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WIKING DISTRICT COURT  
DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

**JCS**

**C 07 2537**

13 SECURITIES AND EXCHANGE COMMISSION,  
14 Plaintiff,  
15 v.  
16 CHRISTOPHER M. BALKENHOL  
17 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER RELIEF**

18  
19 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

20 **SUMMARY OF THE ACTION**

21 1. This insider trading case involves the misappropriation of confidential information  
22 from Oracle Corporation regarding its potential acquisitions. Defendant Christopher M. Balkenhol,  
23 whose wife served as the supervising executive assistant to Oracle's top three executives, netted  
24 nearly \$100,000 through his illicit purchases of stock in Oracle acquisition targets.

25 2. From November 2004 to September 2005, defendant Balkenhol – himself an Oracle  
26 vice president – made increasingly sizeable investments in public companies that were the subject of  
27 highly confidential merger discussions at Oracle. In each instance, Balkenhol's trades coincided with  
28 important high-level meetings involving senior Oracle executives – meetings known to Balkenhol's

1 wife, who had access to the highest level of information at the company. Balkenhol invested in two  
2 companies – Retek, Inc. and Siebel Systems, Inc. – shortly before they were acquired by Oracle. The  
3 public announcements of the acquisitions significantly increased the stock prices of Retek and Siebel,  
4 allowing Balkenhol to reap \$97,283 in illegal trading profits.

5 3. Balkenhol owed a duty of trust to his wife, and violated this duty by using information  
6 he obtained from her in confidence for personal profit. By trading Retek and Siebel securities based  
7 on misappropriated material nonpublic information, defendant Balkenhol violated Section 10(b) of  
8 the Securities Exchange Act (“Exchange Act”) of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17  
9 C.F.R. 240.10b-5] thereunder. Additionally, because the material nonpublic information relating to  
10 Retek involved a tender offer, defendant Balkenhol’s trading in Retek securities also violated Section  
11 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.  
12 The Commission seeks a court order requiring that defendant Balkenhol disgorge his ill-gotten gains  
13 plus prejudgment interest, imposing civil money penalties, and enjoining defendant Balkenhol from  
14 future violations of these provisions of the securities laws.

#### 15 JURISDICTION AND VENUE

16 4. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the  
17 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1(c)].

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

20 6. Defendant, directly or indirectly, made use of the means or instrumentalities of  
21 interstate commerce, or of the mails, or of the facilities of a national securities exchange in  
22 connection with the transactions, acts, practices and courses of business alleged herein.

23 7. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.  
24 § 78aa] because defendant Balkenhol resides within the Northern District of California and acts and  
25 transactions constituting the violations alleged in the Complaint occurred within the Northern District  
26 of California.

1 8. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil L.R.  
2 3-2(c) because a substantial part of the events or omissions which give rise to this claim occurred in  
3 the County of San Mateo.

4 **DEFENDANT**

5 9. Defendant Christopher M. Balkenhol, age 40, resides in San Mateo, California. At all  
6 relevant times, Balkenhol was employed as a vice president at Oracle Corporation.

7 **RELEVANT ENTITIES**

8 10. Oracle Corporation is a Delaware enterprise software company with its principal  
9 offices in Redwood City, California. Oracle's securities are registered with the Commission pursuant  
10 to Section 12(g) of the Exchange Act and listed on the NASDAQ National Market System under the  
11 symbol "ORCL."

12 11. Retek, Inc., prior to being acquired by Oracle in 2005, was a Delaware corporation  
13 with its principal executive offices in Minneapolis, Minnesota. During the relevant time period,  
14 Retek's securities were registered with the Commission pursuant to Section 12(g) of the Exchange  
15 Act and listed on the NASDAQ National Market System under the symbol "RETK."

16 12. Siebel Systems, Inc., prior to being acquired by Oracle in 2006, was a Delaware  
17 corporation headquartered in San Mateo, California. During the relevant time period, Siebel's  
18 securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act and  
19 listed on the NASDAQ National Market System under the symbol "SEBL."

20 **STATEMENT OF FACTS**

21 **A. Balkenhol's Wife, The Top Executive Assistant At Oracle, Shared A Relationship Of**  
22 **Trust And Confidence With Balkenhol.**

23 13. Balkenhol and his wife have been married since 1993 and they live together in San  
24 Mateo, California.

25 14. From 2000 to 2006, both Balkenhol and his wife worked at Oracle. Balkenhol's wife  
26 worked as the supervising executive assistant in Oracle's "Office of the Chief Executive Officer,"  
27 consisting of Oracle's CEO and two co-Presidents. In this position, Balkenhol's wife had access to  
28 the highest level of information at Oracle, including information regarding virtually all meetings

1 attended by the three executives, as well as virtually all potential acquisitions in which those  
2 executives were involved.

3 15. From Fall 2004 to September 2005, Balkenhol was a vice president in Oracle's  
4 Application Development group, specializing in, among other things, Customer Relationship  
5 Management applications ("CRM"), which help businesses track their customers. Retek and Siebel  
6 specialized in technologies that relate directly to the CRM field, and Siebel was absorbed by Oracle's  
7 Application Development group following its acquisition.

8 16. During the relevant period, the couple communicated every day, sharing confidences  
9 about their lives and work. Among other things, they talked about various topics related to Oracle's  
10 business activities, including Balkenhol's career development at Oracle or elsewhere in the same  
11 field. For instance, in early June 2005, he and his wife discussed the possibility that he might want to  
12 leave Oracle to work at Siebel; days later, his wife learned that Oracle executives were planning to  
13 acquire Siebel (after which Balkenhol bought \$270,000 of Siebel stock). In these conversations with  
14 his wife, Balkenhol learned information about the potential acquisitions described herein.

15 **B. Balkenhol's Trading In Confidential Oracle Acquisition Targets Contrasts With His**  
16 **Previous Trading History.**

17 17. Balkenhol's trading in Oracle acquisition targets between November 2004 and  
18 September 2005 sharply diverged from his previous securities trading history. Balkenhol had  
19 previously conducted highly diverse trading in much smaller share and dollar amounts. From 2001  
20 through October 2004, Balkenhol's typical purchase of any single stock averaged only \$15,000.  
21 Moreover, from 2003 through October 2004, Balkenhol bought stock in 22 different companies.

22 18. In contrast, between November 2004 and September 2005, Balkenhol invested in only  
23 Retek, Siebel, and a third public company – each of which was an Oracle acquisition target. These  
24 trades were far in excess of his prior trading history; by September, Balkenhol had invested nearly  
25 \$450,000 in Siebel alone.  
26  
27  
28

1       **C. In October and November 2004, Balkenhol Traded In A Confidential Oracle**  
2       **Acquisition Target.**

3           19. Prior to his illegal insider trading in Retek and Siebel, described below, Balkenhol  
4 made an unsuccessful attempt to profit by purchasing stock in a company under consideration for  
5 acquisition by Oracle. Although this acquisition never came to fruition and these trades are not  
6 alleged as part of defendant's illegal conduct, they represent the beginning of Balkenhol's pattern of  
7 investing in confidential Oracle acquisition targets.

8           20. From late October to early November 2004, Oracle's top executives held confidential  
9 discussions with their attorneys and investment bankers regarding a potential acquisition. Soon after  
10 his wife scheduled these meetings, Balkenhol made two purchases of stock in the target company.  
11 On October 25, 2004, Balkenhol purchased 1,000 shares for approximately \$8,000. Two weeks later,  
12 as talks became more serious, Balkenhol bought an additional 5,000 shares for approximately  
13 \$43,000 –his largest one-day purchase of a publicly traded stock since 2000. However, Oracle did  
14 not pursue the planned acquisition, and Balkenhol ultimately liquidated his position for a near net-  
15 zero change in price.

16       **D. In March 2005, Balkenhol Traded In Retek Stock.**

17           21. On February 28, 2005, Retek announced that it had entered into an agreement to be  
18 acquired by SAP America, Inc., an Oracle competitor, for \$8.50 per share. On that same day, Oracle  
19 took substantial steps, of which Balkenhol's wife was aware, that ultimately led to Oracle's tender  
20 offer to acquire Retek. Among other confidential information, Balkenhol's wife was aware on  
21 February 28 that: (1) Oracle had engaged a law firm to participate in formulating a response to the  
22 Retek/SAP announcement; (2) on the following day, March 1, the top executives at Oracle –  
23 including the CEO and the two co-Presidents – were to conduct an "update call" regarding Oracle's  
24 possible acquisition of Retek; and (3) also on March 1, following the update call, Oracle's  
25 Acquisition Committee was to discuss Retek.

26           22. After the market closed on March 1, 2005, Balkenhol bought 10,000 shares of Retek  
27 stock for approximately \$85,000.  
28

1           23.     Balkenhol's \$85,000 Retek purchase represented his largest ever one-day purchase of  
2 any security.

3           24.     After market close on March 8, Oracle publicly announced its intention to challenge  
4 SAP with a tender offer for Retek. On March 9, the trading volume in Retek doubled, and by market  
5 close Retek's stock rose 25% to \$10.63. Balkenhol immediately liquidated his entire position for  
6 profits of \$15,027.72.

7           **E.     From June to September 2005, Balkenhol Traded In Siebel Stock.**

8           25.     On June 8, 2005, Oracle's two co-Presidents met confidentially with Siebel's CEO to  
9 discuss a possible merger, including a discussion about the form of the acquisition and a possible  
10 price. Balkenhol's wife was aware at that time that the top executives at Oracle had begun merger  
11 negotiations with Siebel, and she began coordinating a "due diligence" kick-off meeting between the  
12 parties to take place the following week.

13          26.     On the next day, June 9, Balkenhol bought over \$270,000 worth of Siebel stock, by far  
14 the largest one-day stock purchase that Balkenhol had ever made.

15          27.     Balkenhol continued to purchase Siebel stock over the next three months, as the  
16 confidential merger talks progressed. Each of Balkenhol's purchases in Siebel happened soon after a  
17 critical advance in the negotiations.

18          28.     On or around June 15, the parties conducted the kick-off meeting that Balkenhol's  
19 wife had arranged. In the following days, the parties proceeded expeditiously with Oracle's due  
20 diligence review of Siebel. On June 15 and 16, the members of Oracle's acquisition team, including  
21 Balkenhol's wife, signed "non-disclosure agreements" with Siebel, after which Siebel began to share  
22 confidential information regarding its business and technologies. Over the weekend of June 18  
23 and 19, Oracle's investment bankers and financial advisors met to discuss the initial findings of  
24 Oracle's review.

25          29.     On Monday, June 20, Balkenhol made an additional purchase of \$86,000 worth of  
26 Siebel stock.

1           30.     For the entire month of July, the parties agreed to put the merger negotiations on hold  
2 while they waited for Siebel's second quarter financial results, which were filed on August 9.  
3 Balkenhol made no Siebel purchases during this one-month lull in negotiations.

4           31.     On August 10, the day after Siebel filed its financial statements, one of Oracle's co-  
5 Presidents and Siebel's CEO came to a revised understanding of the potential terms of the  
6 acquisition, and, on August 11 and 12, Oracle's executive committee discussed and approved  
7 recommencing the negotiations. Balkenhol's wife scheduled these meetings.

8           32.     Balkenhol made his next Siebel purchase on August 12, when he bought an additional  
9 \$49,000 of Siebel stock.

10          33.     Just four days before Oracle's public announcement of the acquisition, while the  
11 parties were in the midst of setting the final acquisition price, Balkenhol made his last Siebel  
12 purchase, increasing his position in Siebel stock by \$42,000. At this time, Balkenhol's wife was  
13 involved in a flurry of last minute activities, including drafting press releases for the acquisition  
14 announcement.

15          34.     In all, Balkenhol invested a total of \$448,256.95 in Siebel stock prior to the merger  
16 announcement.

17          35.     Prior to market open on September 12, Oracle announced its intent to acquire Siebel  
18 for \$5.6 billion, one of the largest Silicon Valley transactions that year. Based on this news, Siebel's  
19 stock price rose over 12%, and trading volume shot up to thirteen times the previous week's average.  
20 On that same day, Balkenhol sold his entire position for gross proceeds of \$530,511.84, representing  
21 a net profit of \$82,254.89.

22           **F.     Balkenhol's Purchases of Retek and Siebel Stock Were Based On Nonpublic**  
23           **Material Information Misappropriated From His Wife.**

24          36.     Each of Balkenhol's purchases of Retek and Siebel stock alleged herein was made  
25 based on inside information misappropriated from his wife in violation of duties of trust and  
26 confidence owed to his wife and to his employer.

27          37.     Balkenhol knew, or was reckless in not knowing, that the information he received  
28 from his wife regarding the Siebel and Retek acquisitions was material and nonpublic.

1 38. Based on his relationship with his wife, his senior position at Oracle, and his training  
2 regarding Oracle's insider trading policy, Balkenhol knew, or was reckless in not knowing, that he  
3 had a duty to refrain from trading on material, nonpublic information.

4 39. Moreover, Balkenhol knew or had reason to know that the inside information  
5 regarding the Retek acquisition came from Oracle, the offering company in a potential tender offer.

6 **FIRST CLAIM FOR RELIEF**

7 **Insider trading of Retek and Siebel Securities in Violation of Section 10(b) of the Exchange Act**  
8 **[15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] Promulgated Thereunder**

9 40. Paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

10 41. In relation to Defendant's aforementioned trading in the securities of Retek and Siebel,  
11 Defendant, with scienter, directly or indirectly:

- 12 a) employed devices, schemes, or artifices to defraud;
- 13 b) made untrue statements of material facts or omitted to state material facts  
14 necessary in order to make the statements made, in the light of the  
15 circumstances under which they were made, not misleading; and
- 16 c) engaged in acts, practices, or courses of business which operated or would  
17 operate as a fraud or deceit upon other persons, including purchasers and  
18 sellers of securities;
- 19 d) in connection with the purchase or sale of securities, by the use of means or  
20 instrumentalities of interstate commerce, of the mails, or the facilities of a  
21 national securities exchange.

22 42. By reason of the foregoing, Defendant violated, and unless restrained and enjoined  
23 will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17  
24 C.F.R. § 240.10b-5] thereunder.

1  
2 **SECOND CLAIM FOR RELIEF**

3 **Insider Trading of Retek Securities in Violation of Section 14(e) of the Exchange Act [15 U.S.C.  
4 § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] Promulgated Thereunder**

5 43. Paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

6 44. After Oracle had taken a substantial step or steps to commence or had commenced a  
7 tender offer, Defendant

8 a) Purchased or sold or caused to be purchased or sold the securities to be  
9 sought by the tender offer while in possession of material information  
10 relating to such tender offer

11 b) which information he knew or had reason to know is nonpublic, and

12 c) which he knew or had reason to know had been acquired directly or  
13 indirectly from the offering company, the issuing company, or any  
14 officer, director, partner or employee acting on behalf of the offering or  
15 issuing companies.

16 45. By reason of the foregoing, Defendant violated, and unless restrained and enjoined  
17 will continue to violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17  
18 C.F.R. § 240.14e-3] thereunder.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Commission respectfully requests that this Court:

21 **I.**

22 Permanently enjoin Defendant from directly or indirectly violating Section 10(b) of the  
23 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

24 **II.**

25 Permanently enjoin Defendant from directly or indirectly violating Section 14(e) of the  
26 Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder;

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III.

Order Defendant to disgorge ill-gotten gains derived from the unlawful trading alleged herein,  
plus prejudgment interest;

IV.

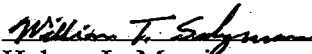
Order Defendant to pay civil penalties pursuant to Section 21A of the Exchange Act [15  
U.S.C. § 78u-1]; and

V.

Grant such other relief as this Court may deem just and appropriate.

Respectfully submitted,

Dated: May 11, 2007

  
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