

Counsel of Record:
Scott A. Thompson
Christopher R. Kelly
Paul T. Chryssikos
Securities and Exchange Commission
Philadelphia Regional Office
1617 JFK Blvd., Suite 520
Philadelphia, PA 19103
Telephone: 215-597-3100
Facsimile: 215-597-2740

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT L. SPALLINA,
THOMAS J. PALERMO,
BRIAN H. MARKOWITZ,
STEVEN G. ROSEN, and
DONALD R. TESCHER,

Defendants.

Case No.

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows against Defendants Robert L. Spallina (“Spallina”), 7387 Wisteria Ave., Parkland, FL 33076; Thomas J. Palermo (“Palermo”), 6921 E. Cypresshead Dr., Parkland, FL 33067; Brian H. Markowitz (“Markowitz”), One N. Ocean Blvd., Apt. 202, Pompano Beach, FL 33062; Steven G. Rosen (“Rosen”), 12516 NW 56th St., Coral Springs, FL 33076; and Donald R. Tescher (“Tescher”), 2600 Whispering Oaks Ln., Delray Beach, FL 33445:

SUMMARY

1. This is an insider trading case that arose when two lawyers and an accountant misappropriated confidential information from a mutual client concerning the impending acquisition of the pharmaceuticals company Pharmasset, Inc. (“Pharmasset”) by trading

Pharmasset securities in advance of the public announcement of the acquisition on November 21, 2011. In addition to trading in his own account, one of the lawyers tipped two close friends, a securities industry professional and another experienced securities trader, who both also profited by trading Pharmasset securities. The five defendants collectively realized a total of approximately \$234,186 in illegal profits through their insider trading.

2. On November 8, 2011, less than two weeks before the November 21, 2011 public announcement that Gilead Sciences, Inc. (“Gilead”) would acquire Pharmasset, a member of Pharmasset’s board of directors (“Board Member”) met with his personal legal, tax, and financial advisers, including Spallina, Tescher, and Rosen, to discuss end-of-year tax and estate planning matters (the “November 8, 2011 Meeting”).

3. During the November 8, 2011 Meeting, the group in attendance – including Spallina, Tescher, Rosen, and Board Member – discussed the fact that Pharmasset’s board of directors was secretly negotiating to sell the company at a price per share significantly higher than the then-current price of Pharmasset stock. This information was confidential and nonpublic and was discussed for the sole purpose of providing Board Member with legal, tax, and financial advice.

4. Shortly after the November 8, 2011 Meeting ended, in breach of their respective fiduciary or other duties of trust or confidence owed to Board Member, Spallina, Rosen, and Tescher purchased Pharmasset securities based on the material, nonpublic information regarding the sale of Pharmasset that they learned at the meeting.

5. In addition, Spallina also tipped this information to two close friends – Palermo, a securities industry professional employed by a registered broker-dealer (“Brokerage Firm”), and Markowitz, an experienced securities trader.

6. Thereafter, both Palermo and Markowitz purchased Pharmasset securities based on material, nonpublic information regarding the acquisition of Pharmasset.

7. On November 21, 2011, following the public announcement that Gilead was acquiring Pharmasset, the price of Pharmasset stock rose to \$134.14, an increase of \$61.47, or 84.6%, from its closing price on Friday, November 18, 2011, the previous trading day.

8. Within hours after the announcement on November 21, 2011, Spallina, Palermo, Markowitz, Rosen, and Tescher liquidated their respective positions in Pharmasset securities, and, as a result: (a) Spallina realized illegal profits of approximately \$39,156; (b) Palermo realized illegal profits of approximately \$124,528; (c) Rosen realized illegal profits of approximately \$27,634; (d) Markowitz realized illegal profits of approximately \$32,931; and (e) Tescher realized illegal profits of approximately \$9,937.

9. By knowingly or recklessly engaging in the conduct described in this Complaint, Spallina, Palermo, Markowitz, Rosen, and Tescher violated, and unless enjoined will continue to violate, Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 & 240.14e-3].

JURISDICTION AND VENUE

10. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1] to permanently enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and to obtain disgorgement, prejudgment interest and civil money penalties, and such other and further relief as the Court may deem just and appropriate.

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

12. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within the District of New Jersey, and were effected, directly or indirectly, by making use of the means or instruments or instrumentalities of transportation or communication in interstate commerce, or of the mails, or the facilities of a national securities exchange. In particular, certain securities transactions alleged herein were matched or trade reported via NASDAQ servers located in Carteret, New Jersey.

DEFENDANTS

13. **Robert L. Spallina**, age 50, resides in Parkland, Florida. Spallina and Tescher had practiced law as principals in the law firm of Tescher & Spallina, P.A., in Boca Raton, Florida, but in approximately July 2015 Spallina became ineligible to practice law. Spallina's law practice was focused on advising clients on tax and estate planning matters. During the relevant time period, Spallina and Tescher provided legal advice to Board Member on tax and estate planning matters.

14. **Thomas J. Palermo**, age 48, resides in Parkland, Florida. From approximately August 2010 until August 2015, Palermo worked as a registered representative in a branch office of Brokerage Firm in Coral Springs, Florida and held the title of Senior Vice President and Financial Advisor. Prior to August 2015, Palermo had worked in the securities industry for approximately 20 years.

15. **Brian H. Markowitz**, age 56, resides in Pompano Beach, Florida. Markowitz is an active securities trader. During the relevant time period, Markowitz and Spallina were next-door neighbors, and Markowitz was one of Spallina's clients.

16. **Steven G. Rosen**, age 65, resides in Coral Springs, Florida. Rosen is a certified public accountant (CPA) and is employed by an accounting firm based in Plantation, Florida, where he provides tax and estate planning services to clients. During the relevant time period, Board Member was a client of Rosen's accounting firm and Rosen was involved in the preparation of Board Member's annual tax returns.

17. **Donald R. Tescher**, age 70, resides in Delray Beach, Florida. Tescher is an attorney admitted to practice law in Florida and is a principal in the law firm of Tescher & Spallina, P.A., in Boca Raton, Florida, the firm where Spallina had practiced until July 2015.

RELATED PERSONS AND ENTITIES

18. **Pharmasset** was a publicly-traded clinical-stage pharmaceutical company based in Princeton, New Jersey, with a focus on the development of oral therapeutics for the treatment of the hepatitis C virus. Before it was acquired by Gilead, Pharmasset's stock was traded on the Nasdaq Stock Market under the ticker symbol "VRUS."

19. **Tescher & Spallina, P.A.** is a law firm based in Boca Raton, Florida specializing in advising high net worth individuals, families, and businesses on wealth transfer planning, income tax planning, charitable and exempt organization planning, and related trust and estate matters. During the relevant time period, Tescher and Spallina were the two principals of the firm, and Board Member was a client of the firm.

20. **Board Member**, prior to Pharmasset's acquisition by Gilead, was a member of Pharmasset's board of directors.

21. **Brokerage Firm** is a New York-based broker-dealer and investment adviser registered with the Commission with branch offices throughout the United States, including one in Coral Springs, Florida, where Palermo worked during the relevant time period.

FACTS

The Sale of Pharmasset

22. On September 2, 2011, Gilead made an initial offer to acquire Pharmasset for \$100 per share in cash. Following the initial offer, the parties engaged in discussions relating to a possible sale and, on October 7, 2011, Gilead increased its offer to acquire Pharmasset to \$125 per share.

23. After receiving the \$125 per share offer from Gilead, the Pharmasset board of directors determined, at an October 11, 2011 meeting, that the company should contact other potential buyers and conduct an auction process, or “market check,” designed to lead to a sale of the company at the highest price.

24. On October 12, 2011, Pharmasset informed Gilead that it would conduct a confidential auction process in which pharmaceutical companies, in addition to Gilead, would be invited to analyze Pharmasset’s confidential information and submit proposals to acquire it.

25. In response to inquiries from Pharmasset’s investment bankers, several pharmaceutical companies, in addition to Gilead, expressed an interest in a possible acquisition of Pharmasset. During October and November 2011, the companies participating in the auction process conducted due diligence on Pharmasset.

26. In connection with the auction process, Pharmasset and its investment bankers set November 17, 2011 as the “bid date,” or deadline, for prospective buyers to submit offers to acquire the company.

27. On November 17, 2011, Gilead increased its offer to acquire Pharmasset to \$135 per share.

28. By November 17, 2011, all potential buyers participating in the auction process, other than Gilead, had informed Pharmasset that they were no longer interested in pursuing an acquisition of Pharmasset.

29. On Friday, November 18, 2011, Pharmasset's board of directors, certain executives based in the company's Princeton, New Jersey headquarters, and the company's financial and legal advisers had a conference call to consider Gilead's increased offer of \$135 per share.

30. Over the weekend of November 19 and 20, 2011, Pharmasset's management informed Gilead that Pharmasset would agree to an acquisition at a purchase price of \$137 per share.

31. At approximately 7:00 a.m. on Monday, November 21, 2011, Gilead and Pharmasset issued a press release announcing their agreement and the forthcoming commencement of a cash tender offer to acquire all outstanding shares of Pharmasset for \$137 per share. The purchase price reflected a premium of approximately 89% over the price at which Pharmasset stock had traded on Friday, November 18, 2011, the previous trading day. In response to this announcement, the price of Pharmasset stock rose \$61.47, or 84.6%, to close at \$134.14 on November 21, 2011, up from its \$72.67 closing price on Friday, November 18, 2011.

**Spallina, Tescher, and Rosen Obtained Material,
Nonpublic Information Regarding the Sale of
Pharmasset During the November 8, 2011 Meeting**

32. On November 8, 2011, Board Member (a member of the board of directors of Pharmasset) met with several of his advisers to receive legal, tax, estate planning, and financial

advice. The advisers present at the meeting, which took place at the Board Member's office, included Spallina, Tescher, Rosen, a second accountant from Rosen's accounting firm, and Board Member's financial adviser.

33. For a number of years prior to this meeting, Tescher and Spallina had served as Board Member's estate planning lawyers, while Rosen and others from his accounting firm had provided Board Member with tax and accounting services.

34. During the November 8, 2011 Meeting, Board Member, Spallina, Techer, Rosen and the other attendees discussed, among other things, Board Member's significant holdings of Pharmasset securities and that Pharmasset was engaged in advanced negotiations involving a sale of the company and that a sale appeared imminent. The group also discussed that Pharmasset would likely be sold at a price per share that was higher than the price at which the company's stock was then trading and that Board Member was likely to realize significant gains on his holdings of Pharmasset securities upon the completion of the sale transaction.

35. The November 8, 2011 Meeting, which lasted for about one hour, ended at approximately 11:00 a.m. Within hours of the meeting, Spallina, Tescher, and Rosen purchased Pharmasset securities on the basis of material, nonpublic information regarding the sale of Pharmasset.

**Rosen Purchased Pharmasset Securities
on the Basis of Material, Nonpublic Information**

36. Less than one hour after the meeting, at approximately 11:26 a.m., Rosen purchased five Pharmasset call options with a strike price of \$80 and an expiration date of December 2011 at an average price of approximately \$1.95 in a brokerage account held by Rosen in the name of an entity called Steven G. Rosen CPA, P.A.

37. An option contract gives the purchaser the option to buy or sell 100 shares of the underlying stock. A “call option” gives the purchaser the right, but not the obligation, to purchase a security at a specified price, the “strike price,” prior to the option’s expiration date. A buyer of a call option anticipates that the price of the underlying security will increase. An “out-of-the-money” call option has a strike price that is higher than the current market price of the underlying stock and has no value at expiration unless the price of the underlying stock has risen higher than the strike price as of the expiration date.

38. On November 8, 2011, at approximately 12:02 p.m., Rosen purchased 200 shares of Pharmasset stock in an IRA account in his name at prices between approximately \$68.63 and \$68.65 per share. That same day, at approximately 1:45 p.m., Rosen sold 200 shares of Pharmasset stock at approximately \$70.15 per share in the same account.

39. On November 14, 2011, at approximately 9:35 a.m., Rosen purchased 200 shares of Pharmasset stock in an IRA account in his name at a price of approximately \$66.34 per share. The next day, Rosen sold 200 shares of Pharmasset stock in the same account at a price of approximately \$70.72 per share.

40. Rosen profited by \$1,136 on his trades in Pharmasset stock between November 8, 2011 and November 15, 2011.

41. Rosen’s trades in Pharmasset stock and call options between November 8, 2011 and November 15, 2011 were made while he was in possession of, and on the basis of, material, nonpublic information regarding the sale of Pharmasset that he obtained during the November 8, 2011 Meeting.

**Tescher Purchased Pharmasset Securities
on the Basis of Material, Nonpublic Information**

42. Less than one hour after the end of the November 8, 2011 Meeting, at approximately 11:40 a.m., Tescher purchased 150 shares of Pharmasset stock in an IRA account in his name at a price of approximately \$67.78 per share.

43. Tescher's November 8, 2011 purchase of 150 shares of Pharmasset stock was made while he was in possession of, and on the basis of, material, nonpublic information regarding the sale of Pharmasset that he obtained during the November 8, 2011 Meeting.

**Spallina Purchased Pharmasset Securities
on the Basis of Material, Nonpublic Information**

44. A few hours after the November 8, 2011 Meeting ended, at approximately 1:51 p.m., Spallina purchased 250 shares of Pharmasset stock at a price of approximately \$70.64 per share in a Roth IRA account in his name.

45. A few minutes later, at approximately 1:54 p.m. on November 8, 2011, Spallina purchased an additional 100 shares of Pharmasset stock at a price of approximately \$70.40 per share in a brokerage account he holds jointly with his wife.

46. The next day, on November 9, 2011 at approximately 3:55 p.m., Spallina purchased an additional 250 shares of Pharmasset stock at a price of approximately \$66.52 per share in a Roth IRA account in his wife's name.

47. Spallina's November 8, 2011 and November 9, 2011 purchases of Pharmasset stock were made while he was in possession of, and on the basis of, material, nonpublic information regarding the sale of Pharmasset that he obtained during the November 8, 2011 Meeting.

Spallina Tipped Palermo Regarding the Sale of Pharmasset

48. In or around November 2011, Palermo and Spallina were close friends. They lived in the same community, socialized together frequently, and vacationed together with their wives. They were also members of the same golf club and played golf together on a regular basis. Palermo and Spallina also discussed stocks and investing on a regular basis and exchanged investment ideas with each other.

49. On November 8, 2011, at approximately 11:09 a.m., only a few minutes after the November 8, 2011 Meeting ended, Spallina called Palermo who was at work at Brokerage Firm. During this call, Spallina told Palermo that he had been in a meeting with a client who is on the board of directors of Pharmasset and had learned that the company was very likely to be sold at a price significantly higher than the price at which the company's stock was trading. Spallina also told Palermo that the ticker symbol for Pharmasset was "VRUS."

50. A few minutes after Spallina called Palermo, at approximately 11:14 a.m., Palermo purchased 750 shares of Pharmasset stock at a price of approximately \$68.12 per share in his IRA account.

51. At approximately 11:37 a.m. on November 8, 2011, Palermo purchased 10 Pharmasset call options with a strike price of \$90 and an expiration date of February 2012 at an average price of approximately \$3.00 in an individual brokerage account in his wife's name.

52. At approximately 12:02 p.m. on November 8, 2011, Palermo purchased an additional 500 shares of Pharmasset stock at a price of approximately \$68.65 per share in a 401(k) account in his wife's name.

53. Palermo's November 8, 2011 purchases of Pharmasset stock and call options were made while he was in possession of, and on the basis of, material, nonpublic information regarding the sale of Pharmasset provided to him by Spallina.

Spallina Tipped Markowitz About the Pharmasset Sale

54. In or around November 2011, Markowitz and Spallina were close friends, next-door neighbors, and members of the same golf club. Spallina was also Markowitz's estate planning attorney. Spallina and Markowitz frequently socialized together, vacationed together, and played golf together. Markowitz and Spallina also discussed stocks and investing on a regular basis and exchanged investment ideas with each other.

55. On the evening of November 8, 2011, Spallina walked next door to Markowitz's house. During this visit, Spallina told Markowitz that earlier in the day he had been in a meeting with a client who is on the board of directors of Pharmasset and had learned that Pharmasset was very likely to be sold at a price significantly above its stock's then-current trading price.

56. The next morning, on November 9, 2011 at approximately 8:30 a.m., Spallina called Markowitz. Less than an hour and 15 minutes later, at approximately 9:41 a.m. on November 9, 2011, Markowitz purchased 400 shares of Pharmasset stock at prices between approximately \$67.52 and \$67.55 per share in his IRA account.

57. At approximately 9:55 a.m., Markowitz purchased five Pharmasset call options with a strike price of \$75 and an expiration date of December 2011 at an average price of approximately \$2.65 in a brokerage account held in the name of an entity called Coopster Investments LLLP.

58. At approximately 2:12 p.m. on November 9, 2011, Markowitz purchased 400 shares of Pharmasset stock at prices between approximately \$66.28 and \$66.36 per share in his

Coopster Investments LLLP brokerage account. Later that day, at approximately 3:37 p.m., Markowitz sold 400 shares of Pharmasset stock at prices between approximately \$66.57 and \$66.56 per share in the same account.

59. On November 10, 2011, at approximately 9:50 a.m., Markowitz purchased 300 shares of Pharmasset stock at a price of approximately \$65.97 per share in his Coopster Investments LLLP account. The next day, at approximately 10:09 a.m., he sold 300 shares of Pharmasset stock at a price of approximately \$66.32 per share in the same account.

60. On November 14, 2011, at approximately 9:34 a.m., Markowitz purchased 300 shares of Pharmasset stock at a price of approximately \$66.36 per share in his Coopster Investments LLLP account. At approximately 10:03 a.m. the same day, he sold 300 shares of Pharmasset stock at prices between approximately \$67.06 and \$67.07 per share.

61. On November 15, 2011, at approximately 10:16 a.m., Markowitz purchased 400 shares of Pharmasset stock at prices between approximately \$70.09 and \$70.10 per share in his IRA account. Later that day, at approximately 2:17 p.m., Markowitz sold 400 shares of Pharmasset stock at prices between approximately \$71.26 and \$71.27 in the same account.

62. On November 16, 2011, at approximately 9:32 a.m., Markowitz purchased 400 shares of Pharmasset stock at prices between approximately \$70.17 and \$70.19 in his IRA account. At approximately 9:53 a.m. the same day, he sold 400 shares of Pharmasset stock in the same account at approximately \$70.83 per share.

63. On November 16, 2011, at approximately 10:48 a.m., Markowitz purchased 300 shares of Pharmasset stock in his IRA account at approximately \$70.70 per share. At approximately 1:18 p.m. that same day, he sold 300 shares of Pharmasset stock at prices between approximately \$73.04 and \$73.05 per share in the same account.

64. On November 17, 2011, at approximately 9:54 a.m., Markowitz purchased 300 shares of Pharmasset stock in his IRA account at prices between approximately \$71.43 and \$71.44 per share. That same day, at approximately 10:33 a.m., Markowitz sold 300 shares of Pharmasset stock at prices between approximately \$72.23 and \$72.24 per share in the same account.

65. On November 17, 2011, at approximately 10:55 a.m., Markowitz sold 400 shares of Pharmasset stock in his IRA account at prices between approximately \$73.11 and \$73.13 per share in his IRA account.

66. On November 18, 2011, at approximately 9:36 a.m., Markowitz purchased 300 shares of Pharmasset stock at approximately \$72.13 per share in his IRA account. At approximately 10:29 a.m. that same day, Markowitz sold 300 shares of Pharmasset stock in the same account at approximately \$72.68 per share.

67. Markowitz profited by \$4,376 on his trades in Pharmasset stock between November 9, 2011 and November 18, 2011.

68. Markowitz's trades in Pharmasset stock and call options between November 9, 2011 and November 18, 2011 were made while he was in possession of, and on the basis of, material, nonpublic information regarding the sale of Pharmasset provided to him by Spallina.

Palermo, Spallina, Markowitz, Rosen and Tescher
Sold Their Pharmasset Securities After the Acquisition
of Pharmasset Was Publicly Announced

69. On Monday, November 21, 2011, at approximately 7:00 a.m., Gilead and Pharmasset issued a press release announcing their agreement and the commencement of Gilead's cash tender offer to acquire all outstanding shares of Pharmasset for \$137 per share.

The price reflected a premium of approximately 89% over the closing price of Pharmasset stock on Friday, November 18, 2011.

70. On the morning of November 21, 2011, Palermo sold 750 shares of Pharmasset stock at an average price of \$135.00 per share in an IRA account in his name. He also sold 500 shares of Pharmasset stock at an average price of approximately \$134.65 per share in a 401(k) account in his wife's name. In addition, he sold 10 Pharmasset call options at an average price of \$45.00 in an individual brokerage account in his wife's name. As a result of his illicit trading of Pharmasset stock and options, Palermo reaped a total profit of \$124,528.

71. On the morning of November 21, 2011, Spallina sold 100 shares of Pharmasset stock at a price of approximately \$134.29 per share in a brokerage account he holds jointly with his wife. He also sold 250 shares of Pharmasset stock at prices between approximately \$134.24 and \$134.24 per share in an IRA account in his name. In addition, he sold 250 shares of Pharmasset stock at an average price of approximately \$134.20 per share in an IRA account in his wife's name. As a result of his illegal trading of Pharmasset stock, Spallina reaped a combined profit of \$39,156.

72. On the morning of November 21, 2011, Rosen sold 5 Pharmasset call options at an average price of approximately \$55.00 in a brokerage account held in the name of an entity called Steven G. Rosen CPA, P.A., resulting in profits of \$26,498. Rosen also earned \$1,136 in illegal profits from his trades in Pharmasset stock between November 8, 2011 and November 15, 2011. Including the \$1,136 in illegal profits that he generated trading Pharmasset stock between November 8, 2011 and November 15, 2011, Rosen reaped a total combined profit of \$27,634.

73. On the morning of November 21, 2011, Markowitz sold the 5 Pharmasset call options in his Coopster Investments LLP brokerage account at an average price of \$59.80,

resulting in profits of \$28,555. Including the \$4,376 worth of illegal profits that he generated trading Pharmasset stock between November 9, 2011 and November 18, 2011, Markowitz reaped ill-gotten profits of \$32,931.

74. On the morning of November 21, 2011, Tescher sold 150 shares of Pharmasset stock in an IRA account in his name at an average price of \$134.29 per share, resulting in illegal profits of \$9,937.

75. As a result of their trades in Pharmasset securities on the basis of material, nonpublic information regarding the sale of Pharmasset, the five defendants realized aggregate profits of \$234,186.

Spallina, Rosen, and Tescher Violated the Federal Securities Laws By Trading on the Basis of Information Misappropriated From Board Member

76. The information regarding the sale of Pharmasset that Spallina, Rosen, and Tescher obtained during the November 8, 2011 Meeting was material and nonpublic. A reasonable investor would have viewed that information as important to his or her investment decisions. Spallina, Rosen, and Tescher knew, or were reckless in not knowing, that Board Member was a member of Pharmasset's board of directors and that the information they obtained during the November 8, 2011 Meeting relating to the sale of Pharmasset was material and nonpublic.

77. As Board Member's estate planning attorneys, Spallina and Tescher owed Board Member a fiduciary or other duty of trust or confidence to maintain the confidentiality of the information discussed during the November 8, 2011 Meeting, including information relating to the sale of Pharmasset, and to refrain from misappropriating such information for their own personal profit.

78. As Board Member's accountant, Rosen also owed Board Member a fiduciary or other duty of trust or confidence to maintain the confidentiality of the information discussed during the November 8, 2011 Meeting, including information relating to the sale of Pharmasset, and to refrain from misappropriating such information for his own personal profit.

79. Spallina, Rosen, and Tescher knowingly or recklessly breached their respective duties to Board Member when they misappropriated material, nonpublic information regarding the sale of Pharmasset that they obtained during the November 8, 2011 Meeting by trading Pharmasset securities for their own profit.

80. At the time of each trade by Spallina, Rosen, and Tescher identified in this Complaint, the misappropriated information was confidential, nonpublic, and material.

81. Spallina, Rosen, and Tescher placed the trades identified in this Complaint while in possession of and based on material, nonpublic information.

82. At all times relevant to this Complaint, Spallina, Rosen, and Tescher acted knowingly and/or recklessly.

Spallina Violated the Federal Securities Laws By Tipping Palermo and Markowitz

83. As Board Member's estate planning attorney, Spallina owed Board Member a fiduciary or other duty of trust or confidence to maintain the confidentiality of the information discussed during the November 8, 2011 Meeting, including information relating to the sale of Pharmasset.

84. Spallina knowingly or recklessly breached this duty when he misappropriated material, nonpublic information regarding the sale of Pharmasset by tipping Palermo and Markowitz such information, resulting in illegal trading by Palermo and Markowitz in Pharmasset securities.

85. Spallina had a reasonable expectation that Palermo and Markowitz would trade on the basis of that information or was recklessly indifferent to the same.

86. Spallina tipped material, nonpublic information regarding the sale of Pharmasset to Palermo and Markowitz with the expectation of receiving a benefit.

87. Spallina received a benefit in exchange for tipping material, nonpublic information regarding the sale of Pharmasset to Palermo and Markowitz.

**Palermo and Markowitz Violated the Federal
Securities Laws By Trading on the Basis of
Information Misappropriated From Board Member**

88. The information regarding the sale of Pharmasset that Spallina provided Palermo and Markowitz was material and nonpublic. A reasonable investor would have viewed that information as important to his or her investment decisions. Palermo and Markowitz knew or were reckless in not knowing that the information they received from Spallina was material and nonpublic.

89. Palermo and Markowitz knew or were reckless in not knowing that Spallina supplied them with material, nonpublic information regarding the sale of Pharmasset.

90. Palermo and Markowitz knew or should have known that the information Spallina supplied them had been obtained and transmitted improperly, in breach of a fiduciary duty or duty of trust or confidence.

91. At the time of each trade by Palermo and Markowitz identified in this Complaint, the misappropriated information was confidential, nonpublic, and material.

92. Palermo and Markowitz placed the trades identified in this Complaint, while in possession of and based on material, nonpublic information.

93. At all times relevant to this Complaint, Palermo and Markowitz acted knowingly and/or recklessly.

Palermo, Markowitz, Rosen, and Tescher
Traded, and Spallina Tipped and Also
Traded, in Connection with a Tender Offer

94. By early November 2011, when Defendants purchased Pharmasset securities on the basis of material, nonpublic information, one or more substantial steps had been taken to commence the tender offer for Pharmasset securities.

95. When Defendants traded Pharmasset securities, they were in possession of material, nonpublic information relating to the tender offer for Pharmasset securities and they knew or should have known that the information was nonpublic and had been acquired, directly or indirectly, from the target company and/or its advisers or representatives.

96. When Spallina tipped Palermo and Markowitz with respect to the sale of Pharmasset, Spallina was in possession of material, nonpublic information concerning the tender offer for Pharmasset securities that he knew or had reason to know was nonpublic and that he knew or had reason to know had been acquired directly or indirectly, from the target company and/or its advisers or representatives.

97. When Spallina tipped Palermo and Markowitz with respect to the sale of Pharmasset, he communicated material, nonpublic information relating to the tender offer for Pharmasset securities under circumstances in which it was reasonably foreseeable that this communication was likely to result in a violation of the federal securities laws.

FIRST CLAIM FOR RELIEF

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

98. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 97, inclusive, as if they were fully set forth herein.

99. By engaging in the conduct described above, in or around November 2011, Spallina, Palermo, Markowitz, Rosen, and Tescher, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (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 light of the circumstances under which they were made, not misleading; and/or
- (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

100. By engaging in the foregoing conduct, Spallina, Palermo, Markowitz, Rosen, and Tescher 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 [17 C.F.R. § 240.10b-5], thereunder.

SECOND CLAIM FOR RELIEF

Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder

101. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 100, inclusive, as if they were fully set forth herein.

102. By engaging in the conduct described above, in connection with a tender offer, Spallina, Palermo, Markowitz, Rosen, and Tescher, knowingly or recklessly, engaged in one or more fraudulent, deceptive, or manipulative acts.

103. By reason of the foregoing, Spallina, Rosen, Markowitz, Rosen and Tescher violated, and unless enjoined will continue to violate, 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment:

I.

Permanently restraining and enjoining Spallina, Palermo, Markowitz, Rosen, and Tescher from, directly or indirectly, violating 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], and 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];

II.

Ordering each of Spallina, Palermo, Markowitz, Rosen and Tescher to disgorge his unlawful trading profits derived from their respective activities set forth in this Complaint, together with prejudgment interest thereon;

III.

Ordering each of Spallina, Palermo, Markowitz, Rosen and Tescher to pay a civil penalty up to three times the profits made as a result of their respective activities pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Granting such other and further relief as this Court may deem just, equitable, and necessary.

Respectfully submitted,

BY: s/ Christopher R. Kelly
Scott A. Thompson
Christopher R. Kelly
Paul T. Chryssikos
Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION
Philadelphia Regional Office
One Penn Center
1617 JFK Blvd., Suite 520
Philadelphia, PA 19103
Telephone: (215) 597-3100
Facsimile: (215) 597-2740

Of Counsel:

Joseph G. Sansone
G. Jeffrey Boujoukos
David L. Axelrod

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT L. SPALLINA, et al.

Defendants.

Case No.

**DESIGNATION OF AGENT
FOR SERVICE**

Pursuant to Local Rule 101.1(f), because the Securities and Exchange Commission (the “Commission”) does not have an office in this district, the United States Attorney for the District of New Jersey is hereby designated as eligible as an alternative to the Commission to receive service of all notices or papers in this action. Therefore, service upon the United States or its authorized designee, Leticia Vandehaar, Deputy Chief, Civil Division, United States Attorney’s Office for the District of New Jersey, 970 Broad Street, 7th Floor, Newark, NJ 07102 shall constitute service upon the Commission for purposes of this action.

Respectfully submitted,

BY: s/ Christopher R. Kelly

Scott A. Thompson
Christopher R. Kelly
Paul T. Chryssikos
Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION
Philadelphia Regional Office
One Penn Center
1617 JFK Blvd., Suite 520
Philadelphia, PA 19103
Telephone: (215) 597-3100
Facsimile: (215) 597-2740

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