

JUDGE JONES

12 CV 7983

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

KRIS CHELLAM,

Defendant.

COMPLAINT

ECF CASE

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Kris Chellam ("Chellam"), alleges as follows:

SUMMARY

1. This matter concerns an insider trading scheme involving Chellam, the former Chief Financial Officer ("CFO") of the technology company Xilinx, Inc. ("Xilinx"), and Raj Rajaratnam ("Rajaratnam"), the founder of the now defunct hedge fund advisory firm Galleon Management, LP ("Galleon"). In late 2006, Chellam tipped Rajaratnam to downward trends in Xilinx's business, which were at odds with the company's prior public projections. Based on Chellam's tips, Rajaratnam caused Galleon hedge funds to short Xilinx stock and garner illicit profits of approximately

\$978,684 after the negative information was announced to the public on December 7, 2006.

2. Chellam tipped Rajaratnam not only because the two were good friends, but also because Chellam had a substantial investment in Galleon, including in one of the funds that profited from the tips Chellam provided about Xilinx. Chellam was also in discussions with Rajaratnam concerning prospective employment at Galleon. In May 2007, Chellam became the Co-Managing Partner of the Galleon Special Opportunities Fund, a venture capital fund that focused on investments in late-stage technology companies.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

3. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against Chellam, enjoining him from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint; disgorgement, jointly and severally, of all trading profits or losses avoided from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest; and civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. In addition, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], the Commission seeks an order barring Chellam from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section

15(d) of the Exchange Act [15 U.S.C. § 78o(d)]. Finally, the Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

5. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York. For example, Chellam conveyed material nonpublic information to Rajaratnam and other Galleon employees who worked at Galleon's headquarters in New York, New York. In addition, the illegal trades that this complaint describes were placed by Galleon traders working in New York, New York.

DEFENDANT

6. **Chellam**, age 61, resides in Saratoga, California. He is currently an independent consultant to privately held technology companies. Chellam served as the CFO of Xilinx from 1998 to 2005 and as a senior executive in the company's corporate and global services department from 2005 to 2007. In addition to his senior positions at Xilinx, Chellam has held high-ranking positions at other publicly traded companies. From December 2005 until April 2011, Chellam was a Director of Cavium Networks,

Inc. Prior to joining Xilinx, Chellam served as Senior Vice President, Finance and Administration and Chief Financial Officer at Atmel Corporation for seven years. In addition, Chellam served on the Board of Directors of @Road, Inc. from December 1999 until its acquisition by Trimble Navigation Limited in February 2007, and chaired the audit committee of its board of directors.

RELEVANT INDIVIDUALS AND ENTITIES

7. **Rajaratnam**, age 55, is incarcerated in federal prison in Massachusetts. Rajaratnam was the founder and Managing General Partner of Galleon. From 1997 to 2009, Rajaratnam served as the portfolio manager of numerous Galleon hedge funds. In May 2011, Rajaratnam was convicted of 14 counts of conspiracy and securities fraud relating to multiple insider trading schemes he perpetrated at Galleon, and in September 2011, he was sentenced to 11 years in prison.

8. **Galleon**, a Delaware limited partnership that Rajaratnam founded in 1997, was a hedge fund investment adviser based in New York, New York. At its height, Galleon claimed to manage assets with a total value of more than \$7 billion. In the wake of Rajaratnam's arrest on October 16, 2009, Galleon began to wind down its business and liquidate the hedge funds it managed.

9. **Xilinx** is a Delaware corporation headquartered in San Jose, California. Xilinx designs, develops and markets semi-conductors and related products. Xilinx's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock trades on the Nasdaq under the symbol "XLNX."

FACTS

10. While employed at Xilinx in late 2006, Chellam tipped Rajaratnam with

material nonpublic information concerning Xilinx's worse-than-expected financial performance before the company made that information available to the public.

11. From 1998 to 2005, Chellam served as the CFO of Xilinx. In June 2005, Chellam left the CFO position to become a senior executive in Xilinx's corporate and global services department. In this position, Chellam received regular internal reports concerning the company's performance and had unfettered access to Xilinx's confidential financial information. As a senior executive of Xilinx, Chellam owed fiduciary duties to Xilinx's shareholders.

12. On October 19, 2006, Xilinx publicly announced results for the second quarter of its 2007 fiscal year, which had ended on September 30, 2006. In the same release, Xilinx announced its "business outlook" (also known as guidance) for its third quarter of fiscal 2007, which was scheduled to end on December 31, 2006. Xilinx projected a two to five percent sequential (that is, quarter over quarter) revenue increase. In absolute terms, this range translated into projected third quarter revenues of approximately \$476 million to \$490 million. Xilinx also stated that it would update its business outlook on December 7, 2006.

13. In the weeks leading up to Xilinx's December 7, 2006 update, Chellam received multiple reports indicating that Xilinx's third quarter business results were not going to be as good as the company had projected on October 19.

14. For example, on November 8, 2006, Chellam received an internal Xilinx report stating that revenue was down 3.3 percent compared to the same quarter a year before, and down 6.4 percent on an annualized basis, and that internal sales results were significantly behind schedule compared to the company's performance during the prior

quarter.

15. Chellam received a similar internal report on November 21, 2006, which indicated that the top end of the company's projected revenue range for its third quarter was being revised downward, from approximately \$490 million to \$470 million.

16. On December 4, 2006, a mere three days before Xilinx was scheduled to update its business outlook, Chellam attended a confidential executive staff meeting in which the bottom end of the company's third quarter revenue projection was also lowered, from approximately \$476 million to \$455 million.

17. Based on this information, Chellam knew that Xilinx would have to lower its guidance when it issued its business outlook update on December 7.

18. On December 5, 2006, the day after Chellam attended the confidential executive staff meeting in which Xilinx's internal revenue projections were lowered, Chellam telephoned Rajaratnam and tipped him concerning Xilinx's worse-than-expected performance.

19. Minutes after the conclusion of that call, Galleon hedge funds controlled by Rajaratnam sold short Xilinx stock, selling short more than 350,000 shares that afternoon.¹ The next day, December 6, Rajaratnam's funds sold short more than 300,000 additional shares. Chellam was an investor in one of the Galleon hedge funds on whose behalf Rajaratnam placed these trades.

¹ "Shorting" or "selling short" is the practice of selling a security that one does not own, but rather has arranged to borrow from a third party, with the intention of purchasing (also called "covering") the security at a later date to deliver to the lender. A short seller stands to gain if the price of the security declines between the short sale and the purchase because the short seller has sold the security at a price that is greater than the purchase price.

20. On December 7, 2006, Xilinx updated its business outlook for its third quarter of fiscal 2007. The public update stated, in pertinent part, that “The company now expects December quarter sales to be down 2 to 5 percent due to weaker than anticipated business This is a revision from previous sales guidance of up to 2 to 5 percent sequentially.” As a result of this announcement, the price of Xilinx stock dropped more than \$1.50 per share, from a closing price of \$26.44 on December 7, 2006 to a closing price of \$24.83 on December 8, 2006.

21. In the weeks following the December 7 announcement, Rajaratnam’s hedge funds garnered approximately \$978,684 in illegal profits covering the substantial short position that Rajaratnam had accumulated based on Chellam’s tip.

22. At the time that he tipped Rajaratnam, Chellam was a close friend of Rajaratnam’s and had over \$1 million invested in a Galleon hedge fund that Rajaratnam managed. Chellam was also in discussions with Rajaratnam concerning prospective employment at Galleon.

23. A few months later, in May 2007, Chellam joined Galleon as the Co-Managing Partner of the Galleon Special Opportunities Fund, a venture capital fund designed to invest in public and private technology companies.

24. After he joined Galleon in May 2007, Chellam continued to obtain material nonpublic about Xilinx’s financial performance. Chellam passed this inside information to colleagues at Galleon until his departure from Galleon in approximately April 2009. During this period, Galleon paid Chellam approximately \$675,000 in salary and other compensation.

CLAIMS FOR RELIEF

CLAIM I

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

25. The Commission realleges and incorporates by reference paragraphs 1 through 24, as though fully set forth herein.

26. The information concerning Xilinx's financial performance that defendant Chellam conveyed to Rajaratnam was material and nonpublic. In addition, the information was, in each case, considered confidential by Xilinx, the company that was the source of the information, and Xilinx had policies protecting confidential information.

27. Chellam learned the material nonpublic Xilinx information that he conveyed to Rajaratnam in late 2006 as a result of his service as a senior executive at Xilinx, and Chellam knew, recklessly disregarded, or should have known, that he owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

28. Chellam tipped material nonpublic information to Rajaratnam in late 2006 in breach of the fiduciary duty that Chellam owed Xilinx, and did so with the expectation of receiving a benefit.

29. After leaving Xilinx, Chellam joined Galleon but continued to obtain confidential information about Xilinx's financial performance, which he tipped to Rajaratnam and other Galleon colleagues with the expectation of receiving a benefit for doing so. Chellam knew, recklessly disregarded, or should have known, that the material nonpublic information concerning Xilinx that he obtained and tipped was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust

and confidence.

30. By virtue of the foregoing, Chellam, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

31. By virtue of the foregoing, Chellam, directly or indirectly, violated, and, unless enjoined, will again violate, 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].

CLAIM II
Violations of Section 17(a) of the Securities Act

32. The Commission realleges and incorporates by reference paragraphs 1 through 31, as though fully set forth herein.

33. By virtue of the foregoing, Chellam, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

34. By reason of the conduct described above, Chellam, directly or indirectly, violated, and, unless enjoined, will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining defendant Chellam from 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];

II.

Permanently restraining and enjoining defendant Chellam from violating Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)];

III.

Ordering defendant Chellam to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the conduct alleged in this Complaint;

IV.

Ordering defendant Chellam to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

V.

Barring defendant Chellam, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered

pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

VI.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
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