

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X  
:  
UNITED STATES OF AMERICA :  
:  
- v. - :  
:  
THOMAS C. DAVIS, :  
:  
Defendant. :  
:  
- - - - - X

SEALED INFORMATION

16 Cr. \_\_\_

**16 CRIM 338**

COUNT ONE

(Conspiracy to Commit Securities Fraud)

The United States Attorney charges:

Relevant Entities and Individuals

1. At all times relevant to this Information, Dean Foods Company ("Dean Foods" or the "Company") was one of the leading dairy companies in the United States with headquarters in Dallas, Texas. At all times relevant to this Information, Dean Foods was a public company whose stock traded on the New York Stock Exchange ("NYSE") under the ticker symbol "DF." Dean Foods' written policies prohibited the unauthorized disclosure of Dean Foods' confidential information, including material non-public information, which specifically included earnings information, business plans and forecasts, long-range strategic plans, and information related to pending litigation involving Dean Foods.

2. At all times relevant to this Information, THOMAS

C. DAVIS, the defendant, was a member of the Board of Directors of Dean Foods (the "Board"), and from on or about May 1, 2013 until on or about August 7, 2015, DAVIS served as the Non-Executive Chairman of the Board. In his capacity as a member of the Board, DAVIS regularly received confidential information about Dean Foods' financial performance and results, contemplated and actual corporate transactions, and other significant corporate and strategic developments prior to Dean Foods' public announcements of such information (the "Inside Information"). As a director of Dean Foods, DAVIS had a fiduciary duty, among other obligations, to maintain the confidentiality of all of Dean Foods' confidential information, including the Inside Information. At various times, DAVIS reviewed and certified his understanding of his duties of loyalty and confidence to Dean Foods.

3. From at least in or about 2008 until in or about October 2012, WhiteWave-Alpro was a segment of Dean Foods that produced and distributed organic and other branded food and beverage products. On or about August 7, 2012, Dean Foods publicly announced that it intended to execute a spinoff of its WhiteWave-Alpro segment through The WhiteWave Foods Company (the "WhiteWave Spinoff"), a public company which was headquartered in Denver, Colorado ("WhiteWave"). On or about October 31, 2012, WhiteWave formally spun off from Dean Foods and, pursuant

to an Initial Public Offering ("IPO"), traded on the NYSE under the ticker symbol "WWAV."

4. At all times relevant to this Information, Darden Restaurants, Inc. ("Darden") owned and operated an assortment of restaurant brands throughout the United States. Headquartered in Orlando, Florida, Darden was a public company that traded on the NYSE under the ticker symbol "DRI."

5. At all times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-1") was a sports bettor, businessman and investor, and served as the Chief Executive Officer and Chairman of the Board of Directors of a holding company based in Las Vegas, Nevada that managed diversified investment and business ventures, including golf courses, real estate developments, and other investments. CC-1 was also the sole authorized trader for brokerage accounts in the name of his holding company and an offshore entity that CC-1 controlled (the "CC-1 Accounts").

#### The Insider Trading Scheme

6. From at least 2008 through in or about 2014, THOMAS C. DAVIS, the defendant, participated in a scheme in which DAVIS provided material non-public information to CC-1, who used that information to purchase and sell securities, all of which occurred in the CC-1 Accounts.

7. In furtherance of the scheme, THOMAS C. DAVIS,

the defendant, obtained Inside Information through his role as a member of the Dean Foods Board, including information related to Dean Foods' financial outlook and performance, earnings results, and the WhiteWave Spinoff. DAVIS provided Inside Information to CC-1 in violation of (i) fiduciary and other duties of trust and confidence owed by DAVIS to Dean Foods; (ii) expectations of confidentiality held by Dean Foods; (iii) written policies of Dean Foods regarding the use and safekeeping of confidential business information; and (iv) agreements between Dean Foods and DAVIS to maintain information in confidence.

8. In order to evade detection by law enforcement authorities, CC-1 provided THOMAS C. DAVIS with a prepaid cellular telephone for DAVIS to use when disclosing Inside Information to CC-1. CC-1 further instructed DAVIS to use code words when discussing Inside Information with CC-1. For example, CC-1 told DAVIS to use the phrase "Dallas Cowboys" to refer to Dean Foods.

9. CC-1, knowing that THOMAS C. DAVIS, the defendant, had disclosed the Inside Information to him in violation of duties of trust and confidence, used the Inside Information to execute profitable trades in Dean Foods stock, which earned CC-1 illegal profits.

10. In addition, THOMAS C. DAVIS, the defendant, received material non-public information about Darden (the

"Darden Inside Information") from an investment firm in New York ("Investment Firm A") which had solicited DAVIS to become an investor in, or director of, Darden. DAVIS provided the Darden Inside Information to CC-1 in violation of (i) an agreement of confidentiality between DAVIS and Investment Firm A, and (ii) fiduciary and other duties of loyalty and confidence owed by DAVIS to Investment Firm A.

11. CC-1, knowing that THOMAS C. DAVIS, the defendant, had disclosed the Darden Inside Information to him in violation of a duty of confidentiality, used the Darden Inside Information to execute profitable trades in Darden stock that earned CC-1 illegal profits of nearly \$1 million.

12. In exchange for providing material non-public information about Dean Foods and Darden to CC-1, which CC-1 used to make profitable securities trades, THOMAS C. DAVIS, the defendant, received significant benefits from CC-1, including business opportunities, investment capital, and approximately \$1 million in loans that were, in large measure, never repaid by DAVIS.

#### Statutory Allegations

13. From at least in or about 2008 through in or about 2014, in the Southern District of New York and elsewhere, THOMAS C. DAVIS, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate and

agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

14. It was a part and object of the conspiracy that THOMAS C. DAVIS, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Sections 240.10b5 and 240.10b5-2 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Overt Acts

15. In furtherance of the conspiracy and to effect

the illegal object thereof, THOMAS C. DAVIS, the defendant, and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about April 9, 2010, DAVIS met with CC-1 in Las Vegas, Nevada, at which meeting CC-1 agreed to provide DAVIS with a loan of \$625,000. At the same meeting, DAVIS provided CC-1 with Inside Information about Dean Foods.

b. On or about July 30 and 31, 2012, DAVIS visited CC-1 in San Diego, California and stayed at CC-1's home. During this visit, DAVIS provided CC-1 with Inside Information about Dean Foods.

c. On or about August 7, 2013, DAVIS traveled from Dallas, Texas, to New York, New York, and met with individuals from Investment Firm-A to discuss the Darden Inside Information.

d. On or about August 20, 2013, CC-1 directed Broker-2, who was located in New York, New York, to purchase 535,200 shares of Darden.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Conspiracy to Commit Wire Fraud)

The United States Attorney further charges:

16. The allegations contained in paragraphs 1 through 12 and 15 of this Information are hereby repeated, realleged,

and incorporated by reference, as if fully set forth herein.

17. From at least in or about 2008 through in or about 2014, in the Southern District of New York and elsewhere, THOMAS C. DAVIS, the defendant, and others known and unknown, willfully and knowingly, did combine, conspire, confederate, and agree together and with each other to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

18. It was a part and an object of the conspiracy that THOMAS C. DAVIS, the defendant, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

(Title 18, United States Code, Section 1349.)

**COUNTS THREE THROUGH SIX**

(Securities Fraud)

The United States Attorney further charges:

19. The allegations contained in paragraphs 1 through 12 and 15 are hereby repeated, realleged, and incorporated by



reference, as if fully set forth herein.

20. On or about the dates set forth below, in the Southern District of New York and elsewhere, THOMAS C. DAVIS, the defendant, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, and caused others to use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Sections 240.10b5 and 240.10b5-2, by: (a) employing devices, schemes and artifices to defraud; (b) making, and causing others to make, untrue statements of material fact and omitting to state, and causing others to omit to state, material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging, and causing others to engage, in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, on the basis of material non-public information that DAVIS disclosed to CC-1 in violation of DAVIS's fiduciary and other duties of trust and confidentiality, and in exchange for pecuniary and other benefits that CC-1 provided to DAVIS, DAVIS caused to be

executed the securities transactions listed below:

Count	Date	Transaction
3	May 8 and 9, 2012	Purchase of approximately 1.2 million shares of Dean Foods
4	July 13, 17, 18, 23, 24 and 31, 2012	Purchase of approximately 2.8 million shares of Dean Foods
5	September 17, 18, 19, and October 9 and 11, 2012	Purchase of approximately 815,953 shares of Dean Foods
6	August 20 and 21, 2013	Purchase of approximately 625,000 shares of Darden

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b5 and 240.10b5-2; and Title 18, United States Code, Section 2.)

COUNTS SEVEN THROUGH TEN

(Wire Fraud)

The United States Attorney further charges:

21. The allegations contained in paragraphs 1 through 12 and 15 are hereby repeated, realleged, and incorporated by reference, as if fully set forth herein.

22. On or about the dates set forth below, in the Southern District of New York and elsewhere, THOMAS C. DAVIS, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television

communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, through the use of interstate wires, including interstate and international telephone calls, DAVIS, who owed fiduciary and other duties of trust and confidentiality to Dean Foods and Investment Firm A, participated in a scheme to defraud Dean Foods, its shareholders, and Investment Firm A, by providing material non-public information to CC-1, and caused to be executed the securities transactions listed below:

Count	Date	Transaction
7	May 8 and 9, 2012	Purchase of approximately 1.2 million shares of Dean Foods
8	July 13, 17, 18, 23, 24 and 31, 2012	Purchase of approximately 2.8 million shares of Dean Foods
9	September 17, 18, 19, and October 9 and 11, 2012	Purchase of approximately 815,953 shares of Dean Foods
10	August 20 and 21, 2013	Purchase of approximately 625,000 shares of Darden

(Title 18, United States Code, Sections 1343 and 2.)

**COUNT ELEVEN**

(Obstruction of Justice)

The United States Attorney further charges:

23. The allegations contained in paragraphs 1 through 12 and 15 of this Information are repeated, realleged, and

incorporated by reference, as if fully set forth herein.

24. From in or about May 2014 through in or about June 2014, in the Southern District of New York and elsewhere, THOMAS C. DAVIS, the defendant, unlawfully, willfully and knowingly, corruptly altered, destroyed, mutilated, and concealed a record, document, and other object, and attempted to do so, with the intent to impair the object's availability for use in an official proceeding, and corruptly obstructed, influenced, and impeded an official proceeding, and attempted to do so, to wit, DAVIS made false statements to federal law enforcement agents in connection with a grand jury investigation, in May 2014 and thereafter, attempted to dispose of a prepaid cellphone by throwing it in a body of water, with the intent of impairing the phone's integrity and availability for the grand jury investigation and/or any subsequent criminal proceeding.

(Title 18, United States Code, Sections 1512(c) (1) and (2) and 2.)

COUNT TWELVE  
(Perjury)

The United States Attorney further charges:

25. The allegations contained in paragraphs 1 through 12 and 15 of this Information are repeated, realleged, and incorporated by reference, as though fully set forth herein.

26. On or about May 18, 2015, in the Southern

District of New York, THOMAS C. DAVIS, the defendant, having taken an oath before a competent officer and person, in a case in which a law of the United States authorized an oath to be administered, that he would testify, declare, depose, and certify truly, willfully and contrary to such oath, stated and subscribed to material matters which he did not believe to be true, to wit, DAVIS, during sworn testimony before the United States Securities and Exchange Commission gave false testimony relating to, among other things, his personal finances and net worth; whether he had accurately filed tax returns on behalf of himself and/or the Dallas-based charity he oversaw; and whether he had ever passed inside information to CC-1 or anyone else regarding Dean Foods or any other company, including but not limited to the following false statements:

Q: How did you know - to the extent that you commented on Dean Foods to [CC-1], how did you know whether or not what you were commenting on was public information or information that was not public that you gleaned from your time on the Board of Dean Foods?

(a) A. I never gave him any confidential information. I'm quite certain about that.

\* \* \*

Q. Did you provide [CC-1] with any information regarding the progress of the WhiteWave spinoff in July of 2012?

(b) A. I did not.

\* \* \*

Q. Did you ever understand [CC-1] to be a shareholder of Dean Foods at any time more recent than the early 2000s?

(c) A. Not that I recall, no.

(Title 18, United States Code, Sections 1621 and 2.)

FORFEITURE ALLEGATION

27. As a result of committing one or more of the offenses alleged in Counts One through Ten of this Information, THOMAS C. DAVIS, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including, but not limited to, outstanding loans that were received as part of the scheme and which were never repaid.

Substitute Assets Provision

28. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 981;  
Title 21, United States Code, Section 853; and  
Title 28, United States Code, Section 2461.)

*Preet Bharara*

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PREET BHARARA

United States Attorney