

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

SUPERSEDING INFORMATION

- v. - :

S2 10 Cr. 1205 (JSR)

LOUIS TOMASETTA and :

EUGENE HOVANEC, :

Defendants. :

- - - - - x

COUNT ONE

(Conspiracy to Destroy, Alter, or Falsify Records in
Contemplation of a Federal Investigation)

The United States Attorney charges:

Relevant Persons and Entities

1. At all times relevant to this Superseding Information, Vitesse Semiconductor Corporation ("Vitesse") was a corporation organized under the laws of the State of Delaware with headquarters in Camarillo, California.

2. At all times relevant to this Superseding Information, Vitesse's common stock was registered with the U.S. Securities and Exchange Commission ("SEC") pursuant to Section 12(g) of the Securities and Exchange Act of 1934 (the "Exchange Act"), and traded on the NASDAQ national market under the symbol "VTSS." Vitesse's shareholders were located throughout the United States, including in the Southern District of New York.

3. LOUIS TOMASETTA, the defendant, co-founded Vitesse in or about 1987. From in or about 1987 through in or about May 2006, TOMASETTA was the President, Chief Executive Officer, and a Director of Vitesse.

4. From in or about December 1993 through in or about April 2005, EUGENE HOVANEC, the defendant, was the Chief Financial Officer and Vice President of Finance of Vitesse. From in or about April 2005 through in or about May 2006, HOVANEC was the Executive Vice President of Vitesse.

5. From in or about 1993 through in or about November 2002, Yatin Mody ("Mody") was the Controller of Vitesse. From in or about July 2002, through in or about April 2005, Mody was the Vice President of Finance of Vitesse. From in or about April 2005 through in or about May 2006, Mody was the Chief Financial Officer of Vitesse.

Vitesse's Stock Option Plans

6. At all times relevant to this Superseding Information, Vitesse granted options to employees pursuant to shareholder approved stock option plans (the "Plans"). Such stock options typically gave holders the right to buy a share of stock on a future date at a set price, known as the "exercise" or "strike" price.

7. During the time period relevant to this Superseding Information, Vitesse's Board of Directors, specifically the Compensation Committee of the Board (the "Compensation Committee"), administered the Plans and had the authority under the Plans to grant stock option awards. Vitesse's public filings for the 2001 to 2005 year-end period indicated that the exercise price of all stock options was at least equal to the fair market value of Vitesse's stock price on the date of the grant.

8. During the time period relevant to this Superseding Information, LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, and others, generally initiated and oversaw the option grant process.

The April and October 2001 Stock Option Grants

9. Minutes of Vitesse's April 12, 2001 Compensation Committee meeting memorialize option grants for approximately 7.6 million shares at approximately \$17.438 per share, which included options for LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, for approximately 1,200,000 and approximately 300,000 shares, respectively (the "April 2001 Options"). The closing price of Vitesse's stock on April 12, 2001 was approximately \$25.70. The minutes of the April 12, 2001

Compensation Committee meeting indicate that the exercise price for these shares was the closing price of Vitesse's stock on April 6, 2001 (specifically, \$17.438 per share).

10. Minutes of Vitesse's October 25, 2001 Compensation Committee meeting memorialize option grants for approximately 15.3 million shares at approximately \$7.27 per share, which included options for LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, for approximately 1,200,000 shares and approximately 300,000 shares, respectively. The closing price of Vitesse's stock on October 25, 2001 was approximately \$11.35. The minutes of the October 25, 2001 Compensation Committee meeting indicate that the exercise price for these options was the closing price on October 2, 2001 (specifically, \$7.27 per share).

Questions Are Raised in the Fall of 2005 Concerning Vitesse's April and October 2001 Stock Option Grants

11. In or about November 2005, Mody contacted Vitesse's then-outside law firm ("Law Firm-1") concerning a press inquiry about Vitesse's stock option practices. After reviewing documents related to, among other things, stock option grants in or about April 2001 and October 2001, Law Firm-1 advised Mody and LOUIS TOMASETTA, the defendant, that it had concerns about, among other things, the April 2001 and October 2001 option grants because the Compensation Committee meeting minutes

indicated that Vitesse had granted options at an exercise price that was lower than the closing price of Vitesse's stock on the date of the meeting memorialized in the minutes, which raised a concern as to whether Vitesse had properly accounted for these option grants.

12. In or about late November 2005, after discussions with LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, Mody created minutes of the Compensation Committee meetings allegedly held telephonically on or about April 6, 2001 and October 2, 2001. Thereafter, at TOMASETTA's request, the former Chairman of Vitesse's Compensation Committee signed these newly created documents. Mody then provided copies of these minutes to Law Firm-1, and specifically advised Law Firm-1 that they were prepared in November 2005 to reflect what had actually occurred at meetings on April 6, 2001 and October 2, 2001.

The Defendants Alter and Fabricate Records Concerning Vitesse's April and October 2001 Stock Option Grants

13. On or about March 18, 2006, the Wall Street Journal published an article that raised questions about stock option practices at various companies, including Vitesse. Following the publishing of this article, Law Firm-1 raised concerns to Vitesse's directors and management, including to LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, about Vitesse's option

grants and about the fact that Compensation Committee minutes had been created years after the fact. Law Firm-1 informed TOMASETTA and HOVANEC that because of the Wall Street Journal article, there was a significant possibility of an SEC investigation into Vitesse's option practices and disclosures. At a meeting on April 11, 2006, Law Firm-1 also advised Vitesse's directors and management, including TOMASETTA and HOVANEC, that the after-the-fact creation (in the fall of 2005) of Compensation Committee meeting minutes for the April and October 2001 stock option grants raised questions about whether the meetings at issue had actually occurred.

14. On April 11, 2006, Vitesse's Audit Committee retained a law firm ("Law Firm-2") to conduct an independent investigation into Vitesse's stock option grants. Law Firm-2 requested that Vitesse provide it with access to, among other things, the computer used by the Vitesse employee who was responsible for, among other things, actually typing the minutes of the meetings of Vitesse's Board of Directors and the committees thereof when the meetings occurred (the "Assistant's Computer").

15. With an understanding that Law Firm-2 would access the Assistant's Computer, on April 12, 2006, LOUIS TOMASETTA and

EUGENE HOVANEK, the defendants, and Mody, acting in concert, created documents that purported to be minutes of meetings of Vitesse's Compensation Committee on or about April 6, 2001 and October 2, 2001, authorizing option grants at those meetings. After creating these documents, TOMASETTA, HOVANEK, and Mody transferred electronic copies of the documents containing the two sets of minutes to the Assistant's Computer and, in an effort to make it appear that the minutes were created at an earlier time, TOMASETTA, HOVANEK, and Mody reset the computer's internal clock to backdate the creation date of these purported board meeting minutes. TOMASETTA and HOVANEK engaged in this action to obstruct Law Firm-2's internal investigation, knowing that there was likely to be an SEC investigation of Vitesse's option grant practices and disclosures.

16. On April 17, 2006, LOUIS TOMASETTA, the defendant, disclosed to Law Firm-2 that on April 12, 2006: (a) TOMASETTA, EUGENE HOVANEK, the defendant, and Mody had created documents that purported to be minutes of meetings of Vitesse's Compensation Committee on or about April 6, 2001 and October 2, 2001; (b) after doing so, TOMASETTA, HOVANEK, and Mody had transferred electronic copies of the documents containing the two sets of minutes to the Assistant's Computer; and (c) in an

effort to make it appear that the minutes were created at an earlier time, TOMASETTA, HOVANEC, and Mody had reset the computer's internal clock to backdate the creation date of these purported board meeting minutes.

STATUTORY ALLEGATION

17. In or about April 2006, in the Central District of California and elsewhere, LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, and Mody, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, namely, to alter, destroy, conceal, and falsify records and tangible objects relating to Vitesse's April and October 2001 stock option grants with the intent to impede, obstruct, and influence a contemplated federal investigation, specifically an investigation by the U.S. Securities and Exchange Commission, in violation of Title 18, United States Code, Section 1519.

18. It was a part and an object of the conspiracy that LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, and Mody, unlawfully, willfully, and knowingly, altered, destroyed, mutilated, concealed, covered up, falsified, and made a false entry in a record, document, and tangible object with the intent to impede, obstruct, and influence the investigation and proper

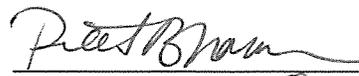
administration of a matter within the jurisdiction of a department or agency of the United States or any case filed under title 11, and in relation to and contemplation of any such matter and case, in violation of Title 18, United States Code, Section 1519.

Overt Act

19. In furtherance of the conspiracy and to effect the illegal object thereof, LOUIS TOMASETTA and EUGENE HOVANEC, the defendants, caused the following overt act, among others, to be committed in the Central District of California and elsewhere:

a. On April 12, 2006, TOMASETTA and HOVANEC transferred electronic copies of purported board meeting minutes to the Assistant's Computer and reset the computer's internal clock to backdate the creation date of these purported board meeting minutes.

(Title 18, United States Code, Section 371.)


PREET BHARARA (186)
United States Attorney

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(18 U.S.C. § 371)

PREET BHARARA
United States Attorney.
