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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14  
15 SECURITIES AND EXCHANGE COMMISSION,  
16 Plaintiff,  
17 vs.  
18 MATTHEW PANUWAT,  
19 Defendant.

Case No.

**COMPLAINT**

20  
21  
22 Plaintiff Securities and Exchange Commission (the “SEC”) alleges as follows:

23 **SUMMARY OF THE ACTION**

24 1. This is a case of insider trading by Matthew Panuwat, formerly a business  
25 development executive at Medivation Inc. (“Medivation”), a mid-sized oncology-focused  
26 biopharmaceutical company.

27 2. On August 18, 2016, and in the course of Panuwat’s employment at Medivation,  
28 Panuwat received confidential, nonpublic information in an email from Medivation’s Chief

1 Executive Officer (“CEO”) that Medivation would be imminently acquired by pharmaceutical  
2 giant Pfizer, Inc. (“Pfizer”).

3 3. As an employee and agent of Medivation, Panuwat owed Medivation a duty of  
4 trust and confidence, including a duty to refrain from using Medivation’s proprietary information  
5 for his own personal gain.

6 4. Nonetheless, within minutes of receiving this highly confidential news from  
7 Medivation’s CEO, Panuwat misappropriated Medivation’s confidential information by  
8 purchasing—from his work computer—out-of-the-money, short-term stock options in Incyte  
9 Corporation (“Incyte”), another mid-cap oncology-focused biopharmaceutical company whose  
10 value he anticipated would materially increase when the Medivation acquisition announcement  
11 became public. Panuwat did not inform anyone at Medivation about his Incyte trades.

12 5. On August 22, 2016, Medivation publicly announced it would be acquired by  
13 Pfizer in an all-cash tender offer at a significant premium to the price at which Medivation shares  
14 had been trading. Over the course of the trading day, the price of Medivation shares rose  
15 materially by approximately 20%. That same day, the stock price of Incyte rose materially by  
16 approximately 8% on the news of Medivation’s acquisition and the value of Panuwat’s Incyte  
17 stock options roughly doubled. By trading ahead of the announcement, Panuwat obtained illicit  
18 profits of \$107,066.

19 6. By engaging in this conduct, as further described herein, Panuwat violated and,  
20 unless restrained and enjoined by this Court, may continue to violate, Section 10(b) of the  
21 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Exchange Act Rule  
22 10b–5 [17 C.F.R. § 240.10b–5].

23 7. The SEC seeks an order from the Court enjoining Defendant from future violations  
24 of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; requiring him to pay a civil  
25 monetary penalty; barring him from serving as an officer or director of a public company; and  
26 providing for other appropriate relief.

27  
28

**JURISDICTION AND VENUE**

1  
2 8. The SEC brings this action pursuant to Sections 21(d) and 21A of the Exchange  
3 Act [15 U.S.C. §§ 78u(d); 78u-1].

4 9. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange  
5 Act [15 U.S.C. § 78aa] and 28 U.S.C. § 1331.

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

9 11. Venue is proper in this District pursuant to Section 27(a) of the Exchange Act  
10 [15 U.S.C. § 78aa(a)]. Acts, transactions, practices, and courses of business that form the basis for  
11 the violations alleged in this complaint occurred in the Northern District of California.

12 12. Under Civil Local Rule 3-2(d), this civil action should be assigned to the San  
13 Francisco Division, because a substantial part of the events or omissions which give rise to the  
14 claims alleged herein occurred in San Francisco County.

15 **DEFENDANT**

16 13. Defendant Matthew Panuwat, age 44, resides in Walnut Creek, California. From  
17 September 2014 to January 2017, Panuwat worked in business development at Medivation. Prior  
18 to that time, Panuwat held licenses in the securities industry and was registered with the SEC as an  
19 associated person of an investment bank in San Francisco that acted as a broker and dealer in  
20 securities.

21 14. At all relevant times, Panuwat was an expert in the biopharmaceutical industry. He  
22 has undergraduate and graduate biology- and pharmaceutical-related degrees, as well as an MBA  
23 from a top business school. At the time of his Incyte trades, he had spent over fifteen years in the  
24 biopharmaceutical industry, including eight years in the global healthcare investment banking  
25 division of a top investment bank and employment in business and strategic development at  
26 several biopharmaceutical companies. Panuwat had significant knowledge and experience  
27 concerning many aspects of the biopharmaceutical industry, including mergers and acquisitions.  
28 At all relevant times, Panuwat was aware of the nature of and prohibitions on insider trading

1 through his employment at various biopharmaceutical companies and in investment banking.  
2 Panuwat is currently an executive at another publicly-traded biopharmaceutical company.

3 **RELATED ENTITIES**

4 15. Medivation was a mid-cap, oncology-focused biopharmaceutical company  
5 incorporated in Delaware with its principal place of business in San Francisco, California until it  
6 was acquired by Pfizer Inc., a global pharmaceutical company, on September 28, 2016. Before its  
7 2016 acquisition, Medivation's common stock was registered with the Commission pursuant to  
8 Section 12(b) of the Exchange Act and was listed on the Nasdaq Stock Market LLC ("Nasdaq")  
9 under the ticker symbol "MDVN." In connection with its acquisition by Pfizer, Medivation's  
10 stock was delisted from Nasdaq and deregistered with the Commission.

11 16. Incyte is a mid-cap, oncology-focused biopharmaceutical company incorporated in  
12 Delaware with its principal place of business in Wilmington, Delaware. Its common stock is  
13 registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on  
14 Nasdaq under the ticker symbol "INCY."

15 **FACTUAL ALLEGATIONS**

16 **A. Panuwat Heads Business Development for Medivation and Pledges Not to Trade on  
17 Its Confidential Information.**

18 17. In 2016, Panuwat's title at Medivation was Senior Director of Business  
19 Development. In that role, Panuwat was responsible for business development at Medivation and  
20 reported to the company's Chief Financial Officer.

21 18. Panuwat's role at Medivation included finding, evaluating, and pursuing strategic  
22 opportunities to expand Medivation's drug products and development pipeline, primarily through  
23 acquisitions and in-licensing. In that role, Panuwat closely tracked the stock prices, drug products,  
24 and development pipelines of other biopharmaceutical companies, including Incyte, as well as  
25 merger and acquisition activity in the biopharmaceutical industry.

26 19. At Medivation, Panuwat was entrusted with confidential information involving  
27 actual or potential Medivation transactions, including actual or potential acquisitions of or by  
28 Medivation.

1           20. Panuwat agreed, at the outset of his employment with Medivation, that he would  
2 keep information he learned during his employment confidential and not make use of such  
3 information, except for the benefit of Medivation. Panuwat also signed Medivation's insider  
4 trading policy, which prohibited employees from personally profiting from material nonpublic  
5 information concerning Medivation by trading in Medivation securities or the securities of another  
6 publicly traded company. The policy stated, "During the course of your employment...with the  
7 Company, you may receive important information that is not yet publicly disseminated...about the  
8 Company. ... Because of your access to this information, you may be in a position to profit  
9 financially by buying or selling or in some other way dealing in the Company's securities...*or the*  
10 *securities of another publicly traded company*, including all significant collaborators, customers,  
11 partners, suppliers, or competitors of the Company. ... For anyone to use such information to gain  
12 personal benefit...is illegal. ..." (Emphasis added.)

13 **B. Medivation Becomes an Acquisition Target.**

14           21. In April 2016, Medivation engaged investment banks to advise the company in  
15 assessing its strategic options in light of then-recent efforts by a French pharmaceutical company  
16 to acquire Medivation. Panuwat, who himself had years of experience as an investment banker  
17 and had specialized in deals involving the pharmaceutical industry, worked closely with  
18 Medivation's investment bankers, and with other high-level Medivation executives, to explore  
19 Medivation's alternatives, including a possible merger with another company.

20           22. In the course of his work with the investment banks advising Medivation about its  
21 strategic options, Panuwat reviewed presentations authored by the bankers that discussed  
22 Medivation's peer companies in the biopharmaceutical industry, *i.e.*, companies that the  
23 investment banks concluded were comparable to Medivation based on their professional judgment.  
24 In particular, the bankers drew close parallels between Medivation and Incyte, including that both  
25 were valuable, mid-cap, oncology-focused companies with a profitable FDA-approved  
26 (commercial stage) drug on the U.S. market. Panuwat knew that, in 2016, large-cap  
27 pharmaceutical companies were interested in acquiring oncology-focused mid-cap  
28 biopharmaceutical companies with commercial-stage drugs; that there were only a few—including

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