

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION
450 FIFTH STREET, N.W.
WASHINGTON, D.C. 20549,

Plaintiff,

vs.

CHARLES BRUMFIELD, JOSEPH BRUMFIELD,
ROBERT ALLEN, WILLIAM MYLETT,
JOSEPH PENNA, JOSEPH CUSIMANO,
ALFRED VOLPE, JAMES GALANTE,
THOMAS ALGER, JOHN O'BRIEN,
LAWRENCE FRIEDMAN, ROBERT FLANAGAN,
THOMAS FLANAGAN, SHARON SEIDEN,
WARREN SMITH, JOHN LYNCH, AND
ALBERT BRODY,

Defendants.

COMPLAINT FOR
PERMANENT INJUNCTIVE
AND OTHER RELIEF

Plaintiff Securities and Exchange Commission ("Commission")
for its Complaint alleges that:

THE NATURE OF THE ACTION

1. This is a case of widespread insider trading in the securities of four American Telephone & Telegraph Company ("AT&T") acquisition targets by family and friends of defendant Charles L. Brumfield ("Brumfield"), a Vice President in AT&T's Human Resources Department. During 1990 and 1991, Brumfield, in breach of AT&T's Code of Conduct for employees, misappropriated confidential information from AT&T concerning its plans to acquire Paradyne Corporation ("Paradyne") NCR Corporation ("NCR"), Digital Microwave Corporation ("Digital Microwave"), and Teradata Corporation ("Teradata"), by telling his son and several

friends to trade in the securities of one or more of those companies. AT&T eventually made a tender offer for the common stock of Paradyne and NCR and acquired Teradata, making the tips regarding those three targets quite profitable. Brumfield's tippees also profited from their trading in the securities of Digital Microwave despite AT&T's abandonment of that acquisition because they followed Brumfield's direction that they liquidate their holdings once he learned of, and told them about, AT&T's change in plans.

Brumfield realized significant profits from the trading of his tippees. He arranged to have several of them surreptitiously trade for him in the securities of the three target companies and kick back profits in the form of cash and other concealed payments. In this connection, he also enlisted the help of Thomas Alger, a colleague at AT&T, who himself breached AT&T's Code of Conduct by tipping a network of his friends and requiring them to kick back some of their profits which he then divided between himself and Brumfield.

Collectively, Brumfield, Alger, and the fifteen defendants who were their direct or indirect tippees realized profits of approximately \$2.6 million from their insider trading, more than \$300,000 of which was kicked back to Brumfield and Alger.

Brumfield and other defendants also made a concerted effort to conceal their illegal trading and payoffs from detection by the Commission. William Mylett and Joseph Cusimano, who received profits of nearly \$400,000 and \$900,000 respectively from

following Brumfield's tips, fabricated documents to make it appear that tens of thousands of dollars in trading profits that each funneled to Brumfield were loans or other legitimate payments. Brumfield and other defendants such as Robert Allen, after discussing matters with Brumfield, made false statements to the Commission during its investigation.

As relief for defendants' tipping and trading in violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78n(e)], and Rules 10b-5 and 14e-3 [17 C.F.R. §§ 240.10b-5 and 240.14e-3] promulgated thereunder, the Commission requests that this Court permanently enjoin defendants from violating the statutory provisions and rules, order them to disgorge all profits from trading in the securities of Paradyne, NCR, Digital Microwave and Teradata, and impose penalties equal to three times the profits realized from trading in the securities of NCR and Teradata.

JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to Sections 21 and 21A of the Exchange Act [15 U.S.C. §§ 78u and 78u-1]. Each defendant has, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the facilities of a national securities exchange in connection with the purchases and sales of securities alleged herein.

3. This judicial district is an appropriate venue for this action pursuant to Section 27 of the Exchange Act [15 U.S.C.

§78aa]. Certain acts and transactions constituting the alleged violations of the Exchange Act occurred within this judicial district. Among other things, tips of material, nonpublic information were made to or from defendants in this district, trading in NCR common stock occurred on the New York Stock Exchange within this district, and orders to trade other securities were placed in or transmitted within this district.

THE ISSUERS

4. AT&T is a New York corporation having its headquarters in New York, New York. During 1990 and 1991, as now, AT&T was principally engaged in the businesses of providing interchange and international telecommunications services and manufacturing telecommunications equipment and general purpose computers.

5. During 1988, Paradyne was a Delaware Corporation headquartered in Largo, Florida. At that time, Paradyne developed, manufactured, sold and serviced data communications equipment such as modems. Throughout 1988, the common stock of Paradyne was registered with the Commission and traded on the New York Stock Exchange.

6. During 1990 and 1991, NCR was a Maryland Corporation headquartered in Dayton, Ohio. During those years, NCR developed, marketed, installed, and serviced business information processing systems. From at least January 1990 through September 19, 1991, the common stock of NCR was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 781(g)] and traded on the New York Stock Exchange, and

its options were traded on the Chicago Board of Options Exchange ("CBOE").

7. During 1991, Digital Microwave was a Delaware corporation, headquartered in San Jose, California, which manufactured microwave-radio and fiber-optic communications products and systems. At the time, Digital's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 781(g)] and quoted on National Association of Securities Dealers Automated Quotation System ("NASDAQ") as a National Market System stock.

8. During 1991, Teradata was a Delaware corporation, headquartered in El Segundo, California, which manufactured and marketed relational database management systems, and was considered a pioneer in the leading-edge computing technology called "massively parallel processing." During 1991, prior to being acquired by AT&T's wholly owned subsidiary NCR, Teradata's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 781(g)] and quoted on the NASDAQ, and its options were traded on the CBOE.

THE DEFENDANTS

9. Brumfield, during 1990 and 1991, resided in New Jersey and was employed as a Labor Relations Vice President in AT&T's Human Resources Department. During those years, Brumfield's place of employment was the Morristown, New Jersey, office of AT&T, and his responsibilities included negotiating labor issues with two major unions, the Communications Workers of America

("CWA") and the International Brotherhood of Electrical Workers ("IBEW"). On or about May 2, 1993, Brumfield retired from AT&T, and he currently resides in Palm Beach, Florida.

10. Joseph Brumfield resides in Naperville, Illinois. He is the son of defendant Charles Brumfield and knew that he was employed by AT&T.

11. Robert Allen ("Allen") resides in Punta Gorda, Florida. During 1990 and 1991, Allen was a friend of Brumfield and knew that he was employed by AT&T.

12. William Mylett ("Mylett") resides in Palm Beach Gardens, Florida. During 1990 and 1991, Mylett was a friend of Brumfield and knew that he was employed by AT&T.

13. Joseph Penna ("Penna") resides in West Palm Beach, Florida. During 1990 and 1991, he was president of IBEW Local 827 and chairman of the IBEW national council established for handling labor negotiations with AT&T. As part of his union responsibilities, Penna had regular communications with Brumfield during those years.

14. Joseph Cusimano ("Cusimano") resides in Joliet, Illinois. During 1990 and 1991, Cusimano was a friend of Brumfield and knew that he was employed by AT&T. On August 17, 1992, Cusimano pled guilty to two felony counts of "aiding or assisting in the preparation of a false federal income tax return" in violation of 26 U.S.C. §7206.

15. Alfred Volpe ("Volpe") resides in Little Silver, New Jersey. During 1990 and 1991, Volpe was a friend of both Penna

and Cusimano. Prior to November 1990, Volpe had met Brumfield through Penna and/or Cusimano and knew that Brumfield was employed by AT&T.

16. James Galante ("Galante") resides in Muttontown, New York. During 1990 and 1991, he was a friend of Volpe.

17. Thomas Alger ("Alger") resides in Punta Gorda, Florida. During 1990 and 1991, he was Brumfield's subordinate in the Labor Relations Department of AT&T. The two were also close friends during those years.

18. John O'Brien ("O'Brien") resides in Huntington Station, New York. During 1990 and 1991, O'Brien was a friend of Alger and knew that he was employed by AT&T.

19. Lawrence Friedman ("Friedman") resides in Punta Gorda, Florida. During 1990 and 1991, Friedman was a friend of Alger and knew that he was employed by AT&T.

20. Albert Brody ("Brody") resides in Merrick, New York. During 1990 and 1991, Brody was a friend of Alger and knew that he was employed by AT&T.

21. Robert Flanagan resides in Boonville, New York. During 1990 and 1991, Robert Flanagan was a friend of Alger and knew that he was employed by AT&T.

22. Thomas Flanagan resides in West Islip, New York. He is Robert Flanagan's brother and, during 1990 and 1991, they owned TJ Courtney's, a restaurant located in Hicksville, New York. Prior to November 1990, Thomas Flanagan had met Alger through his brother and knew that Alger was employed by AT&T.

23. Sharon Seiden ("Seiden") resides in Boonville, New York. During 1990 and 1991, she was a close personal friend of Robert Flanagan. Prior to November 1990, Seiden had met Alger and knew that he was a friend of Robert Flanagan and employed by AT&T.

24. Warren Smith ("Smith") resides in Pompano Beach, Florida. During 1991, he was a friend of Robert Flanagan.

25. John Lynch ("Lynch") resides in Pompano Beach, Florida. During 1991, he and Smith were friends as well as partners in a law practice. Lynch also was a friend of Robert and Thomas Flanagan.

THE TIPPING AND TRADING

Duty of Confidentiality on the Part of Brumfield and Alger

26. At all times between November 1988 and December 1991, AT&T had in place employment policies forbidding its employees from using to their personal advantage or disclosing to anyone outside of AT&T certain nonpublic information that came into their possession in the course of their employment. Specifically, AT&T's Code of Conduct prohibited employees from trading upon or tipping outsiders in regard to "inside information" about AT&T or other companies learned by the employees as part of their jobs. Listed as one category of inside information that employees were forbidden to use or divulge was "acquisition plans" of AT&T. Brumfield and Alger were provided with said Code of Conduct, and each was aware of the prohibitions concerning the use of inside information.

AT&T's Tender Offer for Paradyne

The Confidential Information

27. AT&T retained Morgan Stanley & Co. prior to mid-November 1988 to provide financial advice and to formulate a plan for a possible acquisition of Paradyne by AT&T. On November 15, 1988, at the request of AT&T, Morgan Stanley representatives met with the chairman of Paradyne's board of directors to inquire whether Paradyne would be willing to discuss its possible acquisition by AT&T.

28. On November 22, 1988, representatives of AT&T met with the chairman of Paradyne to discuss the combination of the two companies.

29. On December 15, 1988, Paradyne's board of directors approved the concept of a tender offer by AT&T, and formal negotiations between the companies began on December 19, 1988. An agreement in principle was reached on December 23, 1988, and the tender offer and merger agreement which was executed on December 26, 1988, calling for AT&T to pay \$10.25 for each share of Paradyne common stock.

Brumfield Misappropriates Information About Paradyne

30. On or about December 20, 1988, during the course of his employment as a Vice President of Labor Relations in AT&T's Human Resources Department, Brumfield came into possession of information that AT&T was developing a plan to acquire Paradyne.

31. On or about December 20, 1988, Brumfield gave information concerning AT&T's planned acquisition of Paradyne to Alger and Mylett.

Trading in NCR by Brumfield's Tippees

32. Sometime between December 19 and 27, 1988, after having received information about AT&T's plans to acquire Paradyne, Mylett and Alger ordered the purchase of Paradyne securities and both profited from said purchases.

The Information Becomes Public

33. AT&T publicly announced its tender offer for the common stock of Paradyne on December 27, 1988. At the close of trading on December 23, the last trading day prior to the announcement, Paradyne's common stock had traded at \$5.25 per share. On December 27, following the announcement of the tender offer, Paradyne's common stock rose to a closing price of \$10.00 per share.

AT&T's Tender Offer for NCR

The Confidential Information

34. Beginning in the mid-1980s, AT&T considered ways of strengthening its position in the computer industry and as part of that effort had considered the acquisition of a major computer company. One of the companies that AT&T evaluated was NCR.

35. From in or about the summer of 1990 through October 1990, AT&T intensified its search for a computer company to acquire. On October 17, 1990, AT&T's board of directors decided to pursue NCR. Thereafter, AT&T assembled an internal

acquisition team, retained investment bankers, outside legal counsel and accountants to formulate a specific acquisition plan.

36. Between November 7 and 9, numerous meetings were held by AT&T's acquisition team. One such meeting on November 7 was attended by two of Brumfield's supervisors in the Human Resources Department.

37. At the meeting of AT&T's board on November 14, 1990, the AT&T acquisition team presented a plan to make a tender offer for the stock of NCR. AT&T's board adopted the plan at the meeting.

38. AT&T's plans to commence a tender offer for NCR remained nonpublic until Sunday, December 2, 1990.

Brumfield Misappropriates Information About NCR

39. Before November 8, 1990, during the course of his employment as a Vice President of Labor Relations in AT&T's Human Resources Department, Brumfield came into possession of information that AT&T was developing a plan to acquire NCR.

40. On or before November 8, 1990, Brumfield gave information concerning AT&T's planned acquisition of NCR to Allen, Joseph Brumfield, Cusimano, and Mylett.

41. On or before November 15, 1990, Brumfield gave Alger information that Brumfield had learned at AT&T concerning the planned acquisition of NCR, at which time Brumfield and Alger discussed AT&T's policy precluding them from trading in the securities of NCR while they were in possession of the information. In this regard, Brumfield directed Alger to cause

someone else to purchase for Brumfield short-term, out of the money, NCR call option contracts (referred to hereafter as "call options" or "calls").

42. On or before November 20, 1990, Brumfield gave Penna information that Brumfield had learned at AT&T concerning the planned acquisition of NCR.

Trading in NCR by Brumfield's Tippees

43. Beginning on November 9 and continuing through November 19, 1990, Allen ordered the purchase of NCR common stock and call options at a total cost of approximately \$62,479 (including commissions) through six different brokerage accounts. The details of such purchases are as follows:

- a. 18 December 60 NCR calls at \$2 7/8;
- b. 25 December 65 NCR calls at \$1 7/8;
- c. 20 December 65 NCR calls at \$2 3/8;
- d. 20 December 65 NCR calls at \$2 3/4;
- e. 20 December 70 NCR calls at \$1 1/8;
- f. 20 December 70 NCR calls at \$1 5/8;
- g. 5 December 75 NCR calls at \$5/8;
- h. 9 March 70 NCR calls at \$2 1/4;
- i. 100 shares of NCR common stock at \$55 1/8; and
- j. 500 shares of NCR common stock at \$55 5/8.

44. On or about November 9, 1990, Joseph Brumfield ordered the purchase of 12 December 70 NCR call options at \$1 1/8, investing approximately \$1,428 (including commissions).

45. Beginning on November 9 and continuing through November 20, 1990, Cusimano ordered the purchase of NCR call options at a total cost of approximately \$104,532 (including commissions).

The details of such purchases are as follows:

- a. 3 December 55 NCR calls at \$4 1/2;
- b. 22 December 55 NCR calls at \$5;
- c. 12 December 60 NCR calls at \$2 3/4;
- d. 13 December 60 NCR calls at \$3 1/8;
- e. 20 December 65 NCR calls at \$1 11/16;
- f. 20 December 70 NCR calls at \$1;
- g. 10 March 60 NCR calls at \$4 1/4;
- h. 50 March 60 NCR calls at \$4 3/8;
- i. 25 March 60 NCR calls at \$5;
- j. 20 March 65 NCR calls at \$2 3/4;
- k. 25 March 65 NCR calls at \$3;
- l. 25 March 65 NCR calls at \$3 3/8;
- m. 20 March 65 NCR calls at \$4;
- n. 25 March 70 NCR calls at \$2 1/4; and
- o. 25 March 75 NCR calls at \$1 1/4.

46. Beginning on November 9 and continuing through November 12, 1990, Mylett ordered the purchase of NCR call options at a total cost of approximately \$33,000 (including commissions). The details of such purchases are as follows:

- a. 20 December 75 NCR calls at \$1/2;
- b. 50 December 75 NCR calls at \$5/8;
- c. 50 December 75 NCR calls at \$3/4;

- d. 25 March 70 NCR calls at \$2 1/8;
- e. 25 March 70 NCR calls at \$2 1/4; and
- f. 50 March 70 NCR calls at \$2 1/2.

47. On or about November 20, 1990, Penna ordered the purchase of 10 December 60 NCR call options at \$1 1/4. On or about November 27, 1990, he ordered the purchase of 10 January 65 NCR call options at \$1 3/4. All told, he invested approximately \$3,231 (including commissions) in these NCR call options.

Alger Misappropriates Information About NCR

48. After Brumfield gave Alger information concerning AT&T's planned acquisition of NCR, Alger passed such information on to Robert Flanagan, Thomas Flanagan, Seiden, O'Brien, and Brody. Robert Flanagan also passed along to Thomas Flanagan and Seiden information received from Alger concerning the planned acquisition. Alger further arranged with O'Brien, Brody, the Flanagans to purchase NCR securities for Alger.

Trading in NCR Securities by Alger's Tippees

49. Beginning on November 15 and continuing through November 28, 1990, Thomas Flanagan ordered the purchase of NCR call options having a total cost of approximately \$28,820 (including commissions). The details of such purchases are as follows:

- a. 30 December 60 NCR calls at \$2 5/8
- b. 3 December 65 NCR calls at \$1 7/8;
- c. 10 December 70 NCR calls at \$1 1/8;
- d. 30 December 75 NCR calls at \$5/16;

- e. 77 December 75 NCR calls at \$5/8;
- f. 90 December 75 NCR calls at \$3/4; and
- g. 63 December 75 NCR calls at \$7/8.

50. Beginning on November 16 and continuing through November 29, 1990, Seiden ordered the purchase of NCR call options having a total cost of approximately \$16,020 (including commissions). The details of such purchases are as follows:

- a. 10 December 75 NCR calls at \$1/4;
- b. 290 December 75 NCR calls at \$3/8;
- c. 40 December 75 NCR calls at \$1/2; and
- d. 20 December 75 NCR calls at \$1.

51. On or about November 16, 1990, O'Brien ordered the purchase of 20 December 60 NCR call options at \$4 1/2. On or about November 19, 1990, O'Brien ordered the purchase of 50 shares of NCR common stock at \$59 1/4. O'Brien's total investment in NCR was approximately \$12,276 (including commissions).

52. On or about November 16, 1990, Brody ordered the purchase of 15 December 60 NCR call options at \$4 1/2, 10 January 60 NCR call options at \$2 5/8, 200 shares of NCR common stock at \$58 5/8, and 200 shares of NCR common stock at \$59. All told, he invested approximately \$33,134 (including commissions) in those NCR securities.

The Information Becomes Public

53. On Sunday, December 2, 1990, AT&T announced that it was offering to exchange \$90 of AT&T stock for each share of NCR stock.

54. On Monday, December 3, 1990, the price of NCR's stock rose to a closing price of \$81.50, an increase of \$24.75 from its closing price on the previous trading day, Friday, November 30, 1990.

Profits From Trading in NCR Securities

55. After the December 2, 1990 public announcement of the tender offer, Allen realized a profit of approximately \$259,015 from trading in NCR securities.

56. After the December 2, 1990 public announcement of the tender offer, Joseph Brumfield realized a profit of approximately \$14,666 from trading in NCR securities.

57. After the December 2, 1990 public announcement of the tender offer, Cusimano realized a profit of approximately \$794,712 from trading in NCR securities.

58. After the December 2, 1990 public announcement of the tender offer, Mylett realized a profit of approximately \$365,121 from trading in NCR securities.

59. After the December 2, 1990 public announcement of the tender offer, Penna realized a profit of approximately \$36,671 from trading in NCR securities.

60. After the December 2, 1990 public announcement of the tender offer, Thomas Flanagan realized a profit of approximately \$340,110 from trading in NCR securities.

61. After the December 2, 1990 public announcement of the tender offer, Seiden realized a profit of approximately \$353,242 from trading in NCR securities.

62. After the December 2, 1990 public announcement of the tender offer, O'Brien realized a profit of approximately \$36,537 from trading in NCR securities.

63. After the December 2, 1990 public announcement of the tender offer, Brody realized a profit of approximately \$74,934 from trading in NCR securities.

Secret Payments of NCR Profits to Alger and Brumfield

64. During December 1990 or January 1991, the Flanagans and O'Brien made cash payments to Alger of a portion of the profits they realized by trading in NCR securities. Alger and Brumfield drove from New Jersey to O'Brien's house and the Flanagans' restaurant in New York to pick up the cash.

65. During December 1990 or January 1991, Brody made a cash payment to Alger of a portion of the profits realized by Brody from trading in NCR securities.

66. Upon receiving the payments referenced in paragraphs 64-65, Alger gave portions of them to Brumfield.

67. Beginning in December 1990 and continuing into 1991, out of his profits from trading in NCR securities, Mylett paid approximately \$65,000 to Brumfield through a series of checks.

To disguise the true purpose of the checks, Mylett and Brumfield agreed that certain checks would be made payable to persons designated by Brumfield and that checks given to Brumfield for deposit into accounts under his control would have false notations on them in regard to the purposes for the payments.

68. In or about December 1990 or early 1991, Allen, out of profits from trading in NCR securities, paid \$38,304 to Brumfield, \$37,804 of which was paid by check and \$500 of which was paid in cash.

69. Cusimano gave Brumfield a portion of Cusimano's profits from trading in NCR securities. On or about May 31, 1991, Cusimano drew a check in the amount of \$100,000 payable to Brumfield, and, on or about July 31, 1991, he drew a check in the amount of \$32,500 payable to Brumfield, the latter of which also contained some of the profits Cusimano received from trading in Digital Microwave.

AT&T's Aborted Plan to Acquire Digital Microwave

The Confidential Information

70. On or about March 19, 1991, the Human Resources Department of AT&T received a confidential AT&T memorandum stating that the Chief Executive Officer of AT&T had decided to pursue the acquisition of Digital Microwave and had convened a meeting of AT&T's board of directors for the next day to approve the acquisition.

71. On or about March 20, 1991, AT&T's board of directors approved the acquisition of Digital Microwave. Such approval was

conditioned upon AT&T paying no more than a certain price for each share of Digital Microwave stock.

72. AT&T never publicly announced that it planned to acquire Digital Microwave.

73. On or before March 29, 1991, the price of Digital Microwave's stock rose above the acquisition price approved by AT&T's board, and AT&T abandoned its acquisition plans.

74. AT&T's Human Resources Department was not informed of AT&T's decision to no longer pursue the acquisition of Digital Microwave until in or about the first week of April 1991.

75. AT&T never publicly announced the abandonment of its plans to acquire Digital Microwave.

Brumfield Misappropriates Information About Plans to Acquire Digital Microwave

76. On or about March 20, 1991, during the course of his employment as a Labor Relations Vice President in AT&T's Human Resources Department, Brumfield came into possession of the information referenced in paragraph 59.

77. On or about March 20, 1991, Brumfield gave information concerning AT&T's planned acquisition of Digital Microwave to Cusimano and Alger and recommended to Mylett that he purchase Digital Microwave securities. Brumfield also directed Alger to cause someone to purchase Digital Microwave stock for Brumfield.

Purchases of Digital Microwave by Brumfield's Tippees

78. On or about March 20, 1991, Cusimano ordered the purchase of 10,000 shares of Digital Microwave common stock at \$16 and another 10,000 shares at \$16-1/2. All told, he invested

approximately \$321,256 (including commissions) in Digital Microwave securities.

79. On or about March 20, 1991, after Brumfield had given him information concerning AT&T's plans to acquire Digital Microwave, Cusimano passed the information to Volpe.

80. On or about March 20, 1991, Volpe ordered the purchase of 3,000 shares of Digital Microwave common stock at \$16-3/16, investing a total of approximately \$48,565 (including commissions).

81. On or about March 20, 1991, Volpe gave Galante the information concerning AT&T's plans to acquire Digital Microwave.

82. On or about March 21, 1991, Galante opened a brokerage account and ordered the purchase of 1,000 shares of Digital Microwave common stock at \$16-1/8, investing a total of approximately \$16,128 (including commissions).

83. On or about March 28, Mylett caused the purchase of 1,000 shares of Digital Microwave stock at \$19 and another 2,000 shares at \$19-1/4. All 3,000 shares were ordered and bought through the brokerage account of his son-in-law. The total amount invested in the shares was approximately \$58,250 (including commissions).

Alger Misappropriates Information About AT&T's Plan to Acquire Digital Microwave

84. On or about March 20, 1991, after Brumfield gave Alger information concerning AT&T's planned acquisition of Digital Microwave and asked Alger to purchase Digital Microwave stock for him, Alger in turn gave information about the planned acquisition

to O'Brien, Friedman, and Robert Flanagan. Alger further arranged with each that he would purchase Digital Microwave stock for either Alger or Brumfield.

Purchases of Digital Microwave by Alger's Tippees

85. On or about March 21, 1991, O'Brien opened an account in his wife's previous married name and ordered the purchase of 1,000 shares of Digital Microwave common stock at \$16, investing approximately \$16,323 (including commissions).

86. On or about March 21, 1991, Friedman ordered the purchase of 1,000 shares of Digital Microwave stock at \$16, investing approximately \$16,379 (including commissions).

87. On or about March 20, 1991, Robert Flanagan gave Smith the information concerning AT&T's planned acquisition of Digital Microwave and arranged to trade Digital Microwave securities through Smith's account.

88. On or about March 20, 1991, Robert Flanagan gave Lynch funds which he deposited into his client escrow account. At or about the time Robert Flanagan gave these funds to Lynch, he instructed Lynch to transfer these funds to Smith's brokerage account to facilitate Robert Flanagan's trading in Digital Microwave.

89. On or about April 1, 1991, Lynch transferred the funds provided to him by Flanagan, along with other funds already on deposit in his client escrow account, to Smith's brokerage account.

90. On or about March 22, 1991, Smith ordered the purchase of 22,500 shares of Digital Microwave common stock at \$16 and 5,000 shares at \$16-1/4, investing approximately \$442,000 (including commissions).

Brumfield and Alger Misappropriate Information About AT&T's Abandonment of Its Acquisition Plans

91. In or about the first week of April 1991, during the course of his employment as a Labor Relations Vice President in AT&T's Human Resources Department, Brumfield learned that AT&T had abandoned its acquisition plans for Digital Microwave.

92. In or about the first week of April 1991, Brumfield informed Alger and Cusimano that AT&T had abandoned its acquisition plans for Digital Microwave.

93. In or about the first week of April 1991, Alger told O'Brien, Friedman, and Robert Flanagan to sell the Digital Microwave stock that they had bought because AT&T had abandoned its acquisition plans.

Further Trading in Digital by Tippees

94. On April 8 and 9, 1991, Cusimano ordered the sale of 20,000 shares of Digital Microwave common stock, realizing a profit of approximately \$21,238.

95. In or about the first week of April 1991, Cusimano gave Volpe information that AT&T had abandoned its acquisition plans for Digital Microwave, and Volpe in turn gave such information to Galante.

96. On or about April 9, 1991, Volpe ordered the sale of 3,000 shares of Digital Microwave common stock, realizing a profit of approximately of \$2,431.

97. On or about April 9, 1991, Galante ordered the sale of 1,000 shares of Digital Microwave common stock, realizing a profit of approximately \$472.

98. On or about April 9, 1991, Friedman ordered the sale of 1,000 shares of Digital Microwave common stock, realizing a profit of approximately \$870.

99. On or about April 8, 1991, O'Brien ordered the sale of 1,000 shares of Digital Microwave common stock, realizing a profit of approximately \$836.

100. In or about the first week in April 1991, Robert Flanagan told Smith to sell the Digital Microwave stock because AT&T had abandoned its acquisition plans for Digital Microwave.

101. On or about April 3, 1991, Smith ordered the sale of 15,500 shares of Digital Microwave common stock at \$18, and, on or about April 9, 1991, ordered the sale of 12,000 shares of Digital Microwave common stock at \$17, realizing a profit of approximately \$40,605.

Secret Payments to Alger and Brumfield

102. Smith transferred some or all of the profits realized from trading in Digital Microwave stock and the principal that had been invested in the stock to Robert Flanagan and John Lynch. Specifically, on or about April 11, 1991, Smith sent two wires from his brokerage account, one of approximately \$33,000 to John

Lynch's client escrow account, and the second of approximately \$213,978 to an account controlled by Robert Flanagan. Smith also drew four checks, each in the amount of \$8,000, each made out to cash, and sent them to John Lynch.

103. During April 1991, out of profits received from trading in Digital Microwave stock, one of the Flanagans and Freidman made payments to Alger in cash or by check.

104. Part of the \$32,500 that Cusimano gave to Brumfield by check dated July 31, 1991, which check is referenced in paragraph 69, represented part of Cusimano's profits from trading in Digital Microwave. Sometime during 1991, Cusimano prepared and Brumfield executed a false promissory note to disguise the true purpose of the May 31 and July 31, 1991 checks referenced in paragraph 69.

AT&T's Acquisition of Teradata

Background

105. On or about March 30, 1990, prior to NCR being acquired by AT&T, NCR and Teradata entered into a joint development agreement whereby the two companies would develop new hardware and software systems in connection with the creation of a new generation of parallel processing business computers. Pursuant to the terms of the joint development agreement, NCR and Teradata each had the unilateral right to terminate the agreement within sixty days following notice that there would be a change in control of the other party.

106. A merger agreement between AT&T and NCR was signed on May 6, 1991, and the merger occurred on September 19, 1991.

The Confidential Information

107. On or about September 20, 1991, NCR formally notified Teradata that AT&T had acquired NCR's stock, and the parties agreed that Teradata's right to terminate the joint development agreement would expire on November 21, 1991.

108. On or about November 11, 1991, NCR made a presentation to AT&T during which it informed AT&T that Teradata was contemplating terminating the joint development agreement, and advised that an acquisition of Teradata would have to be considered.

109. On or about November 12, 1991, Morgan Stanley, AT&T's investment banker, was retained to render financial advice to NCR in connection with its review of the various available options relating to the future of the joint development agreement with Teradata, including a possible acquisition of Teradata. At the same time, because of the potential for an acquisition of Teradata, AT&T's Corporate Strategy and Development Department became involved in discussions between NCR and Teradata concerning the future of the joint development agreement.

110. On or about Monday, November 25, 1991, AT&T, in consultation with Morgan Stanley, completed its financial analysis of the Teradata acquisition proposal. That day, NCR advised Teradata that a proposal would be presented to Teradata in Los Angeles, on or about Friday, November 29, and that it

intended to negotiate the details of that proposal during the weekend of November 30-December 1, 1991.

111. On or about Tuesday, November 26, AT&T's executive committee approved an acquisition of Teradata by AT&T's wholly owned subsidiary, NCR.

112. NCR and Teradata entered into a merger agreement at approximately 1:00 a.m. PST, on Monday, December 2, 1991, but that agreement remained nonpublic until approximately 9:20 a.m. EST that same day.

Brumfield Misappropriates Information
Concerning the Planned Acquisition of Teradata

113. On or about Tuesday, November 26, 1991, during the course of his employment as a Vice President of Labor Relations in AT&T's Human Resources Department, Brumfield learned that AT&T, through its wholly owned subsidiary NCR, would be making an acquisition proposal to Teradata over the weekend of November 30-December 1, 1991.

114. On or about Tuesday afternoon, November 26, 1991, Brumfield gave information concerning AT&T's planned acquisition of Teradata to Alger and Cusimano. Brumfield also requested that Alger cause someone to buy Teradata call options for Brumfield.

115. On or about Friday morning, November 29, 1991, Brumfield gave information concerning AT&T's planned acquisition of Teradata to Allen.

Trading in Teradata by Brumfield's Tippees

116. On or about Wednesday, November 27, 1991, Cusimano ordered the purchase of Teradata securities, investing

approximately \$109,700 (including commissions). The purchases were as follows:

- a. 2,500 shares of Teradata common stock at \$21-3/4;
- b. 1,000 shares of Teradata common stock at \$22;
- c. 1,000 shares of Teradata common stock at \$22-1/4;
- d. 10 January 22-1/2 Teradata calls at \$1-3/8; and
- e. 10 April 25 Teradata calls at \$1-7/8.

117. On or about Tuesday, November 26, 1991, after Brumfield had given him information concerning the proposed acquisition of Teradata by AT&T, Cusimano gave the information to Volpe.

118. On Wednesday, November 27, and Friday, November 29, 1991, Volpe ordered the purchase of Teradata securities, investing approximately \$34,390 (including commissions). The purchases were as follows:

- a. 1,000 shares of Teradata common stock at \$21-3/4;
- b. 10 January 22-1/2 Teradata calls at \$2-3/16; and
- c. 10 April 25 Teradata calls at \$1-7/8.

119. On or about Friday, November 29, 1991, Volpe gave Galante the information Volpe had received from Cusimano concerning AT&T's planned acquisition of Teradata, and shortly thereafter, Galante ordered the purchase of 10 January 22-1/2 Teradata calls at \$3-5/8 and 10 April 25 Teradata calls at \$4-1/2, investing approximately \$8,390 (including commissions).

120. On Friday, November 29, 1991, after Brumfield gave Allen information on AT&T's planned acquisition of Teradata, Allen caused the purchase of Teradata securities, investing

approximately \$92,520 (including commissions). The purchases were as follows:

- a. 2,600 shares of Teradata common stock at \$24;
- b. 40 December 22-1/2 Teradata calls at \$2-3/4;
- c. 10 December 25 Teradata calls at \$1-3/4;
- d. 20 January 22-1/2 Teradata calls at \$3-1/2;
- e. 10 January 22-1/2 Teradata calls at \$3-5/8;
- f. 10 January 25 Teradata calls at \$2-5/8; and
- g. 10 January 25 Teradata calls at \$2-3/4.

Alger Misappropriates Information
Concerning the Planned Acquisition of Teradata

121. On or about Tuesday afternoon, November 26, 1991, after Brumfield gave Alger the information concerning AT&T's planned acquisition of Teradata, Alger gave such information to O'Brien, Friedman, and Brody, and made arrangements with each to purchase Teradata securities for the benefit of Alger.

122. On or about Wednesday, November 27, 1991, Alger gave Robert Flanagan information concerning AT&T's planned acquisition of Teradata.

Trading in Teradata by Alger's Tippees

123. On November 27 and November 29, 1991, O'Brien ordered the purchase of 21 Teradata calls and 200 shares of Teradata common stock, investing approximately \$8,100 (including commissions). The details of the purchases are as follows:

- a. 7 January 22-1/2 Teradata calls at \$1-1/2;
- b. 7 January 25 Teradata calls at \$2-1/4;
- c. 7 January 25 Teradata calls at \$1;

d. 100 shares of Teradata common stock at \$22-1/8;
and

e. 100 shares of Teradata common stock at \$22-3/8.

124. On or about Wednesday, November 27, 1991, Friedman ordered the purchase of 25 January 22-1/2 Teradata calls at \$1-3/4 and 25 April 22-1/2 Teradata calls at \$3, investing approximately \$12,500 (including commissions).

125. On or about Wednesday, November 27, 1991, Brody ordered the purchase of Teradata securities, investing approximately \$35,087 (including commissions). The purchases were as follows;

- a. 10 April 22 1/2 calls at \$2 11/16
- b. 10 January 25 calls at \$3/4
- c. 500 shares of common stock at \$21 1/2
- d. 500 shares of common stock at \$21 3/4
- e. 400 shares of common stock at \$24

126. On or about Thanksgiving Day, November 28, 1991, Robert Flanagan gave Smith information concerning AT&T's planned acquisition of Teradata that he had received from Alger.

127. On or about Friday, November 29, Smith ordered the purchase of or caused to be purchased approximately \$106,426 (including commissions) of Teradata securities through three brokerage accounts, including the account of his son, Warren Smith, Jr., and the account of his son-in-law, Carlos Rodriguez. The purchases were as follows:

- a. 150 December 25 Teradata calls at \$1-3/8;
- b. 150 January 25 Teradata calls at \$2-1/4;

- c. 60 January 25 Teradata calls at \$2-1/2;
- d. 60 April 22-1/2 Teradata calls at \$5-3/8;
- e. 50 April 25 Teradata calls at \$4-1/4; and
- f. 1,000 shares of Teradata common stock at \$23.187.

The Information Becomes Public

128. At approximately 9:20 a.m. EST on December 2, 1990, it was announced publicly that Teradata and AT&T's wholly owned subsidiary NCR had agreed to enter into a stock-for-stock merger transaction in which each share of Teradata would be exchanged for AT&T stock worth \$30.25.

129. On Monday, December 2, 1991, after the announcement of the merger transaction, the price of Teradata's stock rose to a closing price of \$27-7/8, which was an increase of \$5-1/8 from its closing price the previous trading day, Friday, November 29, 1991.

Profits from Trading in the Securities of Teradata

130. After the public announcement of the merger on December 2, 1991, Cusimano realized a profit of approximately \$52,780 from his trading in Teradata securities.

131. After the public announcement of the merger on December 2, 1991, Volpe realized a profit of approximately \$14,824 from his trading in Teradata securities.

132. After the public announcement of the merger on December 2, 1991, Galante realized a profit of approximately \$2,157 from his trading in Teradata securities.

133. After the public announcement of the merger on December 2, 1991, Allen realized a profit of approximately \$46,838 from trading in Teradata securities.

134. After the public announcement of the merger on December 2, 1991, O'Brien realized a profit of approximately \$9,304 from trading in Teradata securities.

135. After the public announcement of the merger on December 2, 1991, Friedman realized a profit of approximately \$18,831 from trading in Teradata securities.

136. After the public announcement of the merger on December 2, 1991, Brody realized a profit of approximately \$17,866 from trading in Teradata securities.

137. After the public announcement of the merger on December 2, 1991, Smith realized a profit of approximately \$94,742 from trading in Teradata securities.

Secret Payments of Teradata Profits to Alger and Brumfield

138. During December 1991 or early 1992, O'Brien, Friedman, and Brody made cash payments to Alger out of profits realized from trading in Teradata securities. During the same time period, Smith paid some of the profits he realized from trading in Teradata securities to Robert Flanagan who, in turn, paid some of said trading profits in cash to Alger. Alger gave a portion of these cash payments to Brumfield.

139. In or about January 1992, out of his profits from trading in Teradata securities, Cusimano made a cash payment of approximately \$21,000 to Brumfield in New Jersey.

140. In or about January 1992, out of his profits from trading in Teradata securities, Allen made a cash payment of approximately \$2,800 to Brumfield.

ADDITIONAL EFFORTS TO CONCEAL THE ILLICIT TRADING AND KICKBACKS

141. In or about October 1992, Cusimano caused the preparation of a promissory note to substitute for the one referenced in paragraph 104. This replacement note also falsely indicated that the payments referenced in paragraph 69 were loans.

142. Beginning in or about December 1991, Brumfield discussed with Allen and certain other defendants their providing false statements to the Commission concerning the reasons for their trading in the securities of NCR, Digital Microwave and Teradata.

143. Certain defendants, including Allen, then proceeded to give false sworn testimony to the Commission concerning their reasons for having bought the securities of one or more of the three AT&T targets.

FIRST CAUSE OF ACTION

(Against All Defendants)

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] Promulgated Thereunder

144. Paragraphs 2 through 143 are realleged and incorporated by reference herein.

145. Defendants Brumfield and Alger breached their duty of confidentiality owed to AT&T by giving the other defendants

nonpublic information concerning AT&T's plans to make tender offers for the common stock of Paradyne and NCR, to acquire Digital Microwave and Teradata, and to abandon its plans to acquire Digital Microwave. Defendants Alger also breached that same duty by trading in through the securities of Paradyne while in possession of nonpublic information concerning AT&T's planned tender offer for the common stock of Paradyne.

146. The information referenced in the preceding paragraph is the type of information that would be considered material by a reasonable investor.

147. Defendants Joseph Brumfield, Mylett, Allen, Cusimano, Penna, Volpe, Galante, O'Brien, Friedman, Brody, Thomas Flanagan, Robert Flanagan, Seiden, Lynch and Smith knew or had reason to know at the time that each traded and tipped others who traded in the securities of Paradyne, NCR, Digital Microwave, and/or Teradata while in possession of nonpublic information about AT&T's plans in regard to those companies, that the information each possessed had been communicated by Brumfield and/or Alger in breach of a duty owed to AT&T.

148. By reason of the foregoing, all defendants violated § 10(b) of the Exchange Act [15 U.S.C. § 78j(b) and Rule 10b-5 [17 C.F.R. § 240.10b-5) promulgated thereunder.

SECOND CAUSE OF ACTION

(Against Brumfield, Alger, Allen, Cusimano, Joseph Brumfield, Mylett, Penna, O'Brien, Brody, Robert and Thomas Flanagan, and Seiden)

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

149. Paragraphs 2 through 69 and 141 through 143 are hereby realleged and incorporated by reference herein.

150. On or before November 15, 1988, AT&T had taken a substantial step to commence a tender offer for the common stock of Paradyne.

151. Defendant Brumfield communicated material, nonpublic information relating to AT&T's tender offer for the common stock of Paradyne to defendants Alger and Mylett under circumstances in which it was reasonably foreseeable that such communications were likely to result in trading by the tippee defendants in the securities of NCR while in possession of said information.

152. Defendants Alger and Mylett purchased or caused the purchase of securities of Paradyne while in possession of material information relating to the tender offer and while knowing or having reason to know that said information was nonpublic and had been acquired directly or indirectly from an employee of AT&T.

153. On or before November 8, 1990, AT&T had taken a substantial step to commence a tender offer for the common stock of NCR.

154. Defendants Brumfield and Alger communicated material, nonpublic information relating to AT&T's tender offer for the stock of NCR to defendants Allen, Cusimano, Joseph Brumfield, Mylett, Penna, O'Brien, Brody, Robert and Thomas Flanagan and Seiden under circumstances in which it was reasonably foreseeable that such communications were likely to result in trading by the tippee defendants in the securities of NCR while in possession of said information.

155. Defendants Allen, Cusimano, Joseph Brumfield, Mylett, Penna, O'Brien, Brody, Robert and Thomas Flanagan and Seiden purchased or caused the purchase of securities of NCR while in possession of material information relating to the tender offer and while knowing or having reason to know that said information was nonpublic and had been acquired directly or indirectly from an employee of AT&T.

156. By reason of the foregoing acts, practices and courses of business, defendants Brumfield, Alger, Allen, Cusimano, Joseph Brumfield, Mylett, Penna, O'Brien, Brody, Robert and Thomas Flanagan and Seiden violated § 14(e) of the Exchange Act [15 U.S.C. § 78n(e)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue a Final Judgment permanently restraining and enjoining defendant Charles Brumfield, Joseph Brumfield, Robert Allen,

William Mylett, Joseph Penna, Joseph Cusimano, Alfred Volpe, James Galante, Thomas Alger, John O'Brien, Lawrence Friedman, Robert Flanagan, Albert Brody, Thomas Flanagan, Sharon Seiden, Warren Smith, and John Lynch, each of their agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them who receive actual notice of the order by personal service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, by directly or indirectly using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, by:

- (A) employing any device, scheme or artifice to defraud;
- (B) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (C) engaging in transactions, acts, practices or courses of business which operate or would operate as a fraud or deceit upon any person

in connection with the purchase or sale of the securities of any issuer.

II.

Grant a Final Judgment Of Permanent Injunction restraining and enjoining defendant Charles Brumfield, Joseph Brumfield,

offering person, the issuer of the securities sought or to be sought in the tender offer, or any person acting on behalf of the offering person or such issuer, to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in a violation of Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated under § 14(e) of the Exchange Act [15 U.S.C. § 78n(e)].

III.

Issue an Order requiring each of the defendants, except Lynch, to disgorge all profits that each received or caused another to receive through trading in the securities of Paradyne, NCR, Digital Microwave, and Teradata while in possession of nonpublic information concerning said companies, plus prejudgment interest thereon as appropriate according to law.


IV.

Issue an Order requiring each of the defendants to pay a civil penalty of three times the amount of all profits that each received or caused another to receive through trading in the securities of Paradyne, NCR, and Teradata while in possession of nonpublic information concerning said companies or of such other amount found by this Court to represent an appropriate civil

penalty under the Insider Trading Sanctions Act of 1984 codified at Section 21A(a) of the Exchange Act [15 U.S.C. § 78u-1(a)].

Grant such other relief as this Court may deem necessary or appropriate.

Respectfully submitted,



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