

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS Securities and Exchange Commission

DEFENDANTS Melvyn C. Goldstein

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Mark K. Schonfeld, Securities and Exchange Commission,
3 World Financial Center, Room 437, NY, NY 10281,
212-336-1020

ATTORNEYS (IF KNOWN)
Eric Tirschwell, Kramer Levin Naftalis & Frankel LLP, 1177
Avenue of the Americas, NY, NY 10036-2714, 212-715-8404

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

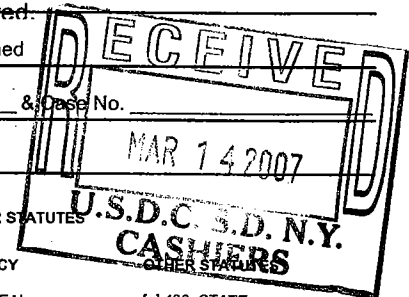
This action is brought under Section 10(b) of the Securities and Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder and involves Goldstein's unlawful insider trading in the securities of Del Laboratories, Inc. ("Del") while in possession of material non-public information that Del was to be acquired.

Has this or a similar case been previously filed in SDNY at any time? No Yes? Judge Previously Assigned

If yes, was this case Vol Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT



CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		ACTIONS UNDER STATUTES		
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY - MED MALPRACTICE	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE REAPPORTIONMENT	<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY	<input type="checkbox"/> 620 FOOD & DRUG	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 410 ANTI-TRUST
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER	<input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 625 DRUG RELATED SEIZURE OF PROPERTY	<input type="checkbox"/> 428 USC 158	<input type="checkbox"/> 430 BANKS & BANKING	<input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 423 WITHDRAWAL 28 USC 157	<input type="checkbox"/> 450 COMMERCE/ICC RATES/ETC	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	<input type="checkbox"/> 340 MARINE	<input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 630 LIQUOR LAWS	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)	<input type="checkbox"/> 460 DEPORTATION	<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 640 RR & TRUCK	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)	<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 650 AIRLINE REGS	<input type="checkbox"/> 820 COPYRIGHTS	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)	<input type="checkbox"/> 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	<input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY	<input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH	<input type="checkbox"/> 830 PATENT	<input type="checkbox"/> 480 CONSUMER CREDIT
<input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	<input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 690 OTHER	<input type="checkbox"/> 840 TRADEMARK	<input type="checkbox"/> 480 CONSUMER CREDIT	<input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 690 OTHER	<input type="checkbox"/> 840 TRADEMARK	<input type="checkbox"/> 490 CABLE/SATELLITE TV
<input type="checkbox"/> 160 STOCKHOLDERS SUITS	ACTIONS UNDER STATUTES		<input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT	<input type="checkbox"/> 861 MIA (1395FF)	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 160 STOCKHOLDERS SUITS	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 720 LABOR/MGMT RELATIONS	<input type="checkbox"/> 862 BLACK LUNG (923)	<input type="checkbox"/> 500 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 190 OTHER CONTRACT	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 510 MOTIONS TO VACATE SENTENCE	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 863 DIWC (405(g))	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 190 OTHER CONTRACT	<input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	<input type="checkbox"/> 863 DIWW (405(g))	<input type="checkbox"/> 500 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY	<input type="checkbox"/> 442 EMPLOYMENT	<input type="checkbox"/> 530 HABEAS CORPUS	<input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY	<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> 510 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 196 FRANCHISE	<input type="checkbox"/> 443 HOUSING ACCOMMODATIONS	<input type="checkbox"/> 535 DEATH PENALTY	<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 196 FRANCHISE	<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 790 OTHER LABOR LITIGATION	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 520 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 210 LAND CONDEMNATION	<input type="checkbox"/> 444 WELFARE	<input type="checkbox"/> 540 MANDAMUS & OTHER	<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 870 TAXES	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 210 LAND CONDEMNATION	<input type="checkbox"/> 446 AMERICANS WITH DISABILITIES - OTHER	<input type="checkbox"/> 791 EMPL RET INC SECURITY ACT	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 530 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	<input type="checkbox"/> 550 CIVIL RIGHTS	<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 440 OTHER CIVIL RIGHTS		<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 540 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 230 RENT LEASE & EJECTMENT	<input type="checkbox"/> 446 AMERICANS WITH DISABILITIES - OTHER	<input type="checkbox"/> 555 PRISONER CONDITION	<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 230 RENT LEASE & EJECTMENT			<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 550 SECURITIES/COMMODITIES/EXCHANGE
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<input type="checkbox"/> 246 TORT PRODUCT LIABILITY			<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 246 TORT PRODUCT LIABILITY			<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 570 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 290 ALL OTHER REAL PROPERTY			<input type="checkbox"/> 385 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 490 CABLE/SATELLITE TV	<input type="checkbox"/> 290 ALL OTHER REAL PROPERTY			<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 580 SECURITIES/COMMODITIES/EXCHANGE

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: YES NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN X IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2a. Removed from State Court
- 2b. Removed from State Court AND at least one party is a pro se litigant
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] []	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] []	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] []
CITIZEN OF ANOTHER STATE	[] []	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] []	FOREIGN NATION	[] []

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Securities and Exchange Commission
3 World Financial Center, Room 437
New York, NY 10281

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Melvyn C. Goldstein
16 Allenby Drive
Fort Salonga, NY 11768

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE 3/14/07 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
 YES (DATE ADMITTED Mo. 6 Yr. 98)
Attorney Bar Code #

RECEIPT #

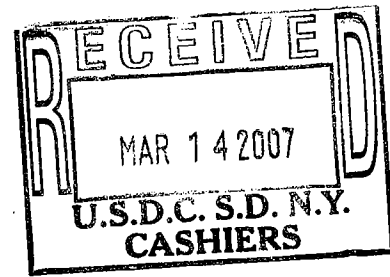
Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Mark K. Schonfeld
Regional Director (MS-2798)



Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
Northeast Regional Office
3 World Financial Center
New York, New York 10281

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE GRIESA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MELVYN C. GOLDSTEIN,

Defendant.

07 CV 2199

07 Civ. ____ ()

COMPLAINT

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges the following against defendant Melvyn C. Goldstein (“Goldstein”):

SUMMARY

1. This action involves Goldstein’s unlawful insider trading in the securities of Del Laboratories, Inc. (“Del”), while in possession of material non-public information, one week prior to the announcement on July 2, 2004, that Kelso & Co. (“Kelso”) and Church & Dwight, Inc. (“C&D”) had reached a definitive agreement to acquire Del. At the time, Goldstein was a consultant for Del in its Finance Department and previously had been Del’s Chief Financial Officer (“CFO”) for sixteen years. Goldstein learned that Del was in sales negotiations and

would soon announce its plans to be acquired, based on information he was told and observed while working at Del as a consultant. Through conversations with several Del employees and his observation of the unusual flurry of activity at Del, Goldstein concluded that the acquisition was imminent.

2. Goldstein started purchasing Del shares on the very day the final price of the acquisition was being negotiated. In total, Goldstein purchased 9,400 shares of Del prior to the acquisition announcement. Goldstein purchased the majority of these Del shares through an account in his wife's name, something he had never done before.

3. After the acquisition announcement, Del's shares closed significantly higher, jumping from \$30.17 on July 1, 2004, to \$34.51 on July 2, 2004, the date of the announcement, a 12% increase. By trading in advance of the public announcement of the acquisition agreement, Goldstein stood to profit by \$38,308.

4. Goldstein knew, or was reckless in not knowing, that information about the Del acquisition was material and non-public. In addition, Goldstein knew, or was reckless in not knowing, that he had a duty to refrain from trading in Del stock based on the information he learned while working as a consultant for Del.

VIOLATIONS

5. By virtue of the conduct alleged herein, Goldstein has engaged, directly or indirectly, singly or in concert, in transactions, acts, practices, and courses of business that constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. Unless Goldstein is permanently enjoined and restrained, he will engage again in the transactions, acts, practices and

courses of business set forth in this Complaint and in transactions, acts, practices and courses of business of similar type and object.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to its authority under Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking a judgment: (a) permanently enjoining Goldstein from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint; (b) ordering Goldstein to disgorge his illicit profit and pre-judgment interest thereon; (c) imposing a civil penalty against Goldstein pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; (d) imposing an officer and director bar, prohibiting Goldstein from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and (e) ordering such other relief as the Court may deem appropriate.

7. Goldstein, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein. Certain of the relevant conduct, transactions, acts, practices, and courses of business occurred in the Southern District of New York. Specifically, during the time of the conduct at issue, shares of Del were traded on the American Stock Exchange (“AMEX”), an electronic stock market located in the Southern District of New York. Accordingly, this Court has jurisdiction over this action, and

venue is proper in this district, pursuant to Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa].

THE DEFENDANT

8. **Goldstein**, age 66, is a resident of Fort Salonga, New York. He was the CFO of Del from 1982 until his retirement from Del at the end of 1997. Goldstein was also a consultant for Del from June 1999 through the end of June 2004, on a near quarterly basis.

RELEVANT ENTITIES

9. **Del**, a Delaware corporation, operated in two business segments – cosmetics and over-the-counter pharmaceuticals – and reported 2003 sales of \$386 million. Among Del's product lines were Sally Hansen, LaCross, and Orajel. During the time of the events alleged herein, the common stock of Del was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the AMEX under the symbol "DLI". After the acquisition by Kelso, Del ceased to be traded.

10. **Kelso**, a New York based private equity firm, announced its agreement with C & D and Del to acquire Del on July 2, 2004. Subsequently, on January 27, 2005, Kelso, through a wholly-owned holding company, acquired Del.

11. **C&D**, a New Jersey based corporation, is a consumer products company which makes, among other things, Arm & Hammer baking soda. C&D along with Kelso was party to the July 2, 2004, agreement to acquire Del. Subsequently, C&D withdrew from the acquisition agreement leaving Kelso to purchase Del alone.

FACTS

Background

12. Beginning in or about June 1999, Goldstein, who had retired as Del's CFO in 1997, returned to Del as a consultant in Del's Finance Department, working in Del's offices on almost a quarterly basis near the end of the quarter for one to two weeks at a time. Goldstein was paid, as a consultant, to assist Del's Finance Department with the accounting of Del's accounts receivables.

13. While working as a consultant, Goldstein was supervised by Del's manager of accounts receivable and charge-backs and Del's comptroller, and occasionally met with Del's CFO to discuss Goldstein's projects. During the period at issue, Goldstein's work station was located in Del's Finance Department, around the corner from the secretary and administrative assistant for Del's CFO at the time of the acquisition. The secretary and administrative assistant for Del's CFO sat across from Del's CFO and had formerly been Goldstein's secretary and administrative assistant. In addition, Goldstein, by virtue of having been Del's CFO, was very familiar with the work and operations of the Finance Department.

14. Goldstein owed a duty of loyalty to Del, which duty required him to maintain Del's confidences, and not to use, for personal gain, any material non-public information concerning Del. At the time of the conduct at issue, Del had a confidentiality policy in place that applied to consultants working within Del's Finance Department, including Goldstein. Goldstein was aware of Del's confidentiality policy, having formerly been Del's CFO and having enforced the policy himself.

A Definitive Acquisition Agreement Is Reached Between Del, Kelso and C&D

15. In September 2003, Del retained a financial advisor to, among other things, analyze the sale of Del as a means to maximize shareholder value. Between September 2003 and May 2004, Del's financial advisor contacted several third parties to solicit their interest in a possible acquisition of Del.

16. In late March 2004, after having obtained a confidentiality agreement, Del's financial advisor provided confidential financial information concerning Del to C&D, which had earlier indicated an interest in acquiring Del with Kelso. On June 1, 2004, Del delivered a draft merger agreement to Kelso and C&D, who together, provided a detailed markup of the proposed agreement to Del on June 15, 2004. On June 22, 2004, Kelso and C&D provided Del with a written, non-binding proposal to acquire Del.

17. On June 23, 24, and 25, Kelso, C&D and Del negotiated the price per share contemplated in the acquisition agreement. Following a telephonic meeting between Del principals on June 25, to consider Kelso's revised proposal, Del continued negotiations with Kelso and C&D regarding the terms and conditions of a definitive agreement. Later that date, Kelso and C&D submitted a binding proposal to buy all of Del's shares for \$35.00 per share.

18. From June 25, 2004, through July 1, 2004, representatives of Del, Kelso and C&D negotiated the remaining terms of the merger agreement, which the parties executed on the evening of July 1, 2004, and announced publicly on July 2, 2004. Under the terms of the agreement, Kelso and C&D, through a jointly formed holding company, were to acquire all outstanding shares of Del at a price of \$35.00 per share, subject to shareholder approval.

19. Following the public announcement, but prior to the shareholder vote, C&D withdrew from the acquisition, leaving Kelso to acquire Del on its own.

20. The acquisition negotiations were highly confidential, and the transaction was not disclosed to the public at any time prior to the July 2, 2004 announcement.

Goldstein Learns that Del Was Negotiating its Acquisition

21. On or before June 25, 2004, Goldstein obtained confidential information about the pending acquisition of Del by Kelso and C&D.

22. While at Del's offices on June 23 and June 25, 2004, for the purpose of performing consulting services, Goldstein had conversations with several clerks and staff of Del's Finance Department, including the secretary and assistant to Del's CFO at the time of the conduct at issue, in which each indicated to Goldstein that he or she believed that Del was in negotiations to sell the company and that a deal for its acquisition would soon be announced. Goldstein became aware, through these conversations, that these and other Del employees were concerned that they would lose their jobs as a result of the acquisition, that auditors were doing work in Del's offices that was not routine, that outside auditors were coming to Del, and that Del had been working with a financial advisor. Further, while working as a consultant at Del on those dates, Goldstein became aware that internal rumors of the company's impending acquisition were rampant and intense, that people were talking in the halls about the impending acquisition, and that senior officials at Del refused to comment on the rumors.

23. Following Goldstein's conversations with the Finance Department's clerks and staff discussed above, on June 25, 2004, while visiting the cafeteria in Del's office building, Goldstein was approached by a Del mid-level marketing manager who asked Goldstein if he was in the offices "to sign papers for the sale." Goldstein acknowledged that as a result, he concluded that the merger "might have been pretty imminent."

24. Moreover, on June 23 and 25, while Goldstein was in Del's offices, there was a significant increase in activity in Del's Finance Department.

1. On June 23, there was a flurry of activity as the Del representatives discussed with Del's financial advisor the initial price offered by Kelso and C&D, which Del rejected. This activity included numerous calls from Del's financial advisor to Del's CFO and others, which conversations took place behind closed doors. In fact, despite Del's usual open door policy, during these days, Del's CFO had his door closed frequently.
2. On June 25, the same Del representatives held a telephonic meeting to consider Kelso and C&D's revised proposal. Following this discussion, Del's CFO and the other Del representatives conducted another series of phone calls and conferences with its financial advisor, while the financial and legal advisors continued negotiations with Kelso and C&D regarding the terms and conditions of the definitive acquisition agreement, including the completion of remaining due diligence. Later that day, Kelso and C&D submitted their binding proposal to acquire 100% of the outstanding shares of Del common stock at \$35.00 per share.

25. Amid the flurry of activity and numerous phone calls that took place on June 23 and June 25, Goldstein approached Del's CFO to discuss the acquisition rumors as well as Goldstein's perception that employee morale was low in light of the anticipated sale. While Del's CFO denied that a final deal had been reached, by the way the CFO responded to Goldstein combined with the unusual activity he observed in Del's offices, Goldstein concluded that Del was in fact going to be acquired and that the acquisition was imminent.

Goldstein Trades in Del

26. On the afternoon of June 25, 2004, after Goldstein had returned home from Del's offices, Goldstein placed an order to purchase 4,400 shares of Del in his two retirement accounts and 5,000 shares of Del in an account in the name of his wife.

27. Prior to his purchases on June 25, 2004, Goldstein had purchased no more than a few hundred shares of Del in any of his brokerage accounts and had never traded in his wife's account.

28. When he placed the order in his wife's account, Goldstein had a conversation with his wife's broker in which the broker, concerned about the suspicious trading activity, asked Goldstein whether Goldstein worked for Del and whether Goldstein had any inside information. Goldstein responded "no" to both questions. Goldstein also failed to tell his wife's broker that he had formerly been Del's CFO, that he was working as a consultant for Del, and that he had been working at Del's offices that very afternoon.

29. Because Del stock was thinly traded, Goldstein's trades in his wife's account were placed through daily limit orders and purchased as follows: 1,600 shares at \$30.31 on June 25, 2004, 200 shares at \$30.35 on June 28, 2004, 3,200 shares on June 29, 2004, in three different lots – 1,200 shares at \$30.75, 1,000 shares at \$30.65 and another 1,000 shares at \$30.65. Goldstein paid for these shares by wire transferring \$49,000 on June 29, 2004, and \$105,200 on June 30, 2004, from his personal checking account to his wife's brokerage account.

30. At the time of the transactions and events described herein, Goldstein had a fiduciary duty, or other duty arising out of a relationship of trust and confidence, to keep confidential the information he obtained in the course of his employment as a consultant in Del's

Finance Department, about, among other things Del's negotiations to be acquired. In addition, Goldstein had a fiduciary duty, or other duty arising out of a relationship of trust and confidence, to refrain from using for his own advantage or benefit information he obtained during the course of his work as a consultant for Del.

31. By virtue of the facts and conduct described above in paragraphs 12 to 30, Goldstein breached a fiduciary duty, or other duty arising out of a relationship of trust and confidence, he owed to Del.

Goldstein's Trading Profits

32. Between June 25, 2004, and June 29, 2004, Goldstein purchased 9,400 shares of Del (including the shares purchased in his wife's account), at an average price of \$30.43, for a total purchase price of \$286,086. On July 2, 2004, Del publicly announced the proposed acquisition by Kelso and C&D for \$35 per share; Del's stock rose to a high of \$34.60, and closed at \$34.51, resulting in a paper profit to Goldstein of \$38,308.

CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5

33. The Commission repeats and realleges the allegations contained in paragraphs 1 through 32 by reference as if fully set forth herein.

34. Goldstein, directly or indirectly, singly or in concert, knowingly or recklessly, by the use of the means or instrumentalities of interstate commerce, or by the use of the mails, or of any facility or national securities exchange, in connection with the purchase of Del securities:

(a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of, or otherwise made, untrue statements of material fact, or omitted to state material facts

