

May 6, 2020

Janice Kaye
Designated Agency Ethics Official
Office of the United States Trade Representative
600 17th Street NW
Washington DC 20508

Re: Ethics Agreement

Dear Ms. Kaye:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest if the United States Senate confirms me for the position of Deputy United States Trade Representative in the Office of the United States Trade Representative.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter. I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I withdrew from the partnership of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. (Firm) on January 22, 2020. Pursuant to Firm policy, the Firm will pay my final partnership share to me in 10 units over the course of 2020. The amount was calculated based on the Firm's 2019 profits. I will not receive a bonus. I will retain an interest in any recovery obtained in *In re Dealer Management Systems Antitrust Litigation*, Case No. 18-cv-864 (N.D. Ill.) and related non-public arbitration proceedings, matters for which I was the originating partner. The terms of my remaining interest are limited to my actual time investment and originating interest in the case while employed at the firm, plus a partial share of any amount in excess of the firm's investment at the time of any future recovery. The maximum fee or percentage I am eligible for was set before I entered the Government. Until I have received these payments, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the Firm, any of the clients involved in these cases, or any of the opposing parties to make any payments related to these cases, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1).

For a period of one year after my withdrawal from the Firm, I also will not participate personally and substantially in any particular matter involving specific parties in which I know the Firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or

represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will divest my interests in the following entities within 90 days of my confirmation: VistaGen Therapeutics and Blackridge Technology. With regard to each of these entities, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets.

I have been advised that the duties of the position of Deputy United States Trade Representative may involve particular matters affecting the financial interests of Sanuwave, Inc. The agency has determined that it is not necessary at this time for me to divest my interests in Sanuwave, Inc. because my recusal from particular matters in which this interest poses a conflict of interest will not substantially limit my ability to perform the essential duties of the position of Deputy United States Trade Representative. Accordingly, for as long as I own this interest, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on Sanuwave, Inc., unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I will remain vigilant in identifying any particular matters affecting the interests of Sanuwave, Inc., including both particular matters involving specific parties and particular matters of general applicability. In particular, I have been advised that I may not participate in: (1) any innovation and intellectual property issue focused on the medical device sector, such as medical device pricing issues and certain patent, trademark, and trade secret matters; and (2) matters involving pharmaceutical companies, the products of which compete directly with Sanuwave, Inc., to treat the same underlying medical conditions.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I will meet in person with you during the first week of my service as a Deputy United States Trade Representative in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13770) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

You have advised me that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely, 

Michael Nemelka