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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 vs.

15 STEVEN J. HARROLD,

16 Defendant.
17

Case No.

CV 12 1959 - 60
(JLX)

**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **SUMMARY OF THE ACTION**

4 1. This case involves unlawful insider trading by Defendant Steven J.
5 Harrold (the “Defendant” or “Harrold”) in the securities of Coca-Cola Enterprises,
6 Inc. (“CCE”) shortly before CCE’s February 25, 2010 announcement that it
7 planned to enter into a significant transaction with The Coca-Cola Company
8 (“KO”). Harrold, in his capacity as a vice president in CCE’s European Group,
9 obtained material nonpublic information regarding CCE’s proposed acquisition of
10 KO’s Norwegian and Swedish bottling operations. As an executive of CCE,
11 Harrold had a relationship of trust and confidence with the company and was
12 regularly in possession of sensitive and confidential information. In addition,
13 Harrold signed a Non-Disclosure Agreement with CCE confirming that he would
14 maintain the confidentiality of all information he learned regarding CCE’s
15 proposed acquisition of KO’s Norwegian and Swedish bottling operations. In
16 breach of his duties, Harrold misappropriated the material nonpublic information
17 about CCE’s proposed transaction with KO, and used that nonpublic information
18 to trade in CCE stock in advance of the public announcement of the proposed KO
19 transaction. As a result of his illegal trading on material nonpublic information,
20 Harrold realized illicit profits of approximately \$86,850 on the purchase and sale
21 of 15,000 shares of CCE stock.

22 2. By engaging in the conduct alleged in this Complaint, Harrold
23 violated the antifraud provisions of the federal securities laws, specifically Section
24 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §
25 § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).
26 The Commission requests that the Court permanently enjoin Harrold from further
27 violations of the antifraud provisions of the federal securities laws, order him to
28 disgorge his unlawful profits and pay prejudgment interest thereon, impose a civil

1 penalty, and enter an order prohibiting him from acting as an officer or director of
2 any publicly traded company.

3 **JURISDICTION AND VENUE**

4 3. This Court has jurisdiction over this action pursuant to Sections
5 21(d)(1), 21(e), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(e),
6 78u-1 & 78aa. Harrold, directly or indirectly, made use of the means or
7 instrumentalities of interstate commerce, or the mails, or the facilities of a national
8 securities exchange in connection with the transactions, acts, practices, and
9 courses of business alleged in this Complaint.

10 4. Venue is proper in this district pursuant to Section 21(d), 21A, and 27
11 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u-1, and 78aa, because the
12 Defendant maintains a residence within this district.

13 **DEFENDANT**

14 5. **Steven J. Harrold**, age 53, currently resides in both Los Angeles,
15 California and London, United Kingdom. During the relevant time period,
16 Harrold was Vice President, Strategy & Innovation, European Group for CCE,
17 and was based in London.

18 **OTHER RELEVANT ENTITIES**

19 6. **Coca-Cola Enterprises, Inc.** ("CCE") is a Delaware corporation
20 based in Atlanta, Georgia. CCE's common stock is registered with the
21 Commission pursuant to Section 12(b) of the Exchange Act, and its shares trade
22 on the New York Stock Exchange. CCE is a marketer, producer, and distributor
23 of KO beverage products.

24 7. **The Coca-Cola Company** ("KO") is a Delaware corporation whose
25 offices are located in Atlanta, Georgia. KO is a licensor, marketer, producer, and
26 distributor of hundreds of non-alcoholic beverage brands, including Coca-Cola.

1 **FACTS**

2 **A. Harrold Had a Special Relationship of Trust and Confidence with**
3 **CCE and Owed a Duty of Confidentiality to CCE**

4 8. As an employee and executive of CCE, Harrold had a position of
5 trust and confidence with CCE and was subject to the company's policies and
6 procedures. CCE's internal policies, set forth in its Code of Business Conduct,
7 expressly prohibit employees from trading when in the possession of inside
8 information. Moreover, Harrold's employment contract with CCE required him to
9 maintain the confidentiality of nonpublic information regarding the business or
10 affairs of CCE. Harrold understood that he had a responsibility to keep nonpublic
11 information regarding CCE confidential and that he was prohibited from trading
12 in CCE stock while he was in possession of material nonpublic information.

13 9. In his capacity as an executive at CCE, Harrold was regularly in
14 possession of sensitive and confidential information. On numerous occasions,
15 Harrold signed non-disclosure agreements with CCE requiring him to keep
16 confidential any information he learned regarding potential acquisitions that CCE
17 considered. Harrold also periodically received blackout notices from CCE that
18 prohibited him from trading in the company's stock for a defined period in which
19 he was likely to be in possession of material nonpublic information.

20 **B. Harrold Learned that CCE was Acquiring KO's Norwegian and**
21 **Swedish Bottling Operations**

22 10. In early January 2010, Harrold was informed that CCE was
23 considering the acquisition of KO's Norwegian and Swedish bottling operations.
24 On or about January 8, 2010, Harrold signed a Non-Disclosure Agreement with
25 CCE that required him to maintain the confidentiality of any nonpublic
26 information he learned regarding the potential transaction between CCE and KO.

27 11. On February 16, 2010, Harrold received an email from CCE's legal
28 counsel informing him that he was subject to a blackout period related to the

1 potential transaction with KO and was prohibited from trading in CCE stock "until
2 further notice."

3 12. On February 18, 2010, Harrold participated in an internal CCE
4 meeting at which the status of the potential transaction with KO was discussed.
5 The agenda for the meeting was marked "Strictly Private & Confidential." As a
6 participant in that meeting, Harrold was provided certain confidential information
7 regarding CCE's proposed acquisition of KO's Norwegian and Swedish bottling
8 operations, including an overview of the valuation of the transaction and a
9 description of the financial opportunities for CCE in connection with the potential
10 transaction.

11 13. CCE's proposed acquisition of KO's Norwegian and Swedish
12 bottling operations was a substantial transaction internally valued at CCE at over
13 \$800 million. It was also a transaction that both CCE and analysts following the
14 company viewed as creating significant positive growth opportunities for CCE.

15 **C. Harrold Traded on Material Nonpublic Information in Breach of**
16 **His Duty to CCE**

17 14. On Wednesday, February 24, 2010, less than a week after attending
18 the meeting at which the status of the proposed transaction with KO was discussed
19 and while still subject to a blackout period prohibiting him from trading in CCE
20 stock, Harrold purchased 15,000 shares of CCE stock at a total cost of
21 approximately \$289,500. Harrold paid an average price of approximately \$19.30
22 per share. That same day, Harrold placed a limit order to sell all 15,000 shares at
23 a price of \$22.00 per share.

24 15. On the morning of Thursday, February 25, 2010, CCE announced
25 that it had agreed to enter into a transaction with KO in which, among other
26 things, (a) KO would acquire CCE's North American bottling operations, and (b)
27 CCE would acquire KO's Norwegian and Swedish bottling operations. KO also
28 agreed to assume approximately \$8.9 billion in CCE debt and CCE obtained the

1 future rights to acquire KO's German bottling operations in 18 to 36 months.

2 16. The morning of the announced transaction, CCE's share price opened
3 more than 30% higher than its closing price the day before. That morning, the
4 15,000 shares of CCE that Harrold had purchased the day before were sold
5 pursuant to the limit order he placed. The shares were sold at a per share price of
6 approximately \$25.09, for total proceeds of approximately \$376,350. Harrold
7 realized a profit of approximately \$86,850 on his CCE trades.

8 17. Harrold made the trades in CCE stock alleged above in a TD
9 Ameritrade brokerage account held in his wife's name. The account listed the Los
10 Angeles address of Harrold and his wife. He had previously used the same
11 brokerage account to trade in CCE stock during times when he was prohibited
12 from doing so pursuant to a blackout notice and company policy.

13 18. As an employee and executive of CCE, Harrold owed CCE a duty of
14 trust and confidence, including the duty to keep CCE business information
15 confidential. Harrold also signed a non-disclosure agreement specifically
16 requiring him to keep information regarding CCE's potential acquisition of KO's
17 Norwegian and Swedish bottling operations confidential. Moreover, Harrold
18 received a blackout notice from CCE's legal counsel regarding CCE's proposed
19 transaction with KO that specifically prohibited Harrold from trading in CCE
20 stock during the time he made the trades alleged above.

21 19. In breach of his duty to CCE, Harrold willfully misappropriated
22 material nonpublic information about CCE's proposed acquisition of KO's
23 Norwegian and Swedish bottling operations, and used that information for his own
24 benefit to trade in CCE stock in advance of the announcement of the transaction.

25 20. On or about September 16, 2010, Harrold was terminated by CCE in
26 connection with his trades in CCE stock in advance of the February 25, 2010
27 announcement. Harrold admitted during CCE's investigation that he placed the
28 trades in his wife's account, and that he had received notice of the blackout period

1 before he purchased the 15,000 shares

2 **CLAIM FOR RELIEF**

3 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF**
4 **SECURITIES**

5 **Violations of Section 10(b) of the Exchange Act**
6 **and Rules 10b-5(a) and (c) Thereunder**

7 21. The Commission realleges and incorporates by reference ¶¶ 1
8 through 20, above.

9 22. As alleged above, through his employment at CCE, Harrold learned
10 material nonpublic information regarding CCE's proposed transaction with KO.
11 At all relevant times, Harrold owed CCE a fiduciary duty, or similar duty of trust
12 or confidence, to maintain such information in confidence.

13 23. Harrold, in breach of a fiduciary duty, or similar relationship of trust
14 or confidence, owed to CCE, misappropriated such material nonpublic
15 information by trading on the basis of such information.

16 24. The misappropriated information was material because it would be
17 important to a reasonable investor in making his or her investment decision to
18 know that CCE planned to enter into a transaction in which it would acquire KO's
19 Norwegian and Swedish bottling operations. There is a substantial likelihood that
20 the disclosure of the misappropriated information would have been viewed by a
21 reasonable investor as having significantly altered the total mix of information
22 available to investors.

23 25. At all times relevant to this Complaint, Harrold acted knowingly
24 and/or recklessly by misappropriating information about CCE's proposed
25 transaction with KO and trading while in possession of such material nonpublic
26 information. At all relevant times, Harrold acted with scienter.

27 26. By engaging in the conduct described above, Harrold, directly or
28 indirectly, in connection with the purchase or sale of securities, by the use of

1 means or instrumentalities of interstate commerce, or the mails, or the facilities of
2 a national securities exchange, with scienter:

- 3 a. employed devices, schemes, or artifices to defraud; and/or
- 4 b. engaged in acts, practices, or courses of business which
5 operated or would operate as a fraud or deceit upon any person
6 in connection with the purchase or sale of any security.

7 27. By engaging in the foregoing conduct, Harrold violated, and unless
8 enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C.
9 § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, the Commission respectfully requests that the Court:

13 **I.**

14 Issue findings of fact and conclusions of law that Defendant committed the
15 alleged violations.

16 **II.**

17 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),
18 permanently enjoining Defendant and his officers, agents, servants, employees, and
19 attorneys, and those persons in active concert or participation with any of them,
20 who receive actual notice of the judgment by personal service or otherwise, from
21 violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
22 (a) and (c) thereunder, 17 C.F.R. § 240.10b-5.

23 **III.**

24 Order Defendant to disgorge, with prejudgment interest, the illegal trading
25 profits or ill-gotten gains received as a result of the conduct alleged in this
26 Complaint.

1 IV.

2 Order Defendant to pay a civil penalty under Section 21A of the Exchange
3 Act, 15 U.S.C. § 78u-1.

4 V.

5 Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C.
6 § 78u(d)(2), prohibiting Defendant from acting as an officer or director of any
7 issuer that has a class of securities registered pursuant to Section 12 of the
8 Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
9 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

10 VI.

11 Retain jurisdiction of this action in accordance with the principles of equity
12 and the Federal Rules of Civil Procedure in order to implement and carry out the
13 terms of all orders and decrees that may be entered, or to entertain any suitable
14 application or motion for additional relief within the jurisdiction of this Court.

15 VII.

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18
19 DATED: March 8, 2012



20 JOHN B. BULGOZDY
21 BERNARD B. SMYTH III
22 Attorneys for Plaintiff
23 Securities and Exchange Commission
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