more occurred in 2005.

51. Berry purchased Chattem securities based on the material non-public information about the pending tender offer for Chattem securities disclosed to him by Melvin.

52. After the Announcement, Berry sold his shares of Chattem stock for a profit of $41,859.71.

Berry tips Coots

53. Berry and Coots are next-door neighbors.

54. Berry advised Coots of the pending tender offer for Chattem securities.

55. Berry told Coots that Chattem was being acquired by another company in the near future.

56. Berry told Coots that the purchase price for Chattem would be approximately $90 per share.

57. Berry told Coots that the source of the information about the pending acquisition of Chattem was a board member who was a client of Melvin's.

58. Coots knew or was reckless in not knowing that the information disclosed to him by Berry about the pending tender offer for Chattem securities was material non-public information.

59. Berry received a benefit from disclosing the material non-public information to Coots in the form of furthering his personal relationship with Coots.

60. Between December 10 and December 14, 2009, Coots purchased 540 shares of Chattem for a total principal cost of $37,136.20, based on the material non-public information Berry disclosed to Coots.

61. After the announcement, Coots sold his Chattem shares for a profit of $13,231.80.

COUNT I—INSIDER TRADING

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]

62. Paragraphs 1 through 61 are hereby re-alleged and are incorporated herein by reference.

63. During December 2009, Defendant, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

64. Defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements

of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

65. By reason of the foregoing, Defendant, directly and indirectly, has violated and, unless 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 II—INSIDER TRADING

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]

66. Paragraphs 1 through 61 are hereby re-alleged and are incorporated herein by reference.

67. By December 7, 2009, substantial steps had been taken to commence a tender offer for the securities of Chattem by Sanofi-Aventis, including, among others: (1) retaining financial advisors and legal counsel; (2) executing confidentiality and exclusivity agreements; (3) holding "telephonic due diligence meetings;" and (4) negotiating the terms of an agreement that provided for Sanofi

to "pursue a two-step transaction in which a tender offer would be followed by a merger."

68. At the time Defendant purchased Chattem securities, he was in possession of material information regarding the tender offer for Chattem securities by Sanofi-Aventis, which he knew or had reason to know was nonpublic, and which he knew or had reason to know was acquired directly or indirectly from an officer, director, partner, or employee or other person acting on behalf of the issuer.

69. By reason of the foregoing, Defendant violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendant committed the violations alleged herein.

II.

A permanent injunction enjoining Defendant, his agents, servants, employees, and attorneys from violating, directly or indirectly, 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].

III.

A permanent injunction enjoining Defendant, his agents, servants, employees, and attorneys from violating, directly or indirectly, 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].

IV.

An order requiring the disgorgement by Defendant of all ill-gotten gains or unjust enrichment, including any received by his tippee, with prejudgment interest, to effect the remedial purposes of the federal securities laws.

V.

An order pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] imposing civil penalties against Defendant.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: August 28, 2012

Respectfully submitted,

/s/ Kristin B. Wilhelm
M. Graham Loomis
Regional Trial Counsel
Georgia Bar No. 457868
Email: loomism@sec.gov

Kristin B. Wilhelm
Senior Trial Counsel
Georgia Bar No. 759054
Email: wilhelmk@sec.gov

COUNSEL FOR PLAINTIFF
Securities and Exchange Commission
950 East Paces Ferry Road, N.E.
Suite 900
Atlanta, Georgia 30326-1382
Tel: (404) 842-7600
Fax: (404) 842-7666