

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ALEJANDRO DUCLAUD GONZALEZ DE
CASTILLA,
IGNACIO GUERRERO PESQUEIRA,
JOSE ANTONIO DUCLAUD GONZALEZ DE
CASTILLA,
PABLO VELAZQUEZ BARANDA,
MARICRUZ LOZANO LEDEZMA,
RODRIGO IGARTUA BARANDA,
ELVIRA BARANDA GARCIA,
ANA IGARTUA BARANDA DE DUCLAUD,
MARTHA BARANDA DE IGARTUA,
ANUSHKA TRUST,
CARIBBEAN LEGAL TRUST,
ANTARES HOLDINGS INVESTMENT LTD., and
BANRISE LTD. BVI,

Defendants.

Civil Action No.
01 Civ. 3999 (RWS)

AMENDED COMPLAINT*

Plaintiff Securities and Exchange Commission ("SEC") alleges:

* The First and Second Claims for Relief, concerning CompUSA, Inc., were dismissed pursuant to the Court's Decision of February 8, 2002. These were the only counts against defendants Jose Antonio Duclaud, Caribbean Legal Trust, Martha Baranda De Igartua and Ana Igartua Baranda De Duclaud. Defendants Pablo Velazquez Baranda, Elvira Baranda Garcia and Maricruz Lozano Ledezma were voluntarily dismissed without prejudice by stipulation with the plaintiff. Defendants Ignacio Guerrero Pesqueira and Banrise Ltd. BVI, have settled.

NATURE OF THE ACTION

1. This is an insider trading case involving persons residing in Mexico who made highly suspicious and very profitable purchases on the New York Stock Exchange of the common stock of CompUSA, Inc. beginning less than three weeks before the January 24, 2000 public announcement that CompUSA had agreed to be acquired by tender offer by Grupo Sanborns, S.A. de C.V., a Mexican holding company, and long after substantial steps were taken by Grupo Sanborns to commence the tender offer. One Defendant is a partner in Grupo Sanborns' regular outside law firm in Mexico City, which participated in the tender offer. The other Defendants are either related to or associated with him. The Defendants made their purchases through numerous brokerage accounts in the United States, and bought most of the shares through offshore nominee companies and offshore trusts with names other than their own.

2. This case also involves highly profitable insider trading in the stock of Prodigy Communications Corporation in the month preceding the public announcement that SBC Communications Inc. was to acquire 43 percent of Prodigy. The pattern to the Prodigy trading is very similar to the CompUSA trading, involving several of the same defendants, the use of offshore nominee accounts, and the participation of the same law firm on behalf of parties to the corporate transaction.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A, and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(e), 78u-1 and 78aa].

4. Defendants, directly or indirectly, have made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

5. CompUSA's common stock was listed on the New York Stock Exchange, located in this District, and all of the transactions at issue were executed in this District on the floor of that Exchange. Prodigy was traded on the Nasdaq Stock Market, Inc., a national securities association, with substantial operations in this District. In addition, many of the transactions at issue were cleared in this District through a broker-dealer with an office or headquarters in this District.

6. Defendants will, unless restrained and enjoined, continue to engage in the acts, practices and courses of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object.

THE DEFENDANTS

7. Defendant Alejandro Duclaud Gonzalez De Castilla ("Alejandro Duclaud") is a Mexican citizen and resident. He was formerly one of eight partners in the Mexico City law firm of Franck, Galicia, Duclaud y Robles, S.C., which is regular outside counsel for Grupo Sanborns, Telefonos de Mexico, S.A. de C.V. ("Telmex"), and Grupo Carso Telecom. His wife is Defendant Ana Igartua Baranda De Duclaud.

8. Defendant Ignacio Guerrero Pesqueira ("Ignacio Guerrero") is a Mexican citizen and resident. At the time of the alleged misconduct, he was Executive Director of Bital, the fourth largest bank in Mexico.

9. Defendant Jose Antonio Duclaud Gonzalez De Castilla ("Jose Antonio Duclaud") is a Mexican citizen and resident. He is the sole partner of the law firm of Duclaud Abogados in Cancun, Mexico, and is the brother of Defendant Alejandro Duclaud.

10. Defendant Anushka Trust is a trust governed by English law that beneficially owns all the stock of Anushka Trust Holdings, Ltd. Alejandro Duclaud is the settlor (that is, the creator) of the Anushka Trust.

11. Defendant Caribbean Trust is a trust governed by English law that beneficially owns all the stock of Caribbean Legal Holdings, Ltd. Jose Antonio Duclaud is the settlor of the Caribbean Trust.

12. Defendant Banrise Ltd. BVI is a British Virgin Islands entity that transferred \$148,265 to Alejandro Duclaud's Anushka Trust on November 23, 1999. Ignacio Guerrero is the beneficial owner of Banrise Ltd. BVI.

13. Defendant Rodrigo Igartua Baranda is a Mexican citizen and resident. He is Chairman and C.E.O. of SB Asesores S.A. de C.V., independent financial advisors, in Mexico City, and the President of Defendant Antares Holdings Investments, Ltd. The President and C.O.O. of SB Asesores is Jorge Cobian, who is also the Investment Manager of Defendants Anushka Trust and Caribbean Trust.

14. Defendants Pablo Velazquez Baranda, Maricruz Lozano Ledezma, Elvira Baranda Garcia, and Martha Baranda De Igartua are Mexican citizens and residents who appear to be relatives of Defendants Alejandro Duclaud and Ana Igartua Baranda De Duclaud.

FIRST CLAIM FOR RELIEF

Violations of Exchange Act Section 10(b) and Rule 10b-5 Promulgated Thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5] With Respect to CompUSA

15. Paragraphs 1 through 14 are realleged and incorporated herein by reference.

Grupo Sanborns' Tender Offer for CompUSA

16. On September 10, 1999, Grupo Sanborns reported publicly its ownership of approximately 14.8% of the then outstanding shares of CompUSA. The price of CompUSA stock at the market close that day was \$7.25 per share.

17. On September 13, 1999, Mr. James F. Halpin, President and Chief Executive Officer of CompUSA, contacted representatives of Grupo Sanborns and discussed in general terms Grupo Sanborns' investment in CompUSA. During this discussion, Mr. Halpin proposed that the parties meet the following day in Mexico City.

18. On September 14, 1999, Mr. Halpin and other representatives of CompUSA met with Mr. Carlos Slim Domit, Chief Executive Officer of Grupo Sanborns, and other representatives of Grupo Sanborns in Mexico City and continued their discussions of Grupo Sanborns' investment in CompUSA. The parties also discussed the possibility of establishing various commercial arrangements between CompUSA and Grupo Sanborns and its affiliates, including joint ventures.

19. During the week of September 20, 1999, representatives of Grupo Sanborns visited CompUSA's headquarters in Dallas, Texas. During this week, representatives of Grupo Sanborns indicated to representatives of CompUSA that Grupo Sanborns would be interested in increasing its investment in CompUSA. In light of provisions under Delaware law restricting certain transactions between Delaware corporations and persons holding 15% or more of their outstanding voting stock, representatives of Grupo Sanborns requested that CompUSA consider taking the necessary corporate action to make these restrictions inapplicable to an increased Grupo Sanborns investment, provided that Grupo Sanborns and its affiliates agree to limit their ownership to less than 20% of the outstanding shares.

20. CompUSA's board met telephonically on September 29, 1999 to consider Grupo Sanborns' request. After considering the matter, Mr. Halpin was instructed to advise Grupo Sanborns that CompUSA would consider taking such action only if Grupo Sanborns entered

into a confidentiality and standstill agreement with CompUSA. The representatives of Grupo Sanborns indicated that they would consider the possibility of entering into such an agreement, and requested that CompUSA prepare a draft agreement.

21. On October 1, 1999, CompUSA furnished Grupo Sanborns with a draft confidentiality and standstill agreement and, on October 22, 1999, Grupo Sanborns informed CompUSA that Grupo Sanborns was not interested in entering into the agreement on the terms proposed by CompUSA.

22. Between October 5-6, 1999, representatives of CompUSA met with representatives of Grupo Sanborns in Mexico City to discuss voting of the CompUSA shares owned by Grupo Sanborns at the upcoming annual shareholder meeting of CompUSA.

23. On November 5, 1999, Mr. Halpin met with representatives of Grupo Sanborns in Mexico City. During this meeting, the parties discussed the possibility of establishing various commercial arrangements between CompUSA and Grupo Sanborns and its affiliates, and representatives of Grupo Sanborns indicated in general terms that Grupo Sanborns continued to be interested in exploring the possibility of increasing its investment in CompUSA.

24. The SEC's public records show that on November 22, 1999, a Schedule 13D was filed with the SEC on behalf of Grupo Carso S.A. de C.V, Grupo Sanborns, Carlos Slim Helu, Chairman of Grupo Carso, and members of Mr. Slim Helu's immediate family, indicating that they might be interested in considering transactions affecting control of CompUSA. The Schedule 13D stated, among other things, the following: Carlos Slim Helu and members of his family, each of whom is a Mexican citizen, beneficially own, through a Mexican corporation and a Mexican trust, 61.27% of the outstanding voting equity securities of Grupo Carso, a corporation organized in Mexico. Grupo Carso is a holding company with interests in a number of businesses. It also owns a

majority of the outstanding voting equity securities of Grupo Sanborns, a corporation organized in Mexico. Grupo Sanborns is a holding company with interests in the real estate, music and retail industries (including Sears de Mexico) and in the operation of restaurants. According to their U.S. counsel, Grupo Carso and Grupo Sanborns have no employees and no actual headquarters. The Schedule 13D gave Grupo Sanborns' principal business address as Avenida San Fernando 649, Colonia Pena Pobre, Tlalpan, Mexico, D.F., Mexico, 14060. The price of CompUSA stock at the market close that day was \$5.875 per share.

25. During the week of November 29, 1999, in a telephone call, representatives of Grupo Sanborns advised representatives of CompUSA that Grupo Sanborns would be interested in exploring the possibility of making a proposal to acquire CompUSA at a valuation of approximately \$7.00 to \$7.50 per share, although no specific proposal was made. Mr. Halpin responded that CompUSA would consider a proposal at such a valuation to be inadequate.

26. According to counsel for Grupo Sanborns, Grupo Sanborns was contemplating a possible tender offer for CompUSA's outstanding shares no later than December 3, 1999. The price of CompUSA stock at the market close that day was \$5.875 per share. That day, in a telephone call, and on December 8-9, 1999, at meetings in Mexico City, representatives of Grupo Sanborns indicated that Grupo Sanborns would consider increasing its valuation to approximately \$8.00 per share for CompUSA, although again no specific proposal was made. Mr. Halpin indicated that such a valuation would still be considered inadequate by CompUSA.

27. On December 16, 1999, a representative of Grupo Sanborns met again with Mr. Halpin and other representatives of CompUSA in Dallas, Texas to continue their discussions. At this meeting, the parties concluded that they had differing views with respect to the valuation of CompUSA and agreed to defer further discussions.

28. During the week of January 3, 2000, representatives of Grupo Sanborns and the Company reopened discussions regarding possible commercial arrangements between CompUSA and an affiliate of Grupo Sanborns. The price of CompUSA stock at the market close on January 6, 2000 was \$5.25 per share, on volume of 1,192,000 shares. The Defendants bought a total of 325,000 CompUSA shares that day, about 27% of total volume.

29. During the week of January 10, 2000, representatives of Grupo Sanborns suggested to Mr. Halpin that they might consider making an acquisition proposal at a valuation of up to \$9.00 per share. Mr. Halpin informed Grupo Sanborns that he would discuss such matter with the CompUSA board.

30. According to counsel for Grupo Sanborns, during the period January 10-18, 2000, representatives of Grupo Sanborns had a conversation with representatives of Credit Suisse First Boston, who advised Grupo Sanborns that Credit Suisse First Boston would be representing CompUSA. The CompUSA board met telephonically on January 16, 2000 and discussed with management and Credit Suisse First Boston their respective views on valuation. The Board authorized Mr. Halpin and Credit Suisse First Boston to have further discussions with Grupo Sanborns to seek a higher price than had been suggested in the earlier discussions.

31. On January 18, 2000, Credit Suisse First Boston, at the direction of the CompUSA board, informed representatives of Grupo Sanborns that CompUSA would not be receptive to a proposal involving a valuation of \$9.00 per share.

32. On January 19, 2000, Credit Suisse First Boston, at the direction of the Board, discussed various prices and transaction terms with representatives of Grupo Sanborns. During these discussions, representatives of Grupo Sanborns advised Credit Suisse First Boston that Grupo Sanborns would consider making a proposal to acquire CompUSA at a valuation of

approximately \$9.50 per share and, after continued discussions, Grupo Sanborns incrementally increased such valuations to \$10.10 per share. Credit Suisse First Boston indicated that it would discuss such proposal with the Board. The price of CompUSA stock at the market close that day was \$5.5625 per share, on volume of 1,102,000 shares. The Defendants bought a total of 273,000 CompUSA shares that day, about 25% of total volume.

33. According to counsel for Grupo Sanborns, on January 20, 2000, a representative of Grupo Sanborns called Rafael Robles Miaja, a partner (with Defendant Alejandro Duclaud among others) in Grupo Sanborns' regular outside law firm in Mexico City, Frank, Galicia, Duclaud y Robles, S.C., and told him that following a conversation with Grupo Sanborns' New York counsel, a form of acquisition agreement was being drafted. Robles was also told that he would be traveling to New York to work on a proposed transaction with CompUSA. The price of CompUSA stock at the market close that day was \$6.125 per share, on volume of 2,584,200 shares. The Defendants bought a total of 170,000 CompUSA shares that day, more than 6% of total volume.

34. On Friday January 21, 2000, Grupo Sanborns submitted to CompUSA a proposed merger agreement and the parties and their legal advisors met in New York to continue to negotiate the terms of the proposed acquisition. The price of CompUSA stock at the market close that day was \$6.75 per share. On January 22-23, 2000, the parties concluded negotiating the terms of the merger agreement and related documents. On January 23, 2000, CompUSA, Grupo Sanborns, and TPC Acquisition Corp., Grupo Sanborns' wholly-owned subsidiary (a Delaware corporation created for the purpose of making the tender offer) executed the merger agreement.

35. On Monday January 24, 2000, prior to the opening of trading on the New York Stock Exchange, Grupo Sanborns and CompUSA issued a joint press release announcing the

execution of the merger agreement. The price of CompUSA stock at the market close that day was \$9.50 per share, on volume of 24,615,200 shares. On February 1, 2000, TPC Acquisition Corp. commenced the tender offer.

Antares Holdings Investment Ltd. Trades

36. Between January 6 and January 19, 2000, Defendant Antares Holdings Investment, Ltd., whose President is Defendant Rodrigo Igartua Baranda, bought a total of 75,000 shares of CompUSA common stock at a cost of \$391,382 through its account at PaineWebber. Specifically, on January 6, 2000, Antares bought 14,300 shares at \$5.125 per shares for a total cost of \$73,864, and an additional 10,700 shares at \$5.1875 per share for a total cost of \$55,934. The following day, January 7, 2000, Antares bought another 30,000 shares at \$5.0625 per share for a total cost of \$153,079. Lastly, on January 19, 2000, Antares bought 20,000 shares at \$5.375 per share for a total cost of \$108,504. On January 26, 2000, two days after the tender offer announcement, Antares sold all 75,000 shares at \$9.625 per share for proceeds of \$719,596 and profits of \$328,215. Shortly thereafter, Defendant Rodrigo Igartua Baranda caused \$131,000 to be transferred from his account to Alejandro Duclaud's Anushka Trust account. Defendant Rodrigo Igartua has testified that this transfer was made because 30,000 shares in the Antares account had been purchased on behalf of Alejandro Duclaud.

Banrise Ltd. BVI Trades

37. In two separate transactions on January 6 and January 19, 2000, Defendant Banrise Ltd. BVI, which is associated with Defendant Ignacio Guerrero, bought a total of 493,200 shares of CompUSA common stock at a cost of \$2,638,485 through its account at Beta Capital Management, which clears its trades through Bear Stearns. Specifically, on January 6, 2000, Banrise bought 300,000 shares at \$5.2127 per share for a total cost of \$1,563,817. On

January 19, 2000, Banrise bought 193,200 shares at 5.5625 per share for a total cost of \$1,053,214. On January 26, 2000, two days after the tender offer announcement, Banrise sold all 493,200 shares at \$9.625 per share for proceeds of \$4,727,160 and profits of \$2,088,675.

Caribbean Trust Trades

38. On January 19, 2000, Defendant Caribbean Trust, which is controlled by Defendant Jose Antonio Duclaud, through its Caribbean Legal Holdings, Ltd. account at PaineWebber, bought 50,000 shares of CompUSA common stock at \$5.4375 per share for a cost of \$271,875. On January 26, 2000, two days after the tender offer announcement, Caribbean Trust sold all 50,000 shares at \$9.625 per share for proceeds of \$481,250 and profits of \$209,375.

Rodrigo Igartua Baranda Trades

39. On January 19, 2000, Defendant Rodrigo Igartua Baranda bought 10,000 shares of CompUSA common stock at \$5.5 per share for a cost of \$55,164 through his account at Lehman Brothers. On January 24, 2000, the date of the tender offer announcement, Rodrigo Igartua Baranda sold all 10,000 shares of CompUSA common stock at \$9.625 per share for proceeds of \$95,948 and profits of \$40,784.

Anushka Trust Trades

40. On January 20, 2000, Anushka Trust, which is controlled by Defendant Alejandro Duclaud, through its Anushka Holdings Ltd. account at PaineWebber, bought 150,000 shares of CompUSA common stock at a cost of \$859,548. Specifically, Anushka Trust bought 50,000 shares at \$5.5 per share for a cost of \$275,000, 26,100 shares at \$5.875 per share for a cost of \$153,337, 35,800 shares at \$6.125 per share for a cost of \$219,279, and 38,100 shares at \$5.5625 per share for a cost of \$211,931. On January 26, 2000, two days after the tender offer announcement, Anushka

Trust sold all 150,000 shares of CompUSA common stock at \$9.625 per share for proceeds of \$1,925,000 and profits of \$584,202.**

Martha Baranda de Igartua, Ana Igartua and Rodrigo Igartua Account Trades

41. On January 20, 2000, Defendants Martha Baranda de Igartua, Ana Igartua and Rodrigo Igartua bought 20,000 shares of CompUSA common stock at \$5.5625 per share for a cost of \$112,154 through their account at PaineWebber. On January 26, 2000, two days after the tender offer announcement, they sold all 20,000 shares at \$9.625 per share for proceeds of \$191,889 and profits of \$79,735.

Pablo Velasquez Baranda, Elvira Baranda Garcia and Maricruz Lozano Ledezma Account Trades

42. On January, 21, 2000, Pablo Velasquez Baranda, Elvira Baranda Garcia and Maricruz Lozano Ledezma bought 30,000 shares of CompUSA common stock at \$6.208 per share for a cost of \$187,182 through their account at Lehman Brothers. On January 24, 2000, the date of the tender offer announcement, they sold all 30,000 shares at \$9.625 per share for proceeds of \$287,297 and profits of \$100,115.

43. As an attorney in the law firm representing Grupo Sanborns in its acquisition of CompUSA, Alejandro Duclaud owed a fiduciary duty to Grupo Sanborns and its shareholders. As a result, Alejandro Duclaud had a duty not to trade while in possession of the material nonpublic information he obtained concerning the CompUSA acquisition and to safeguard the confidentiality of that information and not misuse it.

** Anushka Trust's profits were mistakenly overstated in the Proposed Amended Complaint filed with the Court on August 29, 2001. Accordingly, we have corrected this figure to reflect Anushka's actual profits.

44. In breach of these duties, and for his personal benefit, Alejandro Duclaud traded and caused to be traded CompUSA stock and communicated material nonpublic information concerning the proposed acquisition to his brother Jose Antonio Duclaud and other relatives. Alejandro Duclaud knew or was reckless in not knowing the information he disclosed was nonpublic and that his disclosure of the information was improper and in breach of duties he owed. His disclosure of this information was made under circumstances in which he knew, or should have known, or acted with reckless disregard of the fact that his brother Jose Antonio Duclaud and other relatives were likely to effect transactions in CompUSA stock or to disclose the information to others who were likely to effect such transactions.

45. Alejandro Duclaud's relatives and Jose Antonio Duclaud and his relatives knew, should have known, or acted in reckless disregard of the fact that the information they received, directly or indirectly, from Alejandro Duclaud was nonpublic, and that the information was disclosed to them in violation of a fiduciary duty or other duty of trust and confidence. Accordingly, Alejandro Duclaud's relatives and Jose Antonio Duclaud and his relatives inherited Alejandro Duclaud's duty not to trade on that information and not to communicate it improperly to others. Alejandro Duclaud's relatives and Jose Antonio Duclaud and his relatives knowingly or recklessly breached these duties for their direct or indirect benefit.

46. By reason of the foregoing, Defendants, directly and indirectly, violated 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].

SECOND CLAIM FOR RELIEF

Violations of Exchange Act Section 14(e) and Rule 14e-3 Promulgated Thereunder [15 U.S.C. § 78n(e) and 17 C.F.R. § 240.14e-3]

47. Paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. By December 3, 1999, Grupo Sanborns had taken, in confidence, numerous substantial steps to commence its tender offer for the outstanding shares of CompUSA.

49. Beginning on or about January 6, 2000, Defendants engaged directly or indirectly in fraudulent, deceptive or manipulative acts or practices in connection with a tender offer by Grupo Sanborns for the common stock of CompUSA by (i) purchasing or causing to be purchased the securities of CompUSA while in possession of material information relating to the tender offer, which information they knew or had reason to know was nonpublic and which information they knew or had reason to know was obtained directly or indirectly from Grupo Sanborns or CompUSA or a person acting on behalf of either Grupo Sanborns or CompUSA; or (ii) communicating to others material nonpublic information relating to the Grupo Sanborns tender offer, under circumstances in which it was reasonably foreseeable that such communications were likely to result in the purchase or sale of the securities of CompUSA.

50. By reason of the foregoing, Defendants directly or indirectly violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.

THIRD CLAIM FOR RELIEF

Violations of Exchange Act Section 10(b) and Rule 10b-5 Promulgated Thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5] With Respect to Prodigy

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. In May 1999, Prodigy Communications was a well-known Internet service provider headquartered in White Plains, New York. Its stock traded on the Nasdaq National Market System. About 60 percent of Prodigy was owned by Telmex and Grupo Carso Telecom. These two Mexican companies were controlled (like Grupo Sanborns) by Carlos Slim Helu and his family, and were represented by Alejandro Duclaud's law firm, Franck Galicia. Lawyers at Franck Galicia had information available as early as May 1999 that Prodigy was confidentially considering a transaction with SBC Communications, Inc., one of the largest companies in the United States. By September 27, 1999, the potential Prodigy-SBC deal had ripened to the point where early drafts of voluminous deal documents were being e-mailed to the Franck Galicia firm. Around October 14, lawyers at the firm began to bill for legal services directly related to the Prodigy-SBC deal.

53. About a week later, Alejandro's close friend, Ignacio Guerrero, began buying Prodigy stock. In ten purchases between October 21 and November 18, 1999, he accumulated 56,100 Prodigy shares through his Banrise account at prices ranging between \$21.50 and \$24.75 a share, for a total cost of \$1,263,868. Ignacio Guerrero had never bought so large a dollar amount of any single stock in his Banrise account.

54. On Monday, November 22, 1999, before the market opened, SBC announced that it would take a 43 percent stake in Prodigy. During the four weeks preceding the announcement, the price of Prodigy common stock had fluctuated between a high of \$25.75 and a low of \$20.625 at the close. On the Thursday and Friday preceding the Monday announcement, Prodigy rose \$3.25 and

\$4.625, respectively, to close at \$32.125 on Friday. Trading volume for the two days also increased from 1,620,800 shares traded on Wednesday November 17th to 2,510,400 shares traded on Thursday November 18th and 3,523,700 shares traded on Friday November 19th. There were no significant company announcements those two days. On Monday, November 22, 1999, the date of the announcement, Prodigy opened \$2.815 above the close on Friday, it reached a high of \$35.4375 and closed at \$31 -- \$1.125 below the close on Friday. On that same day, Monday, November 22, 1999, Ignacio Guerrero sold all 56,100 of his shares at \$33.36 per share, for proceeds of \$1,871,284 and a profit of \$607,416.

55. Two days later, Ignacio Guerrero wired \$148,300 from his Banrise account to Alejandro Duclaud's Anushka Trust. Alejandro Duclaud told his trustees that the money was a payment for legal services. Both men have since asserted that the sum was for the purchase of Alejandro Duclaud's Mexico City apartment. Neither man has a single document substantiating this alleged sale. Title never changed hands. Ignacio Guerrero never occupied the apartment. Ignacio Guerrero did not put his existing residence on the market. Later, Ignacio Guerrero bought and moved into a much larger apartment, for which he paid \$800,000. A year and a half after the supposed sale, the apartment remained listed for sale in Alejandro Duclaud's name for \$180,000. Property tax on the apartment and the monthly maintenance fee are still paid by Alejandro Duclaud. The telephone at the apartment is still in Alejandro Duclaud's name. According to the two men, the only persons who have lived in the apartment since Alejandro Duclaud supposedly sold it to Ignacio Guerrero are members of Alejandro Duclaud's family.

56. Alejandro Duclaud misappropriated the Prodigy-SBC information from Franck Galicia and tipped Ignacio Guerrero, who traded illegally based on that information and paid Alejandro Duclaud a kickback from the profits of the trade.

57. On October 25, 1999, about eleven days after billing began on the Prodigy-SBC deal at Alejandro Duclaud's law firm, and four days after Ignacio Guerrero started buying Prodigy, Rodrigo Igartua Baranda opened his first offshore securities trading account, in the name of defendant Antares. He transferred into the account corporate bonds and money market securities valued at \$759,093 – and no equity securities. About three weeks later, on Thursday November 18, Rodrigo Igartua Baranda bought his first equity security in the Antares account – 3,000 shares of Prodigy at \$26.18 per share for a total cost of \$79,017. The following Monday, the Prodigy-SBC deal was announced, and Rodrigo Igartua Baranda sold all 3,000 Prodigy shares at \$33.50 per share for proceeds of \$99,592 and a profit of \$20,575.

58. Alejandro Duclaud misappropriated the Prodigy-SBC information from Franck Galicia and tipped Rodrigo Igartua Baranda, who traded illegally based on that information. Alternatively, knowing that the information from Alejandro Duclaud was confidential inside information, Ignacio Guerrero tipped Rodrigo Igartua Baranda, who traded illegally based on that information.

59. In a prior transaction, Alejandro Duclaud, Ignacio Guerrero, and Rodrigo Igartua (or Martha Baranda de Igartua, Rodrigo Igartua's mother and the mother-in-law of Alejandro Duclaud) engaged in a similar misuse of confidential information involving a Mexican registered stock, providing further evidence of the pattern of insider trading that included Prodigy and CompUSA. In May of 1999, the stock of Pastelaria Francesa ("El Globo"), a Mexican bakery chain, was trading on the Mexican Bolsa for about 30 cents U.S. per share. On May 3 and 4, total trading volume was 54,000 shares.

60. Just before lunchtime on May 5, 1999, the Frank Galicia law firm received a call from Grupo Sanborns, the same firm that subsequently acquired CompUSA. Grupo Sanborns

was considering making a large purchase of El Globo stock, and was putting the law firm on notice that it might need immediate legal assistance.

61. On the morning of the next day, May 6, 1999, just before the market opened, Ignacio Guerrero placed an order to buy 5 million shares of El Globo for exactly 2.75 Pesos per share through his Banrise account with the United States brokerage firm of Beta Capital Management ("Beta"). Beta placed the order in the Mexican market through the Mexican brokerage firm of Operadora de Bolsa Serfin ("OBSA"). At almost exactly the same moment, Ignacio Guerrero's then employer, Banco International, S.A. ("Bital"), placed an order to sell 5 million shares, also for exactly 2.75 Pesos per share. When the Mexican Bolsa opened that day at 8:30 a.m. Mexico City time, the best displayed offer to sell El Globo was for 307,000 shares at 3.00 Pesos per share. The best displayed bid to buy El Globo at the 8:30 market opening was for 20,000 shares at 1.70 Pesos per share.

62. At 8:31:31:76 a.m., the Mexican Bolsa received an electronic order from Bital to sell 5 million shares of El Globo at 2.75 Pesos per share. At 8:31:33:72 a.m., the Mexican Bolsa received an electronic order from OBSA to buy 5 million shares of El Globo at 2.75 Pesos. At 8:31:34:05 a.m., the orders crossed inside the Mexican Bolsa's computer system. Less than three seconds elapsed between the arrival of the Bital sell order and its execution against the OBSA buy order. The nearly simultaneous submission of the orders effectively prevented either order from being displayed to any other market participant.

63. In effect, as Executive Director of Bital overseeing the bank's investments and stock trading, Ignacio Guerrero sold himself an enormous quantity of El Globo stock, in a fashion designed to prevent any possible competition from other potential buyers. The manner of the execution of the trade indicates that the seller not only knew that there was going to be a

perfectly matched buy order, but that the seller and buyer wanted to insure that no other market participant would have an opportunity to place a competing order before the execution.

64. In fact, there was a potential competing buyer — Grupo Sanborns. As it had indicated to the Franck Galicia law firm on May 5, 1999, Grupo Sanborns began to acquire millions of shares of El Globo starting on May 6, 1999. On that day, Grupo Sanborns bought over 47 million shares of El Globo at prices ranging from 2.90 Pesos per share to 3.30 Pesos per share. Over the course of May 6 and May 7, Grupo Sanborns bought 153,109,550 El Globo shares, roughly 60% of the total then outstanding, at an average price of 3.4022 Pesos.

65. On May 7, 1999, shortly after Grupo Sanborns made a competition filing with the Mexican government, a filing prepared by Alejandro Duclaud's law firm, Ignacio Guerrero sold all of his recently acquired 5 million shares at 3.45 Pesos per share, for a net profit of 3,329,500 Pesos. At the then rate of dollar conversion, this profit was the equivalent of over \$350,000. The sale price exceeded the tender offer price of 3.40 for the remaining El Globo shares publicly announced by Grupo Sanborns on May 10, 1999, the Monday following the Friday, May 7, 1999 trading.

66. On May 13, 1999, two days after Guerrero's El Globo sale settled, Ignacio Guerrero wired \$115,400 from his Banrise account to Alejandro Duclaud's Anushka Trust account. Both men now claim that this was a payment for legal services related to Ignacio Guerrero's divorce, his interest in acquiring a private Mexican company, and services related to setting up Banrise. But neither man has been able to produce a single document that supports this story.

67. Alejandro Duclaud misappropriated the Grupo Sanborns-El Globo information from Franck Galicia and tipped Ignacio Guerrero, who traded illegally based on that information and paid Alejandro Duclaud a kickback from the profits of the trade.

68. In addition to the El Globo trading of Ignacio Guerrero, Rodrigo Igartua (or Rodrigo Igartua's mother and Alejandro Duclaud's mother-in-law, Martha Baranda de Igartua) also traded El Globo in advance of Grupo Sanborns. An account in the name of Martha Baranda de Igartua placed orders and successfully acquired 41,000 shares of El Globo in two separate trades on May 6, 1999, just as Grupo Sanborns began its acquisitions on that day. The account of Martha Baranda de Igartua paid 3.20 Pesos on May 6, and resold the same shares for 3.50 Pesos the very next day on May 7. Again, this selling price exceeded the tender offer price publicly proposed by Grupo Sanborns on the next business day, May 10, 1999.

69. Alejandro Duclaud misappropriated the Grupo Sanborns-El Globo information from Franck Galicia and tipped Rodrigo Igartua (or Rodrigo Igartua's mother and Alejandro Duclaud's mother-in-law, Martha Baranda de Igartua), who traded illegally based on that information.

70. Alejandro Duclaud himself sold 45,000 shares of El Globo on May 7, 1999 at a price of 3.50 Pesos. This selling price also exceeded the tender offer price publicly proposed by Grupo Sanborns on May 10, 1999.

71. As an attorney in the law firm representing Telmex and Grupo Carso Telecom in the Prodigy-SBC transaction, and representing Grupo Sanborns in the El Globo transaction, Alejandro Duclaud owed a fiduciary duty to his law firm, its clients, and the shareholders of its clients. As a result, Alejandro Duclaud had a duty to safeguard the confidentiality of the law firm's information and its clients' information, and not to misuse any of it.

72. In breach of these duties, and for his personal benefit, Alejandro Duclaud communicated material nonpublic information concerning the proposed Prodigy-SBC and El Globo transactions to Ignacio Guerrero and to Rodrigo Igartua Baranda (or to Rodrigo Igartua's mother

and Alejandro Duclaud's mother-in-law, Martha Baranda de Igartua). Alejandro Duclaud knew or was reckless in not knowing the information he disclosed was nonpublic and that his disclosure of the information was improper and in breach of duties he owed. His disclosure of this information was made under circumstances in which he knew, or should have known, or acted with reckless disregard of the fact that Ignacio Guerrero, Rodrigo Igartua Baranda, and, perhaps, Martha Baranda de Igartua were likely to effect transactions in Prodigy or El Globo, or to disclose the information to others who were likely to effect such transactions.

73. Ignacio Guerrero, Rodrigo Igartua Baranda, and Martha Baranda de Igartua knew, should have known, or acted in reckless disregard of the fact that the information they received, directly or indirectly, from Alejandro Duclaud was nonpublic, and that the information was disclosed to them in violation of a fiduciary duty or other duty of trust and confidence. Accordingly, Ignacio Guerrero, Rodrigo Igartua Baranda and Martha Baranda de Igartua inherited Alejandro Duclaud's duty not to trade on that information and not to communicate it improperly to others. Ignacio Guerrero, Rodrigo Igartua Baranda, and, perhaps, Martha Baranda de Igartua knowingly or recklessly breached these duties for their direct or indirect benefit.

74. By reason of the foregoing, Defendants Alejandro Duclaud, Ignacio Guerrero, and Rodrigo Igartua Baranda, and each of their respective offshore nominees, Anushka Trust, Banrise Ltd., and Antares Holdings, directly and indirectly, violated 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].


PRAYER FOR RELIEF

WHEREFORE, Plaintiff SEC respectfully requests that this Court enter a judgment:

- (i) permanently enjoining the Defendants from violating Sections 10(b) and 14(e) of the 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 and 240.14e-3];
- (ii) ordering the Defendants to disgorge all profits realized from the unlawful trading alleged herein, with prejudgment interest;
- (iii) ordering Defendants to pay civil money penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (iv) granting such other relief as this Court may deem just and appropriate.

Respectfully submitted,

Dated: Washington, D.C.
March 15, 2002


Mark Kreitman (MK 8935)
John D. Worland, Jr. (JW 1962)
Lawrence A. West
Neil J. Welch, Jr.
Nancy E. McGinley
Jose M. Rodriguez
Counsel for Plaintiff
U.S. Securities and Exchange Commission
450 5th Street, N.W.
Washington, DC 20549-0805
Phone: (202) 942-4522 (Worland)
Fax: (202) 942-9569