UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
	CASE NO. 1:10-cv-00955
Plaintiff,	
v.	
GERALD D. HORN,	
Defendant.	**JURY DEMANDED**

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("SEC"), alleges as follows:

NATURE OF THE ACTION

1. This matter centers on illegal insider trading by Gerald D. Horn ("Horn"), a resident of Deerfield, Illinois, in connection with his purchase and sale of call and put options of LCA Vision, Inc. ("LCA") stock and in connection with his exercise of LCA stock option grants and subsequent sale of that LCA stock. Horn traded on the basis of material, non-public information when he made six separate purchases of LCA puts and calls, resulting in illicit gains of approximately $869,629. Horn also traded on the basis of material, non-public information when he decided to exercise LCA stock option grants and sell the stock, resulting in a loss avoided of approximately $533,603.

2. Because he had material nonpublic information about LCA, Horn never lost money on any of his multiple trades in LCA options, despite his complete lack of prior experience in options trading. Moreover, Horn was able, with great precision and agility, to

switch his trades between calls and puts, predicting that LCA's earnings would either beat or miss its targets, and thus that the price of LCA stock would either rise or fall, and made the correct decision every time.

3. Horn is an employee of the Chicago-area facilities of LCA, a public company headquartered in Cincinnati, Ohio, that provides laser surgery vision correction services in 31 states. Horn is a doctor of ophthalmology who performs surgeries for LCA.

4. Between December 2005 and August 2006, Horn traded in call and put options and sold LCA stock ahead of LCA's earnings announcements based on material, non-public information regarding LCA's total number of laser eye surgeries performed and revenue generated from these procedures. Horn made a profit of approximately $869,629 from trading in call and put options, and avoided a loss of approximately $533,603 in the exercise of LCA stock option grants and subsequent sale of the LCA stock, for a total of approximately $1,403,232 in illicit gains.

5. While trading in LCA securities, Horn traded on the basis of information contained in LCA's internal Eyes by Laser Reports, which provided non-public information regarding LCA's total number of laser eye surgeries performed and revenue generated from these procedures. These reports also allowed him to successfully predict whether LCA's earnings would miss or beat LCA's previous earnings guidance previously provided to the public. Specifically, the Eyes by Laser Reports contained information regarding whether LCA was missing or beating the targets set for LCA employees regarding surgical procedures and revenue, as well as scheduled procedures for the remainder of the month or quarter.

6. LCA's revenue was solely dependent on surgical procedures, and LCA's expenses were relatively fixed. LCA's public guidance as to the company's earnings was thus

largely dependent on the company's projections as to the number of surgical procedures it expected to perform in a given year. For example, if LCA were to significantly miss a quarterly target for number of surgical procedures, then LCA would be forced to revise downward its annual guidance as to projected earnings year-end per share as a result.

7. Consequently, the information contained in the Eyes by Laser reports could enable a person to successfully predict whether LCA would miss or beat the projected earnings per share LCA previously provided to the public. In turn, this would also allow one to successfully predict whether LCA would later decrease or increase its public earnings per share guidance, which would likely cause LCA's stock price to either fall or rise.

8. In addition, Horn was also aware of analysts' targets for the company. Horn has admitted to reviewing "lots of analysts' reports" listed on Yahoo Finance regarding LCA. Horn also testified that he checked LCA's stock price "every day."

9. LCA's Insider Trading Policy included three relevant prohibitions: (i) employees were prohibited from trading LCA securities while in possession of material non-public information; (ii) they were prohibited from trading in options of LCA stock, and (iii) they were prohibited from trading outside of a preset 45-day trading window each quarter that started two days after each quarterly announcement.

10. Horn has admitted that he was aware of the Insider Trading Policy's prohibition against trading in LCA securities while in possession of material non-public information and the requirement that he trade within the trading window.

11. Horn received the written policy regarding the prohibition against trading in options of LCA stock.

12. Although Horn always traded within the trading window, Horn violated prohibitions (i) and (ii) above of LCA's Insider Trading Policy when he traded in call and put options of LCA stock based on material, non-public information regarding LCA's revenue.

13. Through the activities alleged in this complaint, Defendant Horn has, and unless enjoined, will continue to, directly and indirectly, engage in transactions, acts, practices or courses of business which are violations of Section 10(b) [15 U.S.C. § 78j(b)] of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

JURISDICTION

14. The SEC brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1].

15. This Court has jurisdiction pursuant to Sections 21(d), (e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa] and 28 U.S.C. § 1331.

16. The acts, practices and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere.

17. Defendant Horn is an inhabitant of, and transacts business in, the Northern District of Illinois.

18. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.§ 78aa] because certain acts constituting the violations of law alleged in this Complaint occurred in this judicial District.

DEFENDANT

19. Gerald D. Horn, age 57, is a resident of Deerfield, Illinois. Horn has been and continues to be the Medical Director of LCA's facility in Schaumburg, Illinois and the president

of the Illinois professional corporation that services LCA's Chicago-area facilities. He is also the lead surgeon and ophthalmologist for those facilities. Prior to the trades described in this complaint, Horn had never traded in put and call options.

FACTS

LCA'S RELATIONSHIP WITH HORN

20. LCA, listed under the symbol LCAV on NASDAQ, provides laser surgery vision correction services at facilities throughout the United States. Each LCA facility employs one or more optometrists to examine prospective candidates to determine whether they are suitable for laser corrective surgery. If candidates are suitable and decide to have the procedure, an ophthalmologist will oversee the surgery at the facility. The optometrists then handle all of the post-operative care. Each facility also employs a Center Director that oversees the business and financial functions of the facility.

21. Horn is both an employee of LCA and the owner of the Illinois professional corporation that operates LCA facilities in the Chicago area. LCA directly employed Horn as a Medical Director of its facility in Schaumburg, Illinois to oversee the ophthalmologists and optometrists hired for the Chicago area and to consult as necessary on patient care. In addition, Horn is the president of the Illinois professional corporation that provides physicians to work for LCA's Illinois facilities. Horn is also the lead surgeon and ophthalmologist for those facilities.

22. In connection with his employment with LCA as the Medical Director of LCA's Schaumburg, Illinois facility, Horn's employment contract with LCA included a section entitled "Confidential Information" which "expressly acknowledge[d] that" while working at LCA, Horn might have access to LCA's "proprietary" and "confidential information."

23. The employment contract required Horn to agree that he would "protect and preserve" all such information and would not "use such information to [his] advantage or to the advantage of any other person or entity…." LCA considered the Eyes by Laser Reports to be confidential information; the reports were only available to LCA employees on office computers.

24. LCA's Trading Policy included three relevant prohibitions: (i) employees were prohibited from trading LCA securities while having material non-public information; (ii) they were prohibited from trading in options of LCA stock, and (iii) they were prohibited from trading outside of a preset 45-day trading window each quarter that started two days after each quarterly announcement.

25. Horn has admitted that he was aware of the Trading Policy's prohibition against trading in LCA securities while in possession of material non-public information and the requirement that he trade within the trading window.

26. Horn received the written policy regarding the prohibition against trading in options of LCA stock. However, Horn denied, during sworn testimony before the SEC, that he knew that he was forbidden from trading in options of LCA stock.

27. Prior to the LCA option trades at issue in this complaint, Horn had never traded in options.

28. Although Horn always traded within the trading window, Horn violated prohibitions (i) and (ii) above of LCA's Trading Policy when he traded in call and put options of LCA stock on the basis of material, non-public information regarding LCA's revenue.

29. LCA Vision emailed its Trading Policy – specifying the prohibitions against trading in LCA securities while having material non-public information, trading in options of

LCA stock, and trading outside the preset trading window – to all LCA employees, including Horn, in 2004 and twice in 2006.

30. Horn has admitted that he understood that he was not permitted to trade on material non-public information, and that he was not permitted to trade outside the window. As discussed below, Horn's trades were consistently within the trading window.

31. In addition, LCA also regularly circulated to its personnel copies of an executive summary of LCA's Trading Policy, which included prohibitions against trading to take advantage of material non-public information and trading outside the preset trading window, which applied to "all LCA securities."

32. The executive summary of LCA's Trading Policy was sent via email to all LCA personnel, including Horn, every quarter. This notice was also posted in break rooms at LCA's various offices, which Horn admits seeing posted. The executive summary of LCA's Trading Policy was also posted on the intranet available on computers in LCA's offices.

HORN'S ACCESS TO NONPUBLIC MATERIAL INFORMATION ABOUT LCA'S REVENUE

33. Each day, LCA headquarters lists the number of surgeries that have been performed, both in each region and company-wide, in Eyes by Laser Reports that are posted on the company's intranet, which is available on computers in LCA's offices.

34. Horn was able to access reports that show figures for each region as well as the total company's figures. The Eyes by Laser Reports list, among other things, the company's total number of surgeries performed, and the corresponding revenue. Horn could generate Eyes by Laser Reports that list the number of surgeries and revenues for a variety of time ranges, a month to date, or quarter to date, all on a single page.

35. On each report, the number of surgeries and revenues for the entire company is listed just below the individual region. In addition, the annual and quarterly Eyes by Laser Reports are cumulative. Thus, the revenues for all prior quarters and annual periods are available simply by clicking on the appropriate button at the top of the table.

36. In addition, the reports show LCA's monthly targets for surgeries and revenue and the extent to which the company had met those targets as of the date entered. The reports also showed scheduled procedures for the remainder of the month or quarter. Horn could thus easily compare LCA's current and historical performance and then access the Internet to see how the historical performance translated into LCA's stock price.

37. LCA regularly publicly provided forward-looking guidance as to the company's year-end earnings per share, based on LCA's projections for the year. Earnings per share is a crucial measure of a company's success, and correspondingly, the market price for LCA stock depended in great part on LCA's projected year-end earnings per share. LCA's revenue was solely dependent on surgical procedures, and LCA's expenses were relatively fixed. LCA's earnings guidance was thus largely dependent on the company's projections as to the number of surgical procedures it expected to perform in a given year, which was in turn broken down into quarterly and monthly targets.

38. If LCA were to significantly miss a quarterly target for number of surgical procedures, then LCA would likely be forced to revise downward its guidance as to projected earnings year-end per share as a result. Consequently, the information contained in the Eyes by Laser reports enabled Horn to successfully predict whether LCA would miss or beat the projected earnings per share previously provided to the public. In turn, this permitted Horn to

successfully predict whether LCA would later revise its earnings per share downward or upward, which would likely cause LCA's stock price to either fall or rise.

39. In addition, Horn admitted to reviewing "lots of analysts' reports" listed on Yahoo Finance, and thus Horn was also aware of analysts' specific targets for LCA's operations and revenue. Horn also testified, during sworn testimony before the SEC, that he checked LCA's stock price "every day."

40. As a result, Horn was able to compare LCA's progress in meeting analysts' targets for surgical procedures and revenue. Horn thus was able to successfully predict whether, once this information was later made public, analysts and the market would be disappointed or impressed by LCA's quarterly results, and thus whether LCA's stock price would likely fall or rise as a result.

41. Horn could access the Eyes by Laser Reports through computer terminals at all of LCA's various Chicago-area facilities where he worked. LCA assigned individual computers only to the Center Directors at each facility. Horn had access to computers located in each facility's file rooms and break room. Horn was able to access the LCA intranet, where the Eyes by Laser Reports are located, simply by typing in the name of the company facility and then clicking on the Report icons. Horn routinely used the computers in the common areas and the computers designated for LCA Center Directors.

42. Horn has claimed, during sworn testimony before the SEC, that he never accessed Eyes by Laser Reports on LCA computers and that he did not know the reports were available online. Horn also claimed that passwords were necessary to access the company's intranet, where the Eyes by Laser Reports were posted, and that he did not have these required passwords.

43. Horn's claims are incorrect: access to the LCA intranet can be gained simply by typing in the name of the LCA facility.

44. Horn also denied ever seeing physical copies of the Eyes by Laser Reports. However, Horn admitted that he had seen reports which showed, by percentages, the amount of surgeries performed by each of the three types of lasers used in the Chicago-area facilities.

45. The only reports that showed such data were in fact Eyes by Laser Reports, which also contained, on the same page as the laser data, LCA's total number of surgeries and revenue.

46. Horn's claim, during sworn testimony before the SEC, that he did not review any Eyes by Laser Reports is contradicted by other evidence. For example, information in the Eyes by Laser Reports about the Chicago region of LCA directly affected Horn's compensation and the compensation of his employees. Horn's compensation was directly tied to the number of eye surgeries that the Chicago region completed each month, a number reflected in the reports.

47. LCA establishes a monthly goal for eye surgeries for every region and every employee is eligible to receive a bonus if that employee's region achieves the surgery goal for a given month.

48. How close the Chicago region was to reaching its target for surgical procedures performed was a frequent subject of conversation among LCA employees. Horn routinely talked to other LCA employees about whether the Chicago region was reaching its target, particularly towards the end of a month.

49. LCA employees often asked Horn if he would be willing to work extra hours so that the Chicago region could reach a target and thus trigger bonus payments.

50. Eyes by Laser Reports that listed information about the Chicago region also included information about LCA's total number of surgeries and revenue.

THE SUSPICIOUS TIMING AND NATURE OF HORN'S TRADES

51. The timing and nature of Horn's trades demonstrate that Horn based his trades on LCA's confidential financial information. Horn's trades were timed to take advantage of price movements caused by LCA's earnings announcements. The purchases of his options were either near the end of a quarter or shortly before. Horn was careful, however, not to trade outside of the preset trading window, so his trades would not seem overly suspicious. Each of the options purchased by Horn expired after the next earnings announcement was expected to be made.

52. Horn's trades in anticipation of the LCA earnings announcements were unusually large relative to the market. Horn's LCA options trades often represented a large percentage of the total daily trading in LCA options. In one instance, Horn's purchases constituted approximately 95% of all trading of LCA options that day.

53. Further, Horn's trades represented unusually large trades considering his strained finances, particularly the scarcity of disposable cash at the time. Absent a sure thing, such as inside information, it would have been risky for Horn to pay such large premiums in connection with these trades. In short, Horn simply did not have the adequate cash flow to withstand the downside risk inherent in these transactions, in which he spent over $1.09 million on options premiums within a financially strained nine-month period.

54. It is particularly striking that in all of his purchases in LCA calls and puts, Horn <u>never</u> lost money on a trade, making a total of approximately $869,629 in profits.

55. Despite his complete lack of prior experience in options trading, Horn was successful 100% of the time when trading in LCA options.

56. Moreover, Horn was able, with great precision and agility, to switch his trades between calls and puts, predicting that LCA's earnings would either beat or miss its targets, and

thus that the price of LCA stock would either rise or fall, and made the correct decision every time.

57. In addition to his trades in calls and puts, Horn avoided a loss of approximately $533,603 by exercising his LCA stock option grants and immediately selling this stock on the basis of material nonpublic information indicating that LCA was approximately 10% behind its targets for operations and revenue for the quarter.

58. The probability of obtaining such results without reliance on inside information is very low.

59. Finally, once he learned of the SEC's investigation, Horn ceased trading options in LCA and began trading in options of other securities for the first time. Unlike the perfect results in his LCA trading, his results in these non-LCA options trades were, at best, mixed.

CHRONOLOGY OF TRADES BY HORN

Options Trade 1 (In Advance of 2/22/06 Fourth Quarter 2005 Earnings Announcement)

60. During early December 2005, Horn reviewed Eyes by Laser Reports indicating that LCA was approximately 11% behind its targets for surgeries and revenue for the quarter.

61. On or about December 9, 2005, the last day of LCA's open trading window and 22 days before the quarter ended, Horn paid approximately $17,505 to purchase 20 March 55 LCA puts at $8.70. In other words, Horn paid $8.70 per share for the right to sell 2,000 shares of LCA at $55 per share.[1]

62. Based on his review of material nonpublic information, namely the Eyes by Laser Reports, Horn foresaw that LCA stock would drop significantly and thus purchased the options discussed in the previous paragraph.

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[1] A typical options contract is for 100 shares, so purchasing 20 puts gives the holder the right to sell 2,000 shares.

63. At the time of this trade, analysts rated LCA as a "strong buy." LCA stock closed at approximately $49.16 per share on December 9th.

64. On or about February 22, 2006, LCA issued its fourth quarter 2005 and 2005 year-end earnings announcement. This announcement, among other things, reported quarterly earnings per share ("EPS") that was approximately 7% behind analysts' consensus EPS estimate; LCA had in the past typically exceeded consensus EPS estimates. LCA also established a 2006 EPS guidance range at $1.65 - $1.75, compared to the consensus analyst estimate of $1.93. On February 22nd, LCA's stock price dropped approximately 12% from $55.89 to $49.22.

65. An analyst at Raymond James downgraded LCA from "strong buy" (their highest rating) to "outperform" (their second highest rating), calling it a "relatively disappointing quarter." LCA's stock price continued to fall in subsequent days of trading, falling to a close price of $45.25 on February 24th, the first day of the LCA trading window.

66. On March 9, 2006, LCA closed at approximately $42.30. On this day, Horn sold all of the LCA puts he purchased on December 9, 2005, making a profit of approximately $7,159 on an investment of approximately $17,505 in options premium, an approximately 41% profit ratio.

Options Trade 2 (In Advance of 4/25/06 First Quarter 2006 Earnings Announcement)

67. During early April 2006, Horn reviewed Eyes by Laser Reports indicating that LCA had beaten its targets for surgeries and revenue by approximately 3% for the first quarter of 2006, which was already completely over by that time.

68. On April 5, 2006, the penultimate day of the trading window and five days after the quarter ended, Horn paid $69,201 to buy 78 May 40 calls at $8.80 and $9,505 to buy 10 June 40 calls at $9.40. In other words, Horn paid $8.80 per share for the right to purchase 7,800

shares of LCA stock at $40 per share and $9.40 per share for the right to purchase 1,000 shares of LCA stock at $40 per share.

69. Based on his review of material nonpublic information, namely the Eyes by Laser Reports, Horn foresaw that LCA stock would rise significantly and thus purchased the options discussed in the previous paragraph.

70. LCA closed at approximately $48.00 on April 5th, and Horn's purchases constituted approximately 32% of all of trading activity in LCA options.

71. On April 6, 2006, the last day of the trading window, Horn paid $93,686 to buy 100 May 40 calls at $9.30, $120,485 to buy 130 May 40 calls at $9.20 and $99,746 to buy 100 June 40 calls at $9.90. In other words, Horn paid $9.30 per share for the right to sell 10,000 shares of LCA stock at $40 per share, $9.20 per share for the right to sell 13,000 shares of LCA stock at $40 per share, and $9.90 per share for the right to sell 10,000 shares of LCA stock at $40 per share, respectively.

72. Based on his review of material nonpublic information, namely the Eyes by Laser Reports, Horn foresaw that LCA stock would rise significantly and thus purchased the options discussed in the previous paragraph.

73. On April 6th, LCA closed at approximately $48.04, and Horn's purchases constituted approximately 68% of all trading activity in LCA options. At the time of Horn's trades on April 5th and 6th, analysts rated LCA as an "outperform," their second-highest rating.

74. LCA issued its first quarter 2006 earnings announcement on April 25, 2006, before the markets opened. This announcement stated that first quarter EPS was $.61, beating the consensus estimate of $.51. LCA increased its 2006 EPS guidance range by $0.10 to $1.75 - $1.85, compared to the consensus estimate of $1.73. LCA's stock price which had closed on

April 24, 2006 at approximately $51.20, opened on April 25, 2006 at approximately $56.03, an approximately 9.4% increase.

75. An analyst at Raymond James said: "LCA-Vision reported a very strong quarter as the company exceeded our forecasts in nearly all key operating metrics. Simply put, this morning's robust numbers should buttress investor confidence in the company, which was somewhat damaged by relatively lackluster 4Q05 results."

76. On April 27, 2006, the first day of the trading window and two days after LCA issued its earnings announcement, Horn sold all of the above May and June calls making a profit of approximately $316,905 on an investment of approximately $313,917 in options premiums, an approximately 101% profit ratio.

77. On this day, LCA closed at approximately $56.57, and Horn's sale constituted approximately 20% of all trading in LCA options.

Horn's May 2006 Exercise of <u>all</u> of his Exercisable Stock Options
(in advance of 7/25/06 Second Quarter 2006 Earnings Announcement)

78. During early May 2006, Horn reviewed Eyes by Laser Reports indicating that LCA was approximately 10% behind its targets for surgeries and revenue for the quarter.

79. On or about May 4, 2006, Horn informed LCA that he wanted to exercise all of his stock option grants that were exercisable at the time. This consisted of a total of 38,723 stock options, granted to Horn at various times throughout his employment between 1999 and February 2006. Horn exercised all of these options, resulting in 38,723 shares being transferred to his brokerage account, which he immediately sold at approximately $55.77 per share.

80. Based on his review of material nonpublic information, namely the Eyes by Laser Reports, Horn foresaw that LCA stock would drop significantly and thus took the steps described in the previous paragraph.

81. Two months later, LCA's earnings announcement for this quarter was released, which revealed that LCA had significantly missed estimates for the number of surgeries performed that quarter, and thus overall revenue decreased as well. As a result, LCA's stock price dropped approximately 12%, from $46.24 on the close of July 24, 2006 to $40.79 at the open on July 25th.

82. Had Horn instead sold this LCA stock at the July 27th closing price ($41.99), the first day of the trading window after the announcement, Horn would have realized approximately $533,603 less in proceeds.

Options Trade 3 (In Advance of 7/25/06 Second Quarter 2006 Earnings Announcement)

83. During late May 2006 or early June 2006, Horn reviewed Eyes by Laser Reports indicating that LCA was approximately 6% behind its targets for surgeries and revenue for the quarter.

84. On or about June 2, 2006, one week before the trading window closed and 28 days before the close of the quarter, Horn paid approximately $117,481 to buy 100 September 65 puts at $11.65, approximately $109,256 to buy 138 September 60 puts at $7.84 and approximately $64,055 to buy 50 December 65 puts at $12.70. In other words, Horn paid $11.65 per share for the right to sell 10,000 shares of LCA stock at $65.00 per share, $7.84 per share for the right to sell 13,800 shares of LCA stock at $60.00, and $12.70 per share for the right to sell 5,000 shares of LCA stock at $65.00, respectively.

85. Based on his review of material nonpublic information, namely the Eyes by Laser Reports, Horn foresaw that LCA stock would drop significantly and thus purchased the options discussed in the previous paragraph.

86. On this day, LCA stock closed at $54.75 and Horn's purchases constituted approximately 95% of all trading in LCA options. At the time of these trades, analysts rated LCA as an "outperform," their second-highest rating.

87. LCA issued its second quarter 2006 earnings announcement on or about July 25, 2006, before the markets opened. The announcement stated that the quarterly EPS was $0.51, beating the consensus estimate of $0.47. LCA increased its 2006 EPS guidance range by $.05 to $1.80-$1.90, little different from the consensus estimate of $1.86. However, LCA significantly missed analysts' estimates for the number of surgical procedures performed that quarter, and thus overall revenue.

88. An analyst at Raymond James said: "LCAV shares sold off sharply yesterday as investors focused on the soft revenue metrics – procedures were 47,308 vs. our 48,017 estimate; same-store revenue growth was 450 bp below our +25.5% forecast, and, sequentially, procedures dropped ~11.4% vs. a ~4.2% drop in 2Q05." LCA's stock price, which had closed on July 24, 2006 at $46.24, opened on July 25, 2006 at $40.79, an approximately 12% decrease.

89. On or about July 28, 2006, the day after the trading window opened, Horn sold all of the puts he purchased on June 2nd, making a profit of approximately $295,252 on an investment of approximately $290,792 in options premiums, an approximately 102% profit ratio.

90. On this day, LCA closed at $42.82 and Horn's sale constituted approximately 59% of all trading in LCA options.

Options Trade 4 (in advance of 9/29/06 Earnings Guidance Revision and Third Quarter 2006 Earnings Announcement)

91. During mid-August 2006, Horn reviewed Eyes by Laser Reports indicating that LCA was approximately 18% behind its targets for surgical procedures and revenue for the quarter.

92. On or about August 17, 2006, 21 days before the end of the trading window and 44 days before the end of the quarter, Horn paid $39,243 to buy 40 December 50 puts at $9.71 and $201,092 to buy 210 December 50 puts at $9.48. In other words, Horn paid $9.71 per share for the right to sell 4,000 shares of LCA stock at $50.00 per share and $9.48 per share for the right to sell 21,000 shares of LCA stock at $50.00 per share.

93. Based on his review of material nonpublic information, namely the Eyes by Laser Reports, Horn foresaw that LCA stock would drop significantly and thus purchased the options discussed in the previous paragraph.

94. On this day, LCA's stock price closed at $41.76 and Horn's purchases constituted approximately 36% of all trading in LCA options.

95. During late August 2006, Horn reviewed Eyes by Laser Reports indicating that LCA was approximately 13% behind its targets for surgical procedures and revenue for the quarter.

96. On or about August 29, 2006, 9 days before the end of the trading window and 31 days before the end of the quarter, Horn paid another $150,142 to buy 290 December 45 puts at $5.13. In other words, Horn paid $5.13 per share for the right to sell 29,000 shares of LCA stock at $45.00 per share.

97. Based on his review of material nonpublic information, namely the Eyes by Laser Reports, Horn foresaw that LCA stock would drop significantly and thus purchased the options discussed in the previous paragraph.

98. On this day, LCA's stock price closed at $43.72. Around the time of Horn's August 2006 purchases, an analyst at Raymond James had returned to rating LCA as a "strong buy," their highest rating.

99. On or about September 29, 2006, LCA announced that it was revising its 2006 earnings guidance. LCA significantly decreased its 2006 EPS guidance range by $0.20, to $1.60-$1.70, compared to consensus estimates of $1.90. LCA's stock price, which had closed at $41.31 on September 29, opened at $33.06 on October 2, a decrease of 20%.

100. An analyst at Raymond James downgraded LCA from "strong buy" (their highest rating) to "market perform" (their third-highest rating), and an analyst at William Blair said that "it appears that third-quarter [procedure] volumes were weaker than we (and the company) had anticipated."

101. LCA issued its third quarter 2006 earnings announcement on or about October 24, 2009. The announcement reported earnings per share of 34 cents for the quarter, beating analysts' expectations in light of the September 29th earnings guidance that was significantly more pessimistic. LCA's stock price increased approximately 7.3%, from $33.08 to $35.50, slightly rebounding from the decrease following the September 29th earnings guidance announcement.

102. On or about October 27, 2006, the first day of the trading window, Horn sold all of the puts he purchased in August 2006, making a profit of approximately $255,372 on an investment of approximately $390,477 in options premiums, an approximately 65% profit ratio.

103. On this day, LCA stock closed at $34.35, and Horn's sales constituted approximately 65% of all trading in LCA options.

HORN PROVIDED THE SEC WITH FALSE EXPLANATIONS FOR HIS TIMELY TRADING

104. During sworn testimony before the SEC, Horn provided numerous false explanations for his timely trading in call and put options of LCA stock.

105. Horn's first explanation was that his purchase of options of LCA stock was intended as a hedge against his LCA stock option grants, in the event that LCA's stock dropped enough that the grants would be worthless.

106. Other evidence contradicts this explanation. Most of Horn's stock option grants did not vest until years later, and, once vested, could be exercised within several subsequent years. On the other hand, the LCA puts Horn purchased always expired within 6 months or less, and Horn always sold them long before they expired. As a result, these puts could not have served as a hedge with respect to the stock option grants.

107. Horn also claimed that he had identified a "strong" and "predictable" historical pattern in LCA stock prices and that his trades were made based on this pattern. Horn stated that he reviewed "lots of analyst's reports" listed on Yahoo Finance in connection with his purported analysis of whether LCA stock would rise or fall.

108. However, the historical price pattern that Horn described was not consistent with the actual historical price pattern of LCA stock. In addition, Horn's actual trading was not consistent with the trading strategy he claimed to be using.

109. Horn stopped trading in LCA when he learned of the SEC's investigation and LCA learned that Horn had been trading in options on LCA stock.

COUNT I

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

110. Paragraphs 1 through 109 are re-alleged and incorporated by reference as though fully set forth herein.

111. As more fully described in paragraphs 1 through 109 above, Defendant Horn, in connection with the purchase and sale of securities, by the use of the means and instrumentalities

of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities.

112. Defendant Horn knew, or was reckless in not knowing, the facts and circumstances described in paragraphs 1 through 109 above.

113. By reason of the foregoing, Defendant Horn 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].

RELIEF REQUESTED

Wherefore, the SEC respectfully requests that this Court:

I.

Find that Defendant Horn committed the violations charged and alleged herein.

II.

Grant an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Horn, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) [15 U.S.C. § 78j] of the Exchange Act and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

III.

Issue an Order requiring Defendant Horn to disgorge the ill-gotten gains that he received as a result of his wrongful conduct, including prejudgment interest.

IV.

With regard to Defendant Horn's violative acts, practices and courses of business set forth herein, issue an Order imposing upon Defendant Horn an appropriate civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

V.

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

VI.

Grant an Order for any other relief this Court deems appropriate.

Respectfully submitted,

s/ Robin Andrews
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