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LOS ANGELES

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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 vs.

17 GARY K. MELTON,

18 Defendant.

Case No. CV 07 2655 GHK

COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS

(JCx)

19  
20 Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. This Court has jurisdiction over this action pursuant to Sections 21(d)(1),  
23 21(e), 21A(a)(1), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”),  
24 15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1(a)(1) & 78aa. Defendant has, directly or  
25 indirectly, made use of the means or instrumentalities of interstate commerce, of the  
26 mails, or of the facilities of a national securities exchange in connection with the acts,  
27 practices, and courses of business alleged in this complaint.

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1 **RELATED ENTITIES**

2 7. Amgen is a Delaware corporation with its principal offices in  
3 Thousand Oaks, California. Amgen is a biotechnology company that develops,  
4 manufactures, and markets human therapeutics. Amgen's common stock trades on  
5 the NASDAQ Stock Market under the symbol "AMGN."

6 8. Abgenix was a Delaware corporation with its principal offices in  
7 Fremont, California. Abgenix was a biopharmaceutical company that developed  
8 and manufactured human therapeutic antibodies. Abgenix's common stock traded  
9 on the NASDAQ Stock Market under the symbol "ABGX" until Amgen's  
10 acquisition of Abgenix closed in April 2006.

11 **FACTS**

12 **Background**

13 9. Melton's wife became the vice president of strategic sourcing and  
14 procurement at Amgen on August 1, 2005. As an Amgen vice president, Melton's  
15 wife reported directly to Amgen's chief financial officer and attended meetings  
16 where mergers and acquisitions were discussed. Melton had a relationship of trust  
17 and confidence with his wife.

18 10. On November 3, 2005, Amgen and Abgenix issued a joint press  
19 release announcing favorable results of the Phase 3 clinical trial of their co-  
20 developed antibody, panitumumab, in patients with metastatic colorectal cancer.  
21 On the day of the announcement, Abgenix's stock price rose to \$12.90 per share,  
22 an increase of 38% from the previous day's closing price of \$9.37. Both Melton  
23 and his wife read the November 3 press release and discussed its significance for  
24 cancer patients. Melton commented to his wife that he might purchase some  
25 Abgenix stock, to which his wife said nothing.

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1                                   **Melton Misappropriated Material Nonpublic**  
2   **Information from His Wife**

3           11. Through her employment at Amgen in early December 2005,  
4 Melton's wife learned that the public announcement of Amgen's acquisition of  
5 Abgenix was imminent. Recalling her earlier conversation with Melton, Melton's  
6 wife asked him if he had purchased any Abgenix stock. Melton responded that he  
7 had not purchased any Abgenix stock. Melton's wife told Melton not to purchase  
8 any Abgenix stock. Melton understood his wife's unexplained instruction not to  
9 purchase Abgenix stock to mean that more favorable news about Abgenix was  
10 forthcoming.

11           12. Melton knew, or was reckless in not knowing, that his wife's  
12 instruction not to purchase Abgenix stock was based on his wife's knowledge of  
13 material nonpublic information and that his wife owed a duty of trust and  
14 confidence to Amgen and its shareholders.

15           13. Melton knew, or was reckless in not knowing, that his wife should  
16 have kept any information about Abgenix acquired through the course of her  
17 employment at Amgen confidential and that he could not use or take advantage of  
18 such information.

19                                   **Melton Traded on the Basis of Nonpublic Information**

20           14. On December 8, 2006, the same day or the day after Melton and his  
21 wife discussed Abgenix stock, Melton liquidated the existing holdings of securities  
22 in two brokerage accounts (the "Brokerage Accounts") he held jointly with his  
23 wife and his daughter, respectively. In addition to the proceeds from liquidating  
24 the Brokerage Accounts' portfolios, Melton used margin loans to maximize the  
25 Brokerage Accounts' positions in Abgenix stock. Specifically, between December  
26 8 and 13, 2006, Melton placed orders in the Brokerage Accounts to purchase a  
27 total of 2,050 shares of Abgenix on margin at a total cost of \$29,152. Melton  
28 purchased Abgenix stock in breach of his duty of trust and confidence to his wife.

1 By purchasing Abgenix stock for his personal benefit while aware that positive  
2 information about Abgenix was forthcoming, Melton violated Section 10(b) of the  
3 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.  
4 § 240.10b-5.

5 15. After the stock market closed on December 14, 2006, Amgen and  
6 Abgenix issued a joint press release announcing Amgen's acquisition of Abgenix  
7 for \$22.50 per share, which represented a 54% premium on Abgenix's closing  
8 price of \$14.65. On December 15, 2005, Abgenix shares closed at \$21.68, a 55%  
9 increase from the previous day's close of \$14.65. Trading volume that day was  
10 61.7 million shares, a 1,435% increase from the previous day's volume of four  
11 million shares.

12 16. On December 15, 2005, after seeing the public announcement of the  
13 Abgenix acquisition, Melton placed orders to sell all 2,050 of the Abgenix shares  
14 in the Brokerage Accounts at \$21.69 per share. As a result, Melton realized a  
15 profit of \$15,282 from his trading in Abgenix stock. Melton used these profits to  
16 restore the Brokerage Accounts' positions in two of the three securities that were  
17 liquidated to fund the purchases of Abgenix stock.

18 **CLAIM FOR RELIEF**

19 **FRAUD IN CONNECTION WITH THE**  
20 **PURCHASE OR SALE OF SECURITIES**

21 **Violations of Section 10(b) of the Exchange Act**  
22 **and Rule 10b-5 Thereunder**

23 17. The Commission realleges and incorporates by reference paragraphs 1  
24 through 16 above.

25 18. Defendant Melton, by engaging in the conduct described above,  
26 directly or indirectly, in connection with the purchase or sale of a security, by the  
27 use of means or instrumentalities of interstate commerce, of the mails, or of the  
28 facilities of a national securities exchange, with scienter:

- 1 a. employed devices, schemes, or artifices to defraud;  
2 b. made untrue statements of a material fact or omitted to  
3 state a material fact necessary in order to make the  
4 statements made, in light of the circumstances under  
5 which they were made, not misleading; or  
6 c. engaged in acts, practices or courses of business which  
7 operated or would operate as a fraud or deceit upon other  
8 persons.

9 19. By engaging in the conduct described above, defendant Melton  
10 violated, and unless restrained and enjoined will continue to violate, Section 10(b)  
11 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.  
12 § 240.10b-5.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, the Commission respectfully requests that the Court:

15 **I.**

16 Issue a final judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
17 permanently enjoining defendant Melton and his officers, agents, servants,  
18 employees, and attorneys, and those persons in active concert or participation with  
19 any of them, who receive actual notice of the final judgment by personal service or  
20 otherwise, and each of them, from violating Section 10(b) of the Exchange Act, 15  
21 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

22 **II.**

23 Order defendant Melton to disgorge all ill-gotten gains from his illegal  
24 conduct, together with prejudgment interest thereon.

25 **III.**

26 Order defendant Melton to pay a civil penalty under Section 21A(a) of the  
27 Exchange Act, 15 U.S.C. § 78u-1(a).

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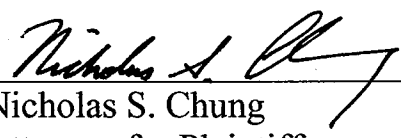
**IV.**

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**V.**

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: April 23, 2007

  
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Nicholas S. Chung  
Attorney for Plaintiff  
Securities and Exchange Commission