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96 CIV. 5279

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
BIOVAIL CORPORATION INTERNATIONAL, :
:
Plaintiff, :
:
- against - :
:
PARKER QUILLEN, QUILCAP :
CORPORATION and LITTLE :
WING, L.P., :
:
Defendants. :
----- X

COMPLAINT

JURY TRIAL DEMANDED

FILED
U.S. DISTRICT COURT

Plaintiff, Biovail Corporation International
("Biovail"), by its undersigned attorneys, as and for its
complaint against the defendants, alleges, upon knowledge as to
itself and otherwise upon information and belief, which
information and belief is based upon conversations with Biovail
stockholders and investment professionals, and upon review of
public trading and other records concerning Biovail stock, the
following:

THE PARTIES

1. Biovail is a corporation established pursuant to the laws of Canada with its principal office located in Mississauga, Canada. Biovail is an international pharmaceutical development company, engaged in the formulation, clinical evaluation, registration and manufacture of drug products utilizing advanced drug delivery technologies. Shares of Biovail common stock (symbol: BVF) are listed and traded on the American Stock Exchange (the "AMEX") and on the Toronto Stock Exchange.

2. Defendant Parker Quillen ("Quillen") at all relevant times was a resident of New York, New York, and the owner and principal officer of defendant Quilcap Corporation ("Quilcorp").

3. Defendant Quilcorp was at all relevant times a fund manager located in New York, New York, which managed and was the general partner of defendant Little Wing, L.P. ("LWLP").

4. Defendant LWLP was at all relevant times an investment fund located in New York, New York which invested in securities and in which defendant Quillen and/or members of his family invested their personal funds.

5. At various times during 1996, LWLP and other entities affiliated with defendants have held and currently hold uncovered short positions in Biovail stock. LWLP's trading in Biovail stock was undertaken at the instance and direction of Quillen and Quilcorp.

JURISDICTION AND VENUE

6. This court has jurisdiction of this action pursuant to Section 27 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") 15 U.S.C. § 78aa, and 28 U.S.C. §§ 1331 and 1337, insofar as the action is one arising under an Act of Congress regulating commerce, and pursuant to 28 U.S.C. § 1332, in that plaintiff is a citizen of Canada and defendants are citizens of the United States, and the matter in controversy exceeds the value of \$50,000, exclusive of interest and costs.

7. The claims asserted herein arise, inter alia, under and pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. §§ 78j(b), and the rules and regulations promulgated thereunder, including Securities and Exchange Commission Rule 10b-5, 17 C.F.R. 240.10-5, and under common law.

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b) and (c). The acts and statements complained of, including the preparation, issuance and/or oral communication, and dissemination of materially false and misleading information to the investing public was initiated and occurred in substantial part in this District.

9. In connection with the wrongful acts and statements alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the mails and interstate telephonic communications, and the facilities of the AMEX, a national securities exchange.

BACKGROUND: RECENT EVENTS IN BIOVAIL'S BUSINESS

10. In the Fall of 1995, Biovail received approval from the United States Food and Drug Administration ("FDA") to market Tiazac, a once daily formulation of diltiazem HCL, one of a family of drugs, known as calcium channel blockers, used to treat hypertension. The total United States market for once daily diltiazem products was estimated at roughly \$1 billion in 1995, representing just under one-third of the estimated \$3.2 billion United States market for calcium channel blockers. The FDA approval of Tiazac was widely recognized by analysts and others in the pharmaceutical industry as a significant positive development for Biovail. In addition, the attention which Biovail received as a result of the FDA's Tiazac approval created increased market awareness of Biovail and its other products, including those in its product development pipeline.

11. In September 1995, Biovail entered into agreements with Forest Laboratories, Inc. ("Forest") for the marketing and distribution of Tiazac in the United States. Pursuant to these agreements, Biovail was to receive substantial royalty payments from Forest on U.S. sales of Tiazac over a period of 16 years, and was to be the exclusive manufacturer of Tiazac for Forest. The terms of this marketing and distribution arrangement were likewise recognized by analysts and others in the pharmaceutical industry as highly beneficial to Biovail.

12. Concurrently with its entry into the marketing and distribution arrangement, Biovail agreed with Forest that Forest would make a cash tender offer for approximately 20% of Biovail's

outstanding stock, at a substantial premium to the market. Such tender offer was implemented in October 1995, at a price (adjusted for a subsequent 3-for-1 stock split which was effected in January 1996) of \$14.00 per Biovail common share. The Forest tender offer, which was oversubscribed and had to be prorated among tendering stockholders, closed in November 1995.

13. Following the FDA approval of Tiazac and the announcement of Biovail's marketing and distribution arrangement with Forest, the price of Biovail stock climbed steadily through the balance of 1995. In mid-November 1995, Biovail's Board of Directors approved a 2-for-1 stock split, to be voted on by Biovail's stockholders at a special meeting to be held on January 2, 1996. By December 4, 1995, the price of Biovail's stock had risen so much further that the Biovail Board of Directors voted to alter the proposed stock split from 2-for-1 to 3-for-1. The 3-for-1 stock split was approved by the stockholders on January 2, 1996 and completed later that month.

14. In late February 1996, Biovail, together with its marketing partner, Forest, began the successful commercial launch of Tiazac in the United States market.

15. In mid-April 1996, Biovail reported record quarterly results for the first quarter of 1996. As compared to 1995, revenues, operating income, net income and earnings-per-share all increased markedly. These increases were in significant part the result of strong early sales of Tiazac. Biovail also announced in April 1996 that Tiazac had been approved for sale in the United Kingdom.

16. There are approximately 25 million Biovail common shares currently outstanding. At all relevant times, the market for Biovail stock was an efficient market for the following reasons, among others:

(a) Biovail stock met the requirements for listing, and was listed and actively traded, on the AMEX, a highly efficient and automated market.

(b) As a regulated issuer, Biovail filed periodic public reports with the SEC and the AMEX.

(c) Biovail was followed by analysts employed by firms specializing in pharmaceutical industry and major brokerage firms who prepared written oral reports which were then disseminated to the sales and/or certain customers of their respective firms and which, in turn, were then available to the public and entered the public marketplace.

(d) Biovail received substantial coverage in the print and electronic news media, with the result that information about Biovail was rapidly and widely disseminated to the investing public.

BACKGROUND: RECENT TRADING IN BIOVAIL STOCK

17. Biovail stock opened 1996 trading at prices in the \$27 - \$29 range. One year earlier, adjusted for Biovail's three-for-one stock split, Biovail stock had traded for between \$2 and \$3 per share. The rise in the price of Biovail stock was attributable in substantial part to Biovail's successful development of Tiazac and its aggressive program to impleme

marketing of Tiazac in the United States, and to increased market awareness of Biovail's product pipeline.

18. A substantial uncovered short position in Biovail stock has developed since the beginning of 1996. Between December 1995 and January 1996, the short interest in Biovail stock increased from approximately 250,000 shares (adjusted for the subsequent 3-for-1 stock split) to over 750,000 shares.

19. Biovail stock experienced downward pressure in January 1996, trading as low as \$21.75 on January 23, 1996. This downward pressure coincided with the dissemination, on January 22, 1996, of a negative "Fax Alert" research report on Biovail by Sturza's Institutional Research, Inc. (the "Sturza Report"), which predicted that Biovail shares "will trade below \$20 in 1996." Sturza's Institutional Research, Inc. publishes a newsletter that is principally directed toward and read by short-sellers.

20. The appearance of the Sturza Report also coincided with a reduction in the overall short interest in Biovail stock. Between January 1996 and February 1996, the short interest in Biovail decreased by over a quarter million shares, receding to approximately 500,000 shares. Short sellers who acquired their Biovail positions in the period December 1995-January 1996 were able to cover at a profit by purchasing Biovail stock in the depressed market which followed the Sturza Report.

21. Several days after the issuance of the Sturza Report, Biovail's stock began once again to rise steadily in value, and by late February was trading in the \$28 -\$30 range.

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\$20's through

In mid-May 1996,
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Biovail stock continued to trade in the upper

March, April and the first half of May 1996.
the stock broke through the \$30 level, therea
month's end and through most of June 1996 in t
\$30's.

22. After remaining at the roughly
share level into April 1996, between mid-April
1996, the short interest in Biovail once again
dramatically. By mid-May 1996 the short posit
more than 1,250,000 shares. This jump put Bio
AMEX stocks with the largest month-to-month po
short interest, both in terms of the total sha
uncovered short interest and in terms of perce
short interest.

23. Because of the strength of Biov
the first six months of 1996 (ultimately reach
of \$40.00 per share on May 22, 1996), as a gen
the notable exception of the period in January
Sturza Report), those persons who made short s
stock and were obliged to cover by purchases o
the marketplace incurred losses on their posit
Alternatively, short sellers who sought to avo
engaged in trading for the purpose of extendin
their short positions to later settlement date
postponing the date on which they would be obl
Biovail shares to cover their short positions.

these traders held open the possibility of profiting, or at least minimizing their losses, if the price of Biovail stock declined.

24. Beginning in late June 1996, the price of Biovail stock declined steadily. On July 12, 1996, notwithstanding the successful launch of Tiazac in the United States and other positive business developments, Biovail stock closed at \$25.375 per share -- below the prices that prevailed in January 1996.

25. The recently depressed price of Biovail stock is attributable in substantial part to the unlawful acts of defendants and others acting in concert with them, as more particularly set forth below. But for the defendants' wrongful conduct, and the wrongful conduct of those acting in concert with them, Biovail stock would have been trading, and would continue to trade, at significantly higher prices per share, and Biovail stock would have shown significantly less price volatility.

DEFENDANTS' MISCONDUCT

26. Commencing in or about May 1996, defendants Quillen and Quilcorp began contacting individual Biovail stockholders, stockbrokers and other investment professionals who follow Biovail stock and disseminating to them false information adverse to Biovail. Defendants Quillen and Quilcorp have made materially false and misleading statements with regard to, among other things: (i) Biovail's overall business outlook; (ii) the regulatory approvals, current sales and future prospects for Tiazac and other Biovail products; and (iii) the likely performance of Biovail stock.

27. Defendants Quillen and Quilcorp acted with the knowledge and approval of defendant LWLP, on behalf of whom (among others) the false and misleading statements were made. By reason of LWLP's knowledge and approval, and by reason of LWLP's intention and expectation to benefit thereby, the statements made by Quillen and Quilcorp are attributed to and constitute as well the statements of LWLP. All defendants have acted with knowledge of the false and misleading nature of the statements and/or with reckless disregard for their truth or falsity.

28. Defendants' intent when disseminating this false information was to artificially drive down the price of Biovail stock, so as to relieve pressure on and eliminate losses for persons -- including defendants and persons with whom they were affiliated -- holding uncovered short positions in Biovail stock. Among other things, using false information, defendants encouraged Biovail stockholders to sell their Biovail shares, with the expectation by defendants that such sales would drive down the price of Biovail stock and allow holders of uncovered short positions to cover by purchasing in a depressed market. In addition, defendants intended to, and by their false disclosures did, generate market rumors adverse to Biovail which would cause other Biovail stockholders to sell and cause potential purchasers of Biovail stock to shy away.

29. Among the false and misleading statements disseminated by defendants as aforesaid are the following:

(a) that Forest was in the process of renegotiating its exclusive licensing agreement to market Tiazac so as to

substantially reduce the payments to be received by Biovail for the pharmaceutical (*In fact, such renegotiation neither occurred nor was suggested.*);

(b) that if Forest failed to obtain meaningful concessions from Biovail with respect to the price of Tiazac, Forest would terminate its Tiazac license and shift its newly expanded marketing force to another, non-Biovail product, which product Forest already was taking steps to acquire (*Building upon the false statement regarding supposed renegotiation of the Tiazac license, this statement, too, was without basis in fact*);

(c) that formal Canadian regulatory approval to market Tiazac in Canada had been withheld because Canadian regulators had found the test data submitted by Biovail -- which was the same as had been submitted to the FDA -- was falsified or otherwise irregular, thus impliedly questioning the validity of the FDA approval to market Tiazac in the United States (*The statement was a complete fabrication, without any basis in fact.*);

(d) that, contrary to Biovail's claim, Tiazac had not been approved for sale in the United Kingdom (*Again, the statement was a complete fabrication; the Medicines Control Agency, the United Kingdom equivalent of the FDA, had approved Tiazac for sale in the United Kingdom.*);

(e) that, based upon a supposed launch in the first week of January 1996, Tiazac's sales and market share were significantly lower than those which another new once daily

diltiazem product had achieved during its introduction the year before, thus indicating that Tiazac sales would not approach their projected first, second and third year levels (In fact, as both Forest and Biovail had publicly announced, Tiazac's product launch occurred on February 22, 1996, so that the purported "comparison" between Tiazac's introductory sales results with those of the competing diltiazem product included seven weeks in which Tiazac was not sold and gave a purposely false and understated picture of Tiazac's sales, which were in fact proceeding in accordance with forecasts.);

(f) during the weeks preceding their eventual purchase, that a group of investment funds led by Soros Fund Management ("Soros") was 100% certain not to purchase a substantial block of Biovail stock (In fact, the funds acquired a 20% interest in Biovail, and the professed certainty that they would not do so was a fabrication.);

(g) after the Soros-led funds had purchased their 20% position in Biovail stock, that the Soros fund had "pre-sold" at higher prices much of the Biovail stock it had purchased, and hence no longer owned a substantial block of Biovail stock (The statement was completely false; the funds continue to hold the Biovail shares they acquired.);

(h) that successive directors of research at Biovail had left because of management turmoil within the company, and that one of the departures was precipitated by the departing employee's alleged refusal to perform illegal acts

(The statements were untrue; both of the allegedly disaffected persons remain valued consultants to Biovail.)

30. At the time they made the aforesaid false and misleading statements to others, defendants themselves held or were affiliated with persons, including but not limited to LWLP, who held uncovered short positions in Biovail stock.

31. The statements made by defendants were intended to be repeated by each direct recipient of the statements, and, as defendants expected, were, in fact, widely disseminated throughout the marketplace for Biovail stock. At present, the market is saturated with such false and misleading statements. Investors in Biovail therefore regularly rely on defendants' false and misleading statements when making their investment decisions.

32. Defendants made the foregoing false and misleading statements with the intent to deceive others and to manipulate the market in Biovail stock. Specifically, defendants intended to drive down the price of Biovail stock, and to obtain profits from such wrongful conduct. Moreover, defendants failed to disclose their wrongful intent to those persons to whom they made the false and misleading statements.

IRREPARABLE HARM

33. As a result of the defendants' violations of law, Biovail and its public stockholders have suffered and are continuing to suffer irreparable harm in that, among other things:

(a) defendants and others are disseminating into the market false and misleading information in an attempt to drive down the price of Biovail stock;

(b) stockholders and others who have been the direct recipients of such false information, and persons whose investment decisions have been or are based upon the presumed integrity of the market for Biovail stock, have made and are making investment decisions with respect to Biovail on the basis of false and misleading information provided by defendants and/or on the basis of a market that has been and is being manipulated by defendants;

(c) Biovail stockholders have been and continue to be induced to sell their shares for less than actual value;

(d) Biovail's ability to use its stock to effect acquisitions and other transactions has been compromised because of the artificially depressed price at which the stock trades and because of the volatility in the stock caused by defendants' misconduct; and

(e) Biovail's reputation with potential commercial partners and within the pharmaceutical and medical communities has been and is being sullied.

34. Biovail and its stockholders are entitled to a market for Biovail stock untainted by such manipulative conduct. Defendants' acts have caused and, unless enjoined, will continue to cause irreparable injury to Biovail and its stockholders, for which they have no adequate remedy at law.

FIRST CLAIM FOR RELIEF

(Section 10(b) of the Exchange Act)

35. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Defendants, acting individually and in concert with others, have pursued a course of conduct in which they knowingly and/or recklessly engaged in acts that operated as a fraud upon plaintiff Biovail, its stockholders, and the market. As set forth hereinabove, defendants and others acting in concert with them have made numerous untrue statements of material fact, and have omitted to state material facts necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading.

37. In particular, defendants and others acting in concert with them made public representations that were misleading with respect to Biovail, its material contracts, and its products. Defendants' failure to disclose their goal of driving down the price of Biovail stock, and their failure to disclose their own trading positions in Biovail stock, also rendered the statements that they and others made materially misleading. Defendants, therefore, have made their statements either with knowledge of the false and misleading nature of those statements and/or with reckless disregard for their truth or falsity.

38. Defendants' false and misleading statements were intended to and did influence the investment decisions of

stockholders, (now) former stockholders and would-be stockholders of Biovail, including persons to whom the statements were made directly and persons who relied upon the integrity of the market, and thereby affected the market price of Biovail stock.

39. By reason of the foregoing, defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

SECOND CLAIM FOR RELIEF

(Tortious Interference with Prospective Economic Advantage)

40. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 34 and 36 through 38 of this Complaint as if fully set forth herein.

41. Defendants have interfered with and are continuing to interfere with the advantageous relationships existing between Biovail and its stockholders, including but not limited to Biovail's institutional stockholders, and have interfered with and are continuing to interfere with the economically advantageous relationships between Biovail and prospective acquisition candidates and marketing partners, by the knowing dissemination of false statements about Biovail and by the downward manipulation of Biovail's stock price.

42. Defendants' have unlawfully interfered in these business relationships for the sole purpose of lowering of the price of Biovail stock and thereby causing harm to Biovail.

43. Defendants' conduct has been and is without privilege and without justification or excuse in law. Defendants' sole and exclusive motive has been to profit

personally, and to create profits for those associated with them, in an unlawful manner.

44. Biovail has already suffered damages in an amount thus far undetermined, but believed to be in excess of \$250 million.

45. Defendants' conduct is continuing and will continue to cause injury to Biovail. Defendants are without adequate resources to compensate Biovail for losses that will be caused by their continuing misconduct.

THIRD CLAIM FOR RELIEF

(Prima Facie Tort)

46. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 34, 36 through 38, and 41 through 43 of the Complaint as if fully set forth herein.

47. Defendants' actions as aforesaid have been undertaken in bad faith with the sole design and intention of harming plaintiff without legal excuse or justification.

48. Biovail has already suffered damages in an amount thus far undetermined, but believed to be in excess of \$250 million, through defendants' knowing dissemination of false statements about Biovail and defendants' downward manipulation of the price of Biovail stock.

49. Defendants' conduct is continuing and will continue to cause injury to Biovail. Defendants are without adequate resources to compensate Biovail for the losses that will be caused by their continuing misconduct.

WHEREFORE, plaintiff seeks judgment as follows:

A. With respect to the First Claim for Relief

(i) declaring that defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by disseminating false and misleading information about Biovail;

(ii) preliminarily and permanently enjoining defendants from continuing with their efforts to drive down the price of Biovail stock through the dissemination of false and misleading statements about Biovail or from otherwise taking any steps to manipulate the market for Biovail stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder;

B. With respect to the Second Claim for Relief

(i) awarding plaintiff damages in an amount not presently known but believed to be in excess of \$250 million;

(ii) preliminarily and permanently enjoining defendants from further tortious interference, through the dissemination of false and misleading information about Biovail and otherwise, with Biovail's present and prospective business relationships;

C. With respect to the Third Claim for Relief

damages in an amount not

excess of \$250 million;

permanently enjoining

unjustified and intentional

(i) awarding plaintiff

presently known but believed to be in

(ii) preliminarily and

defendants from continuing with their

dissemination of false information about Biovail and its products and their illegal downward manipulation of the price of Biovail stock;

D. Awarding plaintiff its costs and disbursements of this action, including attorneys' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 16, 1996

MILBANK, TWEED, HADLEY & McCLOY

By 

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Attorneys for Plaintiff
BIOVAIL CORPORATION INTERNATIONAL

JURY TRIAL DEMAND

Plaintiff demands a jury trial of all issues triable of right by a jury in the above-captioned case.

Dated: New York, New York
July 16, 1996

MILBANK, TWEED, HADLEY & McCLOY

By 

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