

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

Civil Action No.

01 Civ. 3999

Judge Sweet

COMPLAINT

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

NATURE OF THE ACTION

1. This is an insider trading case involving persons residing in Mexico who made highly suspicious and very profitable purchases on the New York Stock Exchange of the common stock of CompUSA, Inc. beginning less than three weeks before the January 24, 2000 public announcement that CompUSA had agreed to be acquired by tender offer by Grupo Sanborns, S.A. de C.V., a Mexican holding company, and long after substantial steps were taken by Grupo Sanborns to commence the tender offer. One Defendant is a partner in Grupo Sanborns' regular

outside law firm in Mexico City, which participated in the tender offer. The other Defendants are either related to or associated with him. The Defendants made their purchases through numerous brokerage accounts in the United States, and bought most of the shares through offshore nominee companies and offshore trusts with names other than their own.

JURISDICTION AND VENUE

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

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

4. CompUSA's common stock was listed on the New York Stock Exchange, located in this District, and all of the transactions at issue were executed in this District on the floor of that Exchange. In addition, many of the transactions at issue were cleared in this District through a broker-dealer with an office or headquarters in this District.

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

THE DEFENDANTS

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

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

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

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

10. Defendant Banrise Ltd. BVI is a British Virgin Islands entity that transferred \$148,265 to Alejandro Duclaud’s Anushka Trust on November 23, 1999.

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

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

FIRST CLAIM FOR RELIEF

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

13. Paragraphs 1 through 12 are realleged and incorporated herein by reference.

Grupo Sanborns' Tender Offer for CompUSA

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

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

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

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

18. CompUSA's board met telephonically on September 29, 1999 to consider Grupo Sanborns' request. After considering the matter, Mr. Halpin was instructed to advise Grupo Sanborns that CompUSA would consider taking such action only if Grupo Sanborns entered into a confidentiality and standstill agreement with CompUSA. The representatives of Grupo Sanborns indicated that they would consider the possibility of entering into such an agreement, and requested that CompUSA prepare a draft agreement.

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

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

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

22. The SEC's public records show that on November 22, 1999, a Schedule 13D was filed with the SEC on behalf of Grupo Carso S.A. de C.V, Grupo Sanborns, Carlos Slim Helu, Chairman of Grupo Carso, and members of Mr. Slim Helu's immediate family, indicating that they might be interested in considering transactions affecting control of CompUSA. The Schedule 13D stated, among other things, the following: Carlos Slim Helu and members of his family, each of

whom is a Mexican citizen, beneficially own, through a Mexican corporation and a Mexican trust, 61.27% of the outstanding voting equity securities of Grupo Carso, a corporation organized in Mexico. Grupo Carso is a holding company with interests in a number of businesses. It also owns a majority of the outstanding voting equity securities of Grupo Sanborns, a corporation organized in Mexico. Grupo Sanborns is a holding company with interests in the real estate, music and retail industries (including Sears de Mexico) and in the operation of restaurants. According to their U.S. counsel, Grupo Carso and Grupo Sanborns have no employees and no actual headquarters. The Schedule 13D gave Grupo Sanborns' principal business address as Avenida San Fernando 649, Colonia Pena Pobre, Tlalpan, Mexico, D.F., Mexico, 14060. The price of CompUSA stock at the market close that day was \$5.875 per share.

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

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

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

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

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

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

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

30. On January 19, 2000, Credit Suisse First Boston, at the direction of the Board, discussed various prices and transaction terms with representatives of Grupo Sanborns. During these discussions, representatives of Grupo Sanborns advised Credit Suisse First Boston that Grupo Sanborns would consider making a proposal to acquire CompUSA at a valuation of approximately \$9.50 per share and, after continued discussions, Grupo Sanborns incrementally increased such valuations to \$10.10 per share. Credit Suisse First Boston indicated that it would discuss such proposal with the Board. The price of CompUSA stock at the market close that day was \$5.5625 per share, on volume of 1,102,000 shares. The Defendants bought a total of 273,000 CompUSA shares that day, about 25% of total volume.

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

32. On Friday January 21, 2000, Grupo Sanborns submitted to CompUSA a proposed merger agreement and the parties and their legal advisors met in New York to continue to negotiate the terms of the proposed acquisition. The price of CompUSA stock at the market close that day was \$6.75 per share. On January 22-23, 2000, the parties concluded negotiating the terms of the merger agreement and related documents. On January 23, 2000, CompUSA, Grupo

Sanborns, and TPC Acquisition Corp., Grupo Sanborns' wholly-owned subsidiary (a Delaware corporation created for the purpose of making the tender offer) executed the merger agreement.

33. On Monday January 24, 2000, prior to the opening of trading on the New York Stock Exchange, Grupo Sanborns and CompUSA issued a joint press release announcing the execution of the merger agreement. The price of CompUSA stock at the market close that day was \$9.50 per share, on volume of 24,615,200 shares. On February 1, 2000, TPC Acquisition Corp. commenced the tender offer.

Antares Holdings Investment Ltd. Trades

34. Between January 6 and January 19, 2000, Defendant Antares Holdings Investment, Ltd., whose President is Defendant Rodrigo Igartua Baranda, bought a total of 75,000 shares of CompUSA common stock at a cost of \$391,382 through its account at PaineWebber. Specifically, on January 6, 2000, Antares bought 14,300 shares at \$5.125 per shares for a total cost of \$73,864, and an additional 10,700 shares at \$5.1875 per share for a total cost of \$55,934. The following day, January 7, 2000, Antares bought another 30,000 shares at \$5.0625 per share for a total cost of \$153,079. Lastly, on January 19, 2000, Antares bought 20,000 shares at \$5.375 per share for a total cost of \$108,504. On January 26, 2000, two days after the tender offer announcement, Antares sold all 75,000 shares at \$9.625 per share for proceeds of \$719,596 and profits of \$328,215.

Banrise Ltd. BVI Trades

35. In two separate transactions on January 6 and January 19, 2000, Defendant Banrise Ltd. BVI, which is associated with Defendant Alejandro Duclaud, bought a total of 493,200 shares of CompUSA common stock at a cost of \$2,638,485 through its account at Beta Capital Management, which clears its trades through Bear Stearns. Specifically, on January 6,

2000, Banrise bought 300,000 shares at \$5.2127 per share for a total cost of \$1,563,817. On January 19, 2000, Banrise bought 193,200 shares at 5.5625 per share for a total cost of \$1,053,214. On January 26, 2000, two days after the tender offer announcement, Banrise sold all 493,200 shares at \$9.625 per share for proceeds of \$4,727,160 and profits of \$2,088,675.

Caribbean Trust Trades

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

Rodrigo Igartua Baranda Trades

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

Anushka Trust Trades

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

Trust sold all 150,000 shares of CompUSA common stock at \$9.625 per share for proceeds of \$1,925,000 and profits of \$1,065,452.

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

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

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

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

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

42. In breach of these duties, and for his personal benefit, Alejandro Duclaud traded and caused to be traded CompUSA stock and communicated material nonpublic information concerning the proposed acquisition to his brother Jose Antonio Duclaud and other relatives. Alejandro

Duclaud knew or was reckless in not knowing the information he disclosed was nonpublic and that his disclosure of the information was improper and in breach of duties he owed. His disclosure of this information was made under circumstances in which he knew, or should have known, or acted with reckless disregard of the fact that his brother Jose Antonio Duclaud and other relatives were likely to effect transactions in CompUSA stock or to disclose the information to others who were likely to effect such transactions.

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

44. By reason of the foregoing, Defendants, directly and indirectly, violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

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

45. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

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

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

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

PRAYER FOR RELIEF

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

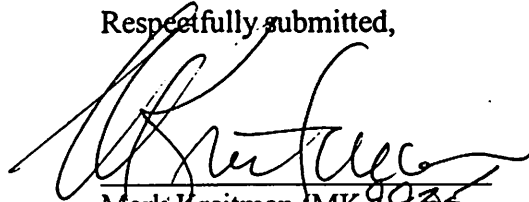
(i) permanently enjoining the Defendants from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)], and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];

(ii) ordering the Defendants to disgorge all profits realized from the unlawful trading alleged herein, with prejudgment interest;

- (iii) ordering Defendants to pay civil money penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (iv) granting such other relief as this Court may deem just and appropriate.

Dated: Washington, D.C.
May 9 2001

Respectfully submitted,



Mark Kreitman (MK 8935)
William R. Baker III
Lawrence A. West
Neil J. Welch, Jr.
Jose M. Rodriguez

Counsel for Plaintiff
Securities and Exchange Commission
Mail Stop 9-1
450 Fifth Street, N.W.
Washington, D.C. 20549
(202) 942-4677 (Kreitman)
(202) 942-9581 (fax)