

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86435 / July 23, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19261

In the Matter of

**Balaji Sundarraj and David
O'Brien,**

Respondents.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Balaji Sundarraj and David O’Brien (“Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities and Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

1. This matter involves insider trading by Respondents in the stock of Opower, Inc. ("Opower" or the "Company"), in advance of the Company's May 2, 2016 announcement that it had agreed to be acquired by Oracle Corporation at a price of \$10.30 per share as part of a tender offer. In late April 2016, Respondent Sundarraj obtained material nonpublic information about Opower by overhearing a telephone conversation of his brother-in-law, an attorney who was working on due diligence for Oracle relating to the Opower acquisition. Sundarraj shared the material nonpublic information he learned with his friend, Respondent O'Brien, and each of them purchased Opower stock before the public announcement. Opower's stock price rose by nearly 30 percent on the news, and Sundarraj and O'Brien immediately sold all of their Opower stock for ill-gotten gains of \$12,050 and \$22,900, respectively.

Respondents

2. Balaji Sundarraj, age 44, resides in Sugar Land, Texas. Sundarraj owns and operates a company that supplies products and services for the oil and gas industry. He has never held securities licenses or been registered with the Commission in any capacity.

3. David O'Brien, age 67, resides in Houston, Texas. Mr. O'Brien is employed as a purchasing manager in the oil and gas industry. He has never held securities licenses or been registered with the Commission in any capacity.

Other Relevant Entities

4. Oracle Corporation, a Delaware corporation, is headquartered in Redwood City, California. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

5. Opower, Inc., a Delaware corporation, was headquartered in Arlington, Virginia until it was acquired by Oracle on June 14, 2016. Before the acquisition, Opower's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. In connection with the acquisition, Opower's stock was delisted from the New York Stock Exchange and deregistered with the Commission.

Factual Background

6. On March 7, 2016, Oracle contacted Opower regarding a potential transaction. On March 28, 2016, Oracle provided Opower with an indication of interest to acquire Opower for a price between \$9 and \$10 per share in cash, subject to Oracle conducting due diligence.

7. On April 6, 2016, Opower informed Oracle that it would be willing to enter into exclusive negotiations with Oracle regarding a potential transaction if Oracle increased its proposed price to \$11 per share. After further discussions, Oracle indicated that it would need to conduct further due diligence before it could increase its offer price.

8. On April 14, 2016, after Oracle conducted further due diligence, it made an offer to acquire Opower for \$10.30 per share in cash, subject to additional due diligence. Two days later, on April 16, 2016, Opower entered into an agreement with Oracle to engage in exclusive negotiations with Oracle to acquire Opower for \$10.30 per share. At the time, Opower was trading at approximately \$6.90 per share. Between April 16 and May 1, 2016, Oracle, Opower and their respective lawyers continued to conduct business and legal due diligence.

9. Sundarraj's brother-in-law was a lawyer engaged in legal due diligence on behalf of Oracle as an associate at one of the law firms Oracle retained to advise it during the due diligence process. Sundarraj's brother-in-law often performed confidential legal work from his home office, located in his home in Sugar Land, Texas. Sundarraj's brother-in-law took steps to ensure that the legal work he performed from his home office remained confidential. Sundarraj lived on the same block as his brother-in-law and frequently visited his brother-in-law at his brother-in-law's home. Sundarraj knew that his brother-in-law worked on confidential matters from his home office, and that his brother-in-law expected that if Sundarraj learned any confidential information about his legal work based on their relationship, it would be maintained in confidence.

10. In late April 2016, Sundarraj's brother-in-law participated in a telephone call from his home office regarding his due diligence work on behalf of Oracle in connection with the potential acquisition of Opower.

11. At the time of the telephone call, Sundarraj was at his brother-in-law's home in an adjacent room. Sundarraj overheard his brother-in-law's conversation and heard his brother-in-law discuss Opower twice during the telephone call. Sundarraj knew that his brother-in-law was a corporate lawyer and sometimes worked on confidential legal matters regarding potential merger and acquisition transactions. Based on what he heard, Sundarraj believed that Opower was likely to be acquired.

12. Sundarraj and Respondent O'Brien were friends who both worked in the oil and gas industry. They had known each other for approximately six years and met socially once or twice a week. Within a day or two after Sundarraj overheard his brother-in-law's conversation involving Opower, Sundarraj discussed with O'Brien what he had overheard, including his belief that, based on what he heard, Opower would be acquired. Respondents either knew or were reckless in not knowing that the information regarding Opower that Sundarraj's brother-in-law discussed in the telephone conversation was confidential and nonpublic, and that they were not permitted to trade on it.

13. Shortly after Sundarraj's and O'Brien's initial conversation about Opower, the two met at a local public library to look up information about Opower using the library's computers rather than one of their own computers. Neither Sundarraj nor O'Brien had heard of Opower before learning of it as a result of Sundarraj overhearing his brother-in-law's conversation. Sundarraj and O'Brien believed that Opower likely would be acquired, and they knew or had reason to know that the information Sundarraj overheard regarding Opower came from someone acting on behalf of Opower or a potential acquiring company. Sundarraj and O'Brien quickly made plans to purchase shares of Opower.

14. On Friday, April 29, 2016, Sundarraj and O'Brien each purchased shares of Opower. Neither had ever traded in the stock of Opower before. Neither would have purchased shares of Opower had Sundarraj not overheard his brother-in-law's conversation about the Company.

15. Sundarraj liquidated his holdings in another stock to generate the cash to purchase 5,000 shares of Opower stock for approximately \$39,359. Nearly all of Sundarraj's prior stock trades were either in large, well-known companies or in companies in the oil and gas industry.

16. O'Brien purchased a total of 8,858 shares of Opower stock for approximately \$68,729 in two separate brokerage accounts. He liquidated his holdings in another stock and used the entirety of the proceeds (and some margin) to purchase 5,586 shares of Opower for approximately \$43,600 in a brokerage account that he jointly held with his wife. Nearly all of O'Brien's prior stock trades were in companies in the oil and gas industry.

17. O'Brien purchased the remaining 3,272 Opower shares in a brokerage account that he had opened solely in his name earlier in April 2016 with a deposit of approximately \$25,000. O'Brien named Sundarraj as his contingent beneficiary when he opened the account and provided Sundarraj's email as the email contact for the account. O'Brien's purchase of Opower stock represented his first trade in the account and he used all of the available funds in the account to buy Opower stock.

18. Before the market opened on the next trading day, Monday, May 2, 2016, Oracle and Opower announced that Oracle would acquire Opower in a tender offer. Opower's stock price increased by approximately 30 percent during the first trading day following the announcement.

19. That same day, May 2, 2016, Sundarraj and O'Brien sold all of their Opower stock. Sundarraj realized gains of approximately \$12,050. O'Brien realized gains of approximately \$22,900.

20. Sundarraj knew that his brother-in-law was a lawyer who sometimes worked on confidential legal matters regarding potential merger and acquisition transactions. At all relevant times, Sundarraj knew, or was reckless in not knowing, that his brother-in-law expected him to maintain in confidence any material nonpublic information Sundarraj learned based on his relationship with his brother-in-law.

21. Each of Sundarraj's and O'Brien's Opower trades was based on material, nonpublic information Sundarraj misappropriated from his brother-in-law, in violation of duties of trust and confidence owed to him. O'Brien knew, or was reckless in not knowing, that Sundarraj provided him material nonpublic information about Opower in breach of a duty of trust and confidence.

22. As a result of the conduct described above, Respondents each violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

23. As a result of the conduct described above, Respondents each violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, which prohibit fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Respondent Sundarraj shall pay disgorgement of \$12,050 and prejudgment interest of \$1,650, and a civil money penalty of \$34,950 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made within 14 calendar days of the entry of this Order. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

C. Respondent O'Brien shall pay disgorgement of \$22,900 and prejudgment interest of \$3,137, and a civil money penalty of \$22,900 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made within 14 calendar days of the entry of this Order. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Balaji Sundarraj and/or David O'Brien as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Erin E. Schneider, Associate Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery St., Suite 2800, San Francisco, CA 94104-4802.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary