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SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**FENG "FRANK" XIE,**

**Defendant.**

Civil Action No. **'09 CV 2210 JM RBB**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the "SEC" or "Commission"), for its Complaint, alleges as follows:

**SUMMARY**

1. Feng "Frank" Xie ("Defendant" or "Xie"), a project manager at Document Sciences Corporation ("DOCX"), engaged in insider trading in violation of the federal securities laws. Xie learned material nonpublic information regarding the contemplated acquisition of DOCX by EMC Corporation ("EMC") in advance of the December 27, 2007 public announcement that EMC would acquire DOCX. Between December 3, 2007 and December 26, 2007, while in possession of and based on material nonpublic information concerning EMC's potential acquisition of DOCX, Xie purchased a total of 10,499 shares of DOCX common stock at prices ranging from \$8.10 to \$8.81 per share. Xie knew, or was reckless in not knowing, that the information about the possible acquisition of DOCX was confidential, and that by trading while in possession of, and based on that information, for his own benefit, he violated his fiduciary duty or other relationship of trust and confidence that he owed to DOCX and its

shareholders. Xie made ill-gotten gains of more than \$62,000 by purchasing DOCX shares in advance of the public announcement and then selling those shares after the announcement.

2. Xie violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. The Commission requests that this Court permanently enjoin Xie from violating the foregoing securities laws, order him to disgorge his unlawful profits with prejudgment interest, impose civil monetary penalties and order such other and further relief as the Court may deem appropriate.

### **JURISDICTION AND VENUE**

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

4. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts, practices, transactions, and courses of business constituting the violations occurred in the Southern District of California.

5. Xie directly or indirectly 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 acts, practices, transactions, and courses of business alleged in this Complaint.

6. Unless restrained and enjoined, Xie will continue to engage in the acts, practices, transactions, and courses of business that are alleged in this Complaint and that violate the provisions of the Exchange Act at issue, or in acts, practices, transactions, and course of business of similar purpose and object. The Commission seeks a judgment permanently enjoining Xie from future violations of the provisions of the Exchange Act at issue and directing disgorgement of his ill-gotten gain, pursuant to Sections 21(d)(1) and (e) of the Exchange Act [15 U.S.C. §§

78u(d)(1) and (e)]. The Commission also brings this action for an award of civil penalties, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

### **DEFENDANT**

7. **Feng “Frank” Xie**, 34, resides in Carlsbad, California and is a citizen of China. Xie joined DOCX as a project manager in July 2004. He has been a project manager at EMC since EMC acquired DOCX in March 2008.

### **RELEVANT ENTITIES**

8. **Document Sciences Corporation** was, prior to its acquisition by EMC, a global provider of customer communications management solutions. It was incorporated in Delaware and had its principal place of business in Carlsbad, California. Before the acquisition, DOCX common stock was registered with the Commission pursuant to Exchange Act Section 12(b), and traded on the Nasdaq Global Market. In the 52 weeks prior to EMC’s announcement on December 27, 2007 that it would acquire DOCX, shares of DOCX common stock traded within a range of \$5.81 to \$10.90 on average daily volume of approximately 6,960 shares.

9. **EMC Corporation** is a Delaware corporation headquartered in Hopkinton, Massachusetts. EMC’s common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and trades on the New York Stock Exchange.

### **FACTUAL ALLEGATIONS**

#### **Xie Violated His Duty to DOCX and Its Shareholders**

10. Xie joined DOCX as a project manager in July 2004.
11. On July 22, 2004, Xie signed a document acknowledging he had received the company’s “Insider Trading Compliance Program” and “Policy on Avoidance of Insider Trading.”

12. DOCX's Insider Trading Compliance Program informed the company's officers, directors, employees, and other related individuals of the company's policies on insider trading. This Program explained DOCX's Policy on Avoidance of Insider Trading and included a copy of the Policy. The Program indicated that the Policy covered "officers, directors and all other employees of, and consultants to" DOCX and was "to be delivered to all new directors, employees and consultants on the commencement of their relationships with the Company, and was to be circulated to all directors and employees at least annually."

13. DOCX's Policy on Avoidance of Insider Trading prohibited insider trading. The Policy stated, in relevant part, that "[t]o avoid potential liability, under our policy all employees of the Company, including the Company's officers, must not purchase or sell securities of the Company or of any other issuer of a security at a time when the employee is aware of any material non-public information about the issuer, regardless of how that information was obtained." As one example of material information, the Policy cited "news of a pending or proposed merger or acquisition."

14. Xie signed another document on July 22, 2004, indicating that he had read, understood, and agreed to comply with DOCX's "Code of Business Conduct and Ethics."

15. Among other things, the Code of Business Conduct and Ethics noted that "all employees and directors are prohibited from (i) taking for themselves opportunities that are discovered through the use of corporate property, information or position; (ii) using corporate property, information or position for personal gain ..." In a section on "Securities Trading," the Code refers to DOCX's Insider Trading Policy and explains that trading in securities on the basis of material, nonpublic information is prohibited.

**Xie Acquired Material, Nonpublic Information  
About EMC's Interest in a Potential Acquisition of DOCX**

16. In late November 2007, DOCX executives asked Xie to participate in a meeting with EMC representatives, but did not tell him that the meeting was in furtherance of EMC's due diligence of DOCX as part of a potential acquisition.

17. Instead, at least by December 3, 2007, DOCX executives told Xie a "cover story" that the meeting was part of a plan to further extend the pre-existing partnership between EMC and DOCX, through a new potential original equipment manufacturer partnership between DOCX and EMC's Documentum division. The cover story had been crafted to limit the number of people within DOCX who had access to material, nonpublic information about the acquisition discussions between EMC and DOCX. However, even though it was a cover story, Xie was warned that news of the potential new development in the partnership was not to be shared with those outside of the small group at DOCX working on the project.

18. In anticipation of the meeting with EMC, DOCX executives asked Xie to compile information about DOCX's source code and documents about certain of its products. Xie also worked with a due diligence firm hired by EMC to work on the project. Based on this work, and his position with DOCX, Xie learned that EMC was interested in acquiring DOCX.

19. On December 7, 2007, Xie flew into the Oakland, California airport to attend the meeting with EMC representatives.

20. The meeting was held at the Redwood Shores, California offices of EMC's outside counsel, which worked on the DOCX acquisition. The location of this meeting was unusual; meetings about the companies' partnership were typically held at EMC's Pleasanton, California offices. The attendees of this meeting included, among others, various employees of EMC and DOCX.

21. Xie made a presentation about DOCX technical matters at this meeting and answered related questions.

22. After the meeting concluded, Xie and his supervisor boarded the same airplane to return to San Diego, California.

23. While on the plane, Xie asked his DOCX supervisor what would happen if someone were to buy DOCX shares in a time period when they thought something was going to happen to that company.

24. Xie's supervisor told Xie that that would be a bad thing to do, that it could be traced, and that it was prohibited and illegal.

25. As late as December 19, 2007, Xie continued to prepare materials and do other work with EMC and EMC's due diligence firm.

26. In a telephonic interview with the Commission's staff on March 3, 2009, Xie claimed that he was not aware that DOCX would be acquired by EMC prior to December 27, 2007, the date of the merger announcement. Xie also told the Commission's staff that he had no role in the merger due diligence process at DOCX before it was acquired.

27. Shortly after this telephonic interview with the Commission's staff, Xie entered his supervisor's office and closed the door. Xie explained that he had received a call from the SEC, and that the SEC was asking about his trades in DOCX stock. Xie's supervisor then asked Xie if he remembered the conversation they had on the airplane in December 2007, and that Xie could not do these things. Xie responded that he did remember that conversation, but Xie said that he had already done it. Xie's supervisor recommended that Xie talk to a lawyer and their conversation ended.

**Xie Traded in DOCX Common Stock  
Ahead of the Acquisition Announcement**

28. Xie began acquiring shares of DOCX common stock prior to the December 7th meeting at the offices of EMC's counsel, at the same time that he was preparing due diligence materials for EMC about DOCX. These initial purchases of 6,892 shares were made at prices ranging from \$8.39 to \$8.68.

29. In addition, despite the warning from his supervisor on December 7th, Xie continued to acquire DOCX common stock up to December 26, the day before the merger announcement, purchasing an additional 3,607 shares.

30. In total, between December 3, 2007 and December 26, 2007, Xie purchased 10,499 shares of DOCX common stock for prices ranging from \$8.10 to \$8.81.

31. At 6:00 a.m. Eastern Standard Time on December 27, 2007, EMC and DOCX issued a joint press release announcing that EMC would acquire DOCX in an all-cash transaction valued at \$85 million, or \$14.75 per share.

32. After this announcement, there was a significant increase in the volume and price of DOCX common stock. On December 27, 2007, DOCX common stock closed trading at \$14.49, up 76% from the previous day's close of \$7.91, on volume of 653,275 shares, compared with average daily volume of 12,198 over the three months preceding the acquisition announcement.

33. Based on the price of DOCX common stock at the close of trading on December 27th, Xie's ill-gotten gain from his trading in DOCX common stock totaled more than \$62,000.

**CLAIM FOR RELIEF**

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. Between December 3, 2007 and December 26, 2007, in violation of a fiduciary duty or other relationship of trust and confidence owed to DOCX and its shareholders, Xie purchased 10,499 shares of DOCX common stock. Xie purchased the shares when he knew, or was reckless in not knowing, that the information he possessed concerning the proposed acquisition of DOCX was material, nonpublic information and he had a duty to safeguard the confidentiality of the information and not misuse it.

36. Xie's ill-gotten gain from his trading in DOCX common stock totaled more than \$62,000.

37. By engaging in the foregoing conduct, Xie, directly or 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].



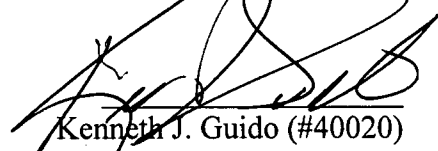
**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that the Court enter judgment:

- (a) permanently enjoining Xie from, directly or indirectly, violating 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];
- (b) ordering Xie to disgorge all ill-gotten gains obtained through the violations alleged herein, with prejudgment interest thereon;
- (c) ordering Xie to pay a civil money penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (d) granting such other and further relief as may be appropriate.

Dated: Washington, D.C.  
October 2, 2009

Respectfully submitted,



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