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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
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12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 KENNETH W. MELLERT and ROMAN D.  
16 MAYER,

17 Defendants.  
18

Civil Action No.

COMPLAINT

DEMAND FOR JURY TRIAL

19 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

20 SUMMARY OF THE ACTION

21 1. This is an insider trading case in which defendant Kenneth W. Mellert, a regional  
22 sales director for PeopleSoft, Inc. ("PeopleSoft" or the "Company"), tipped confidential  
23 information about his employer to his friend, defendant Roman D. Mayer. Mayer purchased  
24 PeopleSoft securities based on the information, netting more than \$218,000 in unlawful trading  
25 proceeds, which he shared with Mellert.

26 2. On the morning of April 1, 2002, Mellert learned that PeopleSoft, a San Francisco  
27 Bay Area software company, would be issuing a press release later in the day announcing  
28 disappointing financial results. Mellert called Mayer that morning and told him the information.

1 Mayer agreed to purchase PeopleSoft put options – options that would rise in value if  
2 PeopleSoft’s stock price fell – in his own account and split any profits with Mellert. Within  
3 moments after this phone call, Mayer called his broker and purchased the options.

4 3. Following the close of the markets on April 1, PeopleSoft issued a press release  
5 announcing an earnings shortfall. The following day, the Company’s common stock price  
6 plunged by approximately 33%. Mayer sold the options several days later, netting trading profits  
7 of \$218,173. Of this sum, Mayer paid Mellert \$59,082.

8 4. By disclosing material, nonpublic information concerning PeopleSoft’s planned  
9 press release, and by trading on such information, defendants Mellert and Mayer violated Section  
10 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] (“Exchange Act”) and Rule  
11 10b-5 [17 C.F.R. 240.10b-5] thereunder.

12 AUTHORITY TO BRING THIS ACTION

13 5. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of  
14 the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1(c)].

15 6. Defendants, directly and indirectly, have engaged in transactions, acts, practices  
16 and courses of business that constitute violations of Section 10(b) of the Exchange Act [15  
17 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

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

21 JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

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

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

27 10. This district is an appropriate venue for this action under Section 22(a) of the  
28 Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

1 Certain of the transactions, acts, practices and courses of business constituting the violations  
2 alleged herein occurred within the Northern District of California.

3 11. Assignment to the San Francisco Division is appropriate pursuant to Civil Local  
4 Rule 3-2(c).

5 THE DEFENDANTS

6 12. Kenneth W. Mellert, 38, resides in Naperville, Illinois. During the relevant  
7 period, Mellert was a Regional Sales Director working in PeopleSoft's Chicago-area office.

8 13. Roman D. Mayer, 38, resides in Atlanta, Georgia. During the relevant period,  
9 Mayer was a regional sales director of a publicly-held software company based in Irvine,  
10 California.

11 RELATED ENTITY

12 14. PeopleSoft is a Delaware corporation, with its principal place of business in  
13 Pleasanton, California. The Company develops software for use by businesses. Its common  
14 stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is  
15 quoted on the Nasdaq National Market under the symbol "PSFT." The Company's options trade,  
16 among other places, on the Chicago Board Options Exchange.

17 DEFENDANTS' ILLEGAL CONDUCT

18 Defendants Plan To Profit From PeopleSoft's Slow Sales.

19 15. Mellert and Mayer have been friends for several years, having previously worked  
20 together at several software companies. Though they currently reside in different cities, they  
21 have remained in contact.

22 16. In or around mid-March 2002, Mellert contacted Mayer and told him that  
23 PeopleSoft's sales appeared to be slow. Mayer and Mellert discussed investing in PeopleSoft put  
24 options to take advantage of an anticipated drop in the price of PeopleSoft common stock once  
25 the news of the Company's weak sales reached the market.

26 17. A put option is a contract giving the purchaser the right to sell 100 shares of the  
27 company's stock at a set price (the "strike price") by a certain date (the "expiration date").  
28

1 Investors in put options profit only when a company's stock price falls below the strike price  
2 prior to the expiration date.

3 18. In a subsequent phone call, Mellert informed Mayer that his employment  
4 agreement with PeopleSoft prohibited him from trading put options on the Company's stock.  
5 The defendants agreed that Mayer would purchase the options in his own brokerage account and  
6 split any trading profits with Mellert. They determined to invest \$8,000 each in PeopleSoft put  
7 options. Mayer did not purchase the options right away, however.

8 Mellert Tips Inside Information To Mayer, Who Trades On The Information.

9 19. PeopleSoft's first quarter for the 2002 fiscal year ended on March 31, 2002. On  
10 or around the morning of April 1, 2002, the Company's senior management decided to issue a  
11 press release at the end of the day announcing that the financial results for the first quarter were  
12 expected to fall significantly below analysts' expectations.

13 20. On or around the morning of April 1, 2002, Mellert learned about the planned  
14 press release. Mellert called Mayer and informed him that the Company would be announcing an  
15 earnings disappointment at the end of the day. Defendants anticipated that PeopleSoft's stock  
16 price would fall after the announcement, and determined that they would need to purchase the put  
17 options that afternoon in order to capitalize on the information.

18 21. Within minutes after getting off the phone with Mellert, Mayer telephoned his  
19 broker and placed an order for 500 PeopleSoft put option contracts at a price of approximately  
20 \$15,910. The put options had a strike price of \$30 and an expiration date of April 19, 2002 – in  
21 other words, the options gave Mayer the right to sell 50,000 shares of PeopleSoft common stock  
22 at \$30 per share by April 19. At the time of Mayer's purchase, PeopleSoft was trading at around  
23 \$37 per share. Hence, the options would be profitable only if the Company's stock price fell at  
24 least \$7 per share in the short term.

25 Mayer And Mellert Split \$218,173 In Unlawful Trading Profits.

26 22. Following the close of the stock market on April 1, 2002, PeopleSoft issued a  
27 press release announcing that it expected first quarter software licensing revenue to total between  
28 \$130 to \$135 million. This forecast fell significantly below the expectations of Wall Street

1 analysts. The following day, PeopleSoft's common stock price closed at \$25.16, a 33% decline  
2 from the April 1, 2002, close of \$37.37.

3 23. Mayer sold all of the PeopleSoft options on April 4 for approximately \$234,082,  
4 representing a profit of \$218,173.

5 24. Mayer determined to retain sufficient funds to pay the taxes on his trading profits,  
6 and to split the remainder with Mellert. Mayer calculated his share of the trading profits as  
7 \$159,091 and Mellert's as \$59,082. On or around May 10, 2002, Mayer mailed Mellert a check  
8 for approximately \$57,000 (after deducting certain debts Mellert owed Mayer).

9 CLAIM FOR RELIEF

10 *Violations of Section 10(b) of the Exchange Act*  
11 *and Rule 10b-5*

12 25. The Commission realleges and incorporates by reference Paragraphs 1 through 24  
13 above.

14 26. Mellert had a fiduciary duty to PeopleSoft and its securities holders not to trade in  
15 PeopleSoft securities based on material, nonpublic information concerning the Company, or to  
16 tip such information to others for personal benefit. Mellert breached that duty when he disclosed  
17 material, non-public information about PeopleSoft to Mayer on April 1, 2002. Through their  
18 profit-sharing arrangement, Mellert obtained a personal monetary benefit by disclosing this  
19 information to Mayer so that Mayer could trade.

20 27. Mayer knew or had reason to know that Mellert was acting in breach of his  
21 fiduciary duty to PeopleSoft and its securities holders by disclosing to Mayer material, non-  
22 public information about PeopleSoft on April 1, 2002.

23 28. Defendants, with scienter, directly or indirectly:

- 24 a) employed devices, schemes, or artifices to defraud;
- 25 b) made untrue statements of material facts or omitted to state material facts  
26 necessary in order to make the statements made, in the light of the  
27 circumstances under which they were made, not misleading; and  
28

1 c) engaged in acts, practices, or courses of business which operated or would  
2 operate as a fraud or deceit upon other persons, including purchasers and  
3 sellers of securities;  
4 in connection with the purchase or sale of securities, by the use of means or instrumentalities of  
5 interstate commerce, of the mails, or the facilities of a national securities exchange.

6 29. By reason of the foregoing, defendants violated, and unless restrained and  
7 enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and  
8 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

9 PRAYER FOR RELIEF

10 WHEREFORE, the Commission respectfully requests that this Court:

11 I.

12 Permanently enjoin defendants and their agents, servants, employees and attorneys, and  
13 those persons in active concert or participation with them who receive actual notice of the final  
14 judgment of permanent injunction by personal service or otherwise, and each of them, from directly  
15 or indirectly violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17  
16 C.F.R. 240.10b-5] thereunder;

17 II.

18 Enter an Order requiring defendants to disgorge an amount equal to their illegal trading  
19 profits from the securities transactions complained of herein, plus prejudgment interest;

20 III.

21 Enter an Order requiring defendants to pay civil penalties under Section 21A of the  
22 Exchange Act [15 U.S.C. § 78u-1];

23 IV.

24 Retain jurisdiction of this action in accordance with the principles of equity and the  
25 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and  
26 decrees that may be entered, or to entertain any suitable application or motion for additional  
27 relief within the jurisdiction of this Court; and  
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V.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: February 13, 2003

Respectfully submitted,

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Helane L. Morrison  
John S. Yun  
Marc J. Fagel

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

\_\_\_\_\_  
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