

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	COMPLAINT
	:	
v.	:	Civil Action No. 1:10-cv-00740-JRN
	:	
MARLEEN JANTZEN and JOHN JANTZEN,	:	
	:	
Defendants.	:	

Plaintiff Securities and Exchange Commission (“Plaintiff” or the “Commission”) alleges:

SUMMARY OF THE ACTION

1. This case involves illegal insider trading by Defendants Marleen and John Jantzen, a married couple, in the securities of Perot Systems Corp. (“Perot Systems”) in the days surrounding the September 21, 2009 public announcement that Dell Inc. (“Dell”) would acquire Perot Systems through a tender offer transaction. Marleen Jantzen was an employee of Dell who, in the course of her duties, learned material, nonpublic information about the impending acquisition and, in breach of her duties to Dell, tipped her husband, John Jantzen.

2. On September 18, 2009, the last trading day before the tender offer announcement, Marleen Jantzen made a highly unusual cash transfer to a brokerage account held jointly by both Jantzens. Within minutes of the cash transfer, John Jantzen started buying Perot Systems call options and common stock in the joint account—in total, purchasing 500 shares of Perot Systems common stock and 24 Perot Systems call option contracts. The Jantzens made the trades while in possession of material, nonpublic information related to the acquisition.

3. Before the start of trading on September 21, Perot Systems and Dell publicly announced their agreement, under which Dell would purchase, through a tender offer, all of Perot Systems' common stock at \$30 per share for a total of approximately \$3.9 billion. Following the announcement, Perot Systems' stock price immediately increased, closing at \$29.56, up \$11.65 (approximately 65%) from the prior trading day's close of \$17.91.

4. Immediately following the public announcement and resulting increase in the price of Perot System shares, Defendants liquidated their entire position in Perot Systems stock and call options. As a result of their illegal trading in Perot Systems securities, Defendants realized net trading profits totaling \$26,813.58.

5. By reason of these activities, Defendants Marleen and John Jantzen violated Sections 10(b) [15 U.S.C. § 78j(b)] and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78n(e)], and Rules 10b-5 [17 C.F.R. § 240.10b-5] and 14e-3 [15 U.S.C. § 78n(e)] thereunder. In addition, Defendant Marleen Jantzen also violated Exchange Act Rule 14e-3(d) [17 C.F.R. Sec 240.14e-3(d)]. Accordingly, the Commission seeks: (i) entry of permanent injunctions prohibiting Defendants from further violations of, as applicable, Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5, 14e-3, and 14e-3(d) thereunder; (ii) disgorgement of the profits from their insider trading, plus prejudgment interest; and (iii) the imposition of civil monetary penalties of up to three times the profits from their insider trading.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. The Commission seeks the imposition of civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa]. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this Complaint.

8. Venue is proper because transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Western District of Texas.

DEFENDANTS

8. Marleen D. Jantzen, age 54, is a resident of Austin, Texas. During all relevant periods, she was employed by Dell as an administrative assistant.

9. John R. Jantzen, age 70, is a resident of Austin, Texas, and is Marleen Jantzen's husband. John Jantzen is a registered representative employed by Primerica Financial Services Investments, Inc., a division of CitiGroup ("PFSI"), and holds Series 6, Series 26, and Series 63 securities industry licenses. Since January 1990, John Jantzen has been a Regional Vice President for PFSI.

STATEMENT OF FACTS

A. Background

10. Dell is a Delaware technology corporation headquartered in Round Rock, Texas. Dell's common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and trades on the NASDAQ.

11. During all relevant times, Perot Systems was a Delaware technology corporation headquartered in Plano, Texas. Until Perot Systems was acquired by Dell, its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the New York Stock Exchange.

12. The two companies started discussing a tender offer at least as early as August 2009. The discussions remained nonpublic until September 21, 2009, when the companies announced an acquisition pursuant to which, through a tender offer, Dell would purchase all of Perot Systems' common stock at \$30 per share for a total of approximately \$3.9 billion (the "acquisition").

B. Marleen Jantzen Acquires Material, Nonpublic Information and Tips Her Husband

13. During September 2009, in the course of her Dell employment, Marleen Jantzen acquired material, nonpublic information concerning the acquisition. Specifically, on September 3, 2009, a group of Dell executives and their assistants, including Marleen Jantzen, received an internal Dell email from Dell's General Counsel with the subject line: "Confidential – Instructions and Guidelines – Trading Restrictions – Confidentiality Agreement – Project Eagle."

The email stated (emphasis in original):

We are evaluating a possible transaction with Perot Systems Corp., a publicly traded global provider of information technology services and business solutions. Because this potential transaction involves a public company, we must be extremely diligent about our external communications, and we must be extremely careful about the extent and nature of our internal communications. ***We cannot over emphasize how important it is to maintain strict confidentiality regarding this project and our progress and plans.*** We need to be thoughtful about our dealings with this company during the evaluation period and our internal communications about the project. In that regard, please read the following rules and guidelines in their entirety, including the **trading prohibitions and certifications and consents** set forth below, and use the voting button above to indicate your understanding of and consent to the terms of this non disclosure agreement."

14. The email also included references to "the acquisition" and described Perot Systems as the "Potential Target Company."

15. The email identified Marleen Jantzen and her direct supervisor, a Dell executive, as members of the core team of internal Dell people "who are actively working on or have

knowledge of [the] project” and admonished the recipients against trading in either Dell or Perot Systems stock or derivatives. Specifically, it provided:

Trading in Eagle Stock – Until further notice, ***under no circumstances should you engage in any trading (buying or selling) in Perot Systems Corp.*** This restriction includes selling short and engaging in transactions in derivatives (such as puts and calls) where this stock is the underlying security. There could be serious criminal and civil penalties associated with any trading.

Trading in Dell Stock – In light of this potential transaction, we have determined that it is advisable to keep the trading window closed for the Company, the Board, Senior Management, and the Project Eagle working group. Consequently, ***until further notice, the trading window will remain closed for all of you.*** During this time, you may not transact any sales or purchases of Dell stock. This includes open market sales or purchases and exercises of stock options.

16. In consideration of continued employment with Dell, all recipients, including Marleen Jantzen, were told they were required to certify that they would not disclose “Highly Sensitive Information to anyone outside of Dell unless directed to do so, in writing, by Dell’s Chairman and Chief Executive Office or General Counsel,” and that any internal Dell disclosure would be made only to persons who had signed the attached Highly Sensitive Information Agreement.

17. Further, the email stated that the consequences for a breach of the confidentiality agreement or failure to comply may result in termination of employment, or criminal prosecution and/or civil liability.

18. Finally, the email stated that the recipient’s “obligations in [the] Agreement are in addition to the obligations of confidentiality and cooperation [they are] already subject to pursuant to [their] Employment Agreement, Dell’s Code of Conduct, and other such agreements or policies.”

19. Dell and Perot Systems had originally anticipated announcing the acquisition on Monday, September 28. By the evening of Thursday, September 17, the companies had agreed

to accelerate the announcement to the morning of Monday, September 21, before the opening of trading. An email circulated among senior deal team members providing an agenda for a September 20 signing ceremony at Ross Perot Jr.'s residence.

20. On or about September 17, 2009, through her employment at Dell, Marleen Jantzen became aware of nonpublic information that caused her to conclude that the Perot acquisition would be announced as early as Monday, September 21.

21. In breach of her duties of trust and confidence owed to Dell, Marleen Jantzen conveyed material, nonpublic information concerning the acquisition to her husband, John Jantzen.

C. Defendants Were Aware of the Insider Trading Prohibitions

22. As a registered representative employed by PFSI, a Commission-registered broker-dealer, John Jantzen was familiar with insider trading rules. PFSI's insider trading policy was contained in its compliance manuals, which John Jantzen received and reviewed. PFSI's insider trading policy prohibits PFSI employees from trading in securities of a company if they have "inside information" about that company. Specifically, the PFSI insider trading policy states that inside information includes information related to "possible acquisitions."

23. John Jantzen knew that his wife, Marleen Jantzen, worked for executives at Dell and knew, or was reckless in not knowing, that Marleen Jantzen was providing confidential information to him in breach of her duty to Dell.

24. As a Dell employee, Marleen Jantzen had also received and was bound by the company's standard confidentiality policy, which prohibited employees from trading based on confidential corporate information.

25. As explained above, Marleen Jantzen was under an explicit duty to maintain the confidentiality of information she learned concerning the acquisition, both as a result of the company's standard confidentiality policy and the explicit notice she received from Dell on September 3, 2009.

D. The Jantzens Traded on the Basis of Material, Nonpublic Information

26. John Jantzen regularly traded in a brokerage account at TD Ameritrade ("TDA") that he held jointly with his wife. Marleen Jantzen regularly traded through a separate TDA account, held in her own name. As of September 17, the joint account had a negative cash balance of \$1,271.49 and held securities valued at approximately \$5,000. Marleen Jantzen's account had a cash balance of approximately \$5,500.

27. The Jantzens did not have a history of commingling funds between their TDA accounts, and did not access each other's accounts. Rather, Marleen Jantzen historically had traded in her personal account using her personal funds, while John Jantzen traded in the joint account, using his personal funds.

28. Nevertheless, on the evening of September 17, while she was aware of material, nonpublic information concerning the acquisition, Marleen Jantzen commenced the process of buying Perot Systems stock and call options. In an unprecedented move, Marleen Jantzen arranged to quickly transfer \$5,000 of the \$5,500 in cash available in her own TDA brokerage account to the account she held jointly with John Jantzen. To facilitate the cash transfer, Marleen Jantzen contacted TDA early in the evening of September 17, after normal business hours, to learn how to transfer money from her personal account to the joint account. TDA e-mailed a transfer form to Marleen Jantzen that evening. Both Jantzens signed the form, with a

signature date of September 17. Either late that evening or early the following morning, they faxed the transfer papers to TDA.

29. At approximately 9:34 a.m. on September 18, John Jantzen logged into Marleen Jantzen's TDA account from his office. A few minutes after John Jantzen made this highly unusual access to Marleen Jantzen's account, the Defendants spoke twice by cell phone. An hour after these calls, Marleen Jantzen accessed her brokerage account from a computer at Dell.

30. A few minutes after accessing her account, at approximately 10:54 a.m., Marleen Jantzen contacted TDA by telephone. As reflected in a TDA telephone recording, Marleen Jantzen sought to ensure that TDA had received the transfer request and to "see what [TDA] can do to get them expedited" so that the transfer would happen "before noon at the latest [1 p.m.] today." Initially, the TDA representative indicated that it could take some time and that he could not make any "guarantee" on the time. When Marleen Jantzen continued to press him on expediting the transfer, he conferenced in a second representative who ultimately told Marleen Jantzen that the transfer could be processed that day. Marleen Jantzen responded "this is wonderful; what do you think turnaround time would be, *so I could alert my husband?*" (emphasis added). The representative told her it would take about 30 minutes. Immediately after the TDA call, Marleen Jantzen placed a call to John Jantzen's cell phone. Within 30 minutes and while he was aware of material, nonpublic information concerning the tender offer transaction, John Jantzen started executing the trades in Perot Systems securities in the Jantzens' joint account.

31. On September 18, while he was in possession of material, nonpublic information, John Jantzen purchased in the joint account: (i) 500 shares of Perot Systems common stock; (ii) 12 Perot Systems call option contracts, expiring in October 2009; (iii) 12 Perot Systems call

option contracts, expiring in January 2010; and (iv) 15 Dell call option contracts, expiring in November 2009.

32. A “call option” is a securities transaction that gives the purchaser the right to buy 100 shares of an underlying security at a specified price up to a specified expiration date. A call option gives the purchaser the right to “call in” or buy stock, and profit is made on a call option when the underlying stock price increases above the strike price by the expiration date. The expiration date for most listed options in the United States, including the type of options the Jantzens acquired, is the third Friday of the expiration month (except when it falls on a holiday, in which case it is on Thursday).

E. The Merger Announcement and Defendants’ Trading Profits

33. Before the market opened on Monday, September 21, 2009, Dell announced a tender offer for Perot Systems, pursuant to which Dell would purchase all of Perot Systems’ common stock at \$30 per share for a total of approximately \$3.9 billion. Following the announcement, Perot Systems’ stock price immediately increased, closing at \$29.56, up \$11.65 (approximately 65%) from the prior trading day’s close of \$17.91.

34. On the morning of the announcement, John Jantzen liquidated his entire Perot Systems options and stock positions, selling all of the Perot Systems call options and stock he and his wife had acquired just days before. As a result of their illegal trading, Defendants made profits of approximately \$26,813.58.

35. During all relevant periods, and at the time they traded Perot Systems securities, Defendants knew, should have known, or were reckless in not knowing, that they possessed or used inside information conveyed in breach of a duty of trust and confidence.

F. The Defendants' Attempted Cover Up

36. During the Commission's investigation, the Defendants both lied under oath about their Perot Systems trading and provided falsified documents to the Commission in an attempt to cover up their illicit insider trading.

CLAIMS FOR RELIEF

FIRST CLAIM

**Violations by Defendants of Exchange Act Sections 10(b) and
Rules 10b-5 Promulgated Thereunder**

37. Paragraphs 1 through 36 are realleged and incorporated by reference.

38. Defendants, by engaging in the conduct described above, directly and indirectly, in connection with the purchase and sale of securities, and by use of the means and instrumentalities of interstate commerce and of the mails, have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted 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) engaged in acts, practices or courses of business that have operated or will operate as a fraud and deceit upon other persons.

39. Defendants intentionally, knowingly or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

40. By reason of their foregoing acts and practices, Defendants violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

SECOND CLAIM
Violation by Both Defendants of Exchange Act Section 14(e) and
Rule 14e-3(a) Promulgated Thereunder

41. Paragraphs 1 through 36 are realleged and incorporated by reference.

42. After Dell had taken substantial steps to commence a tender offer of Perot Systems' stock, the Defendants purchased Perot Systems' securities. The Defendants did so while in possession of material information relating to the tender offer that they knew or had reason to know: (1) was nonpublic; and (2) had been acquired directly or indirectly from the offering person, namely Dell, or one of its officers, directors, or employees.

43. By reason of the foregoing, the Defendants, directly or indirectly, violated Section 14(e) of the Exchange Act [15 U.S.C Sec 78n(e)] and Rule 14e-3(a) thereunder [17 C.F.R Sec 240.14e-3(a)], and are likely to commit such violations in the future unless enjoined from doing so.

THIRD CLAIM
Violation by Marleen Jantzen of Exchange Act Section 14(e) and
Rule 14e-3(d) Promulgated Thereunder

44. Paragraphs 1 through 36 are realleged and incorporated by reference.

45. Marleen Jantzen, an employee of the offering person Dell, communicated material, nonpublic information relating to the tender offer to John Jantzen under circumstances in which it was reasonably foreseeable that such communication was likely to result in a violation of Rule 14e-3 [17 C.F.R Sec 240.14e-3].

46. By reason of the foregoing, Marleen Jantzen, directly or indirectly, violated Section 14(e) of the Exchange Act [15 U.S.C Sec 78n(e)] and Rule 14e-3(d) thereunder [17 C.F.R Sec 240.14e-3(d)], and is likely to commit such violations in the future unless enjoined from doing so.

PRAYER FOR RELIEF

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

- (i) Permanently enjoining Defendants Marleen and John Jantzen from violating Sections 10(b) [15 U.S.C. § 78j(b)] and 14(e) of the Exchange Act [15 U.S.C. § 78n(e)], and Rules 10b-5 [17 C.F.R. § 240.10b-5] and 14e-3 [15 U.S.C. § 78n(e)] thereunder;
- (ii) Permanently enjoining Defendant Marleen Jantzen from violating Exchange Act Rule 14e-3(d) [17 C.F.R. Sec 240.14e-3(d)];
- (iii) Ordering Defendants to disgorge, on a joint and several basis, all ill-gotten gains from the conduct alleged herein, with prejudgment interest;
- (iv) Ordering Defendant Marleen Jantzen to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for her violations of the federal securities laws as alleged herein;
- (v) Ordering Defendant John Jantzen to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for his violations of the federal securities laws as alleged herein; and
- (vi) Granting such other relief as this Court may deem just and appropriate.

October 5, 2010

Respectfully submitted,

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