

1 MARC J. FAGEL (Cal. Bar No. 154425)
ROBERT TASHJIAN (Cal. Bar No. 191007)
2 tashjianr@sec.gov
3 LLOYD FARNHAM (Cal. Bar No. 202231)
farnhaml@sec.gov

4 Attorneys for Plaintiff
5 SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, 26th Floor
6 San Francisco, California 94104
Telephone: (415) 705-2500
7 Facsimile: (415) 705-2501

E-filing

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

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12
13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 v.

16 NASSER M. MARDINI,

17 Defendant.

Case No.

CV 09

COMPLAINT

SI
1882

18
19 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

20 **SUMMARY OF THE ACTION**

21 1. This action involves insider trading by Defendant Nasser Mardini. On at least one
22 occasion, Mardini purchased securities and tipped others after learning from his friend Michael
23 Kara that the company was the target of a potential acquisition. Michael Kara received the
24 information from his brother Maher Kara, who at the time was an employee of the Investment
25 Banking Division of Citigroup Global Markets, Inc. ("Citigroup").

26 2. In March 2007, Michael Kara tipped Mardini about an upcoming acquisition
27 involving Biosite, Inc., a medical device company. Before the acquisition was announced,
28 Mardini directed a friend to purchase Biosite call options for his benefit, caused another person

1 to purchase Biosite call options, and purchased Biosite stock in another person's account. The
2 profits in these three accounts totaled \$291,723.

3 JURISDICTION AND VENUE

4 3. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of
5 the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1].

6 4. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A and 27
7 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1 and 78aa].

8 5. The Defendant, directly or indirectly, made use of the means or instrumentalities
9 of interstate commerce, or of the mails, or of the facilities of a national securities exchange in
10 connection with the transactions, acts, practices and courses of business alleged herein.

11 6. Venue in this District is proper pursuant to Section 27 of the Exchange Act
12 [15 U.S.C. § 78aa] because a substantial part of the acts and transactions constituting the
13 violations alleged in this Complaint occurred within the Northern District of California.

14 INTRADISTRICT ASSIGNMENT

15 7. Under Civil Local Rule 3-2, this civil action should be assigned to the San
16 Francisco or Oakland Divisions, because a substantial part of the events or omissions which give
17 rise to the claim occurred in Alameda County and Contra Costa County.

18 DEFENDANTS

19 8. **Nasser N. Mardini**, age 52, is a resident of Stockton, California. He owns and
20 operates a small business in Stockton.

21 RELEVANT ACQUISITION TARGET

22 9. **Biosite, Inc.** ("Biosite") was a Delaware corporation with its principal place of
23 business in San Diego, California. During the relevant time period, Biosite common stock was
24 listed on the NASDAQ Global Market. Prior to its acquisition in 2007, Biosite developed and
25 sold diagnostic medical tests.

1 **FACTUAL ALLEGATIONS**

2 **A. Maher Kara's access to nonpublic information**

3 10. Maher Kara was employed by Citigroup as an investment banker from 1999 to
4 April 2007, and specialized in healthcare companies beginning in 2002. Maher Kara learned
5 about confidential upcoming transactions and other confidential information regarding
6 Citigroup's clients through his position in the Healthcare Group. As an employee of Citigroup
7 with access to confidential information, Maher Kara was subject to restrictions regarding
8 confidential information he obtained in the course of his employment.

9 **B. Trading in the Securities of Biosite, Inc.**

10 11. In March 2007, bankers from Citigroup's Investment Banking Healthcare Group
11 learned that one of its clients, Beckman Coulter Inc., a medical equipment company based in
12 Fullerton, California, was in advanced discussions with an acquisition target and would seek
13 financing for the acquisition from Citigroup. The planned acquisition of Biosite and Beckman
14 Coulter's work with Citigroup was confidential and not publicly disclosed. Maher Kara was
15 aware that Citigroup's client was seeking to acquire Biosite. At least as of March 19, 2007,
16 Beckman Coulter had taken the following steps toward its planned acquisition of Biosite,
17 including (1) entering into a confidentiality agreement; (2) engaging legal and financial advisors;
18 (3) negotiating with Biosite management and board of directors regarding a tender offer price;
19 and (4) securing financing commitments for the proposed acquisition.

20 12. Maher Kara misappropriated material nonpublic information, in breach of his
21 duty of confidentiality to Citigroup, by tipping his brother Michael Kara about the planned
22 Biosite acquisition. Maher Kara tipped Michael Kara to confer a benefit on himself or to provide
23 a gift to his brother.

24 13. On March 22, 2007, Michael Kara provided Mardini with material nonpublic
25 information about the plan to acquire Biosite. At the time he tipped Mardini, Michael Kara was
26 in possession of material nonpublic information regarding Biosite, and he knew or was reckless
27 in not knowing that Maher Kara disclosed this information in breach of a duty of confidentiality.
28

1 Michael Kara tipped Mardini about the plan to acquire Biosite to receive a personal benefit or to
2 confer a gift of the information to Mardini.

3 14. On March 22 and 23, 2007, Mardini directed a friend to purchase Biosite call
4 options for his benefit, caused another person to purchase Biosite call options by recommending
5 that he purchase the options, and executed trades in another person's brokerage account.

6 15. At the time he made these trades, tipped others, or caused others to purchase
7 Biosite securities, Mardini was in possession of material nonpublic information regarding Biosite
8 and knew or was reckless in not knowing that this information was obtained in breach of a duty
9 of confidentiality. Mardini also knew or had reason to know that the information was nonpublic,
10 and knew or had reason to know that the information originated from the offering company, the
11 target company, or any person working on their behalf. Mardini provided tips to others to
12 receive a personal benefit or to confer a gift of the information to friends or family members.

13 16. On Sunday, March 25, 2007, Beckman Coulter announced that it had reached an
14 agreement with the management of Biosite to acquire the company in a tender offer at a price of
15 \$85 per share. The price of Biosite shares rose 51 percent from a \$55.45 closing price on Friday,
16 March 23 to close at \$83.80 per share on Monday, March 26, with the trading volume on March
17 26 more than 38 times the trading volume on March 23.

18 17. The trading in Biosite by either Mardini, the friend he directed to purchase Biosite
19 securities, or others he tipped resulted in illegal profits of \$291,723.

20 **FIRST CLAIM FOR RELIEF**

21 *Violation of Section 10(b) of the Exchange Act and Rule 10b-5*

22 18. Paragraph nos. 1 through 17 are re-alleged and incorporated herein by reference.

23 19. The Defendant, while in the possession of material nonpublic information
24 regarding Andrx and Biosite traded in the securities of those companies.

25 20. The Defendant, while in the possession of material nonpublic information
26 regarding Biosite, traded in the securities of those companies or tipped others using material
27 nonpublic information.

1 Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R.
2 § 240.14e-3].

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Commission respectfully requests that this Court:

5 I.

6 Permanently enjoin the Defendant from directly or indirectly violating Sections 10(b) and
7 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)], and Rules 10b-5 and 14e-3
8 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3].

9 II.

10 Order the Defendant to disgorge the ill-gotten gains derived from illegal trading and
11 tipping, plus prejudgment interest.

12 III.

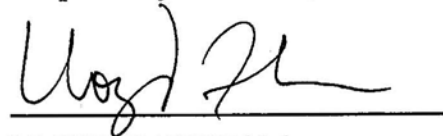
13 Order the Defendant to pay civil penalties pursuant to Section 21A of the Exchange Act
14 [15 U.S.C. § 78u-1]; and

15 IV.

16 Grant such other relief as this Court may deem just and appropriate.

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18 Dated: April 30, 2009

Respectfully submitted,

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21 LLOYD FARNHAM
22 Attorney for Plaintiff
23 SECURITIES AND EXCHANGE COMMISSION
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