

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

January 2023 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERREN SCOTT PEIZER,

Defendant.

CR 2:23-cr-00089-DSF

I N D I C T M E N T

[18 U.S.C. § 1348(1): Securities Fraud; 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5: Securities Fraud (Insider Trading); 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §§ 1348(1), 2(b)]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this Indictment:

1. Ontrak, Inc. was a company based in Santa Monica, California, that provided behavioral health services, primarily to members of large health-insurance plans, designed to reduce the insurance companies' costs. Shares of Ontrak were publicly traded on the National Association of Securities Dealers Automated Quotations Stock Market ("NASDAQ"), a national securities exchange, under the

1 symbol "OTRK." Ontrak was an issuer with securities registered under
2 Section 12 of the Securities Exchange Act of 1934 (the "Exchange
3 Act") and was required to file reports under Section 13 of the
4 Exchange Act.

5 2. Defendant TERREN SCOTT PEIZER was a resident of Puerto Rico
6 and Santa Monica, California. Defendant PEIZER was the Executive
7 Chairman (a management role to which the Chief Executive Officer
8 ("CEO") reported) and Chairman of the Board of Directors for Ontrak.
9 Defendant PEIZER founded Ontrak in or around September 2003 and had
10 served as its CEO until in or around April 2021. By virtue of his
11 relationship with Ontrak, defendant PEIZER had access to material
12 nonpublic information belonging to Ontrak, including Ontrak's
13 relationship with and retention of customers. As a member of the
14 Board of Directors, defendant PEIZER was a corporate insider and owed
15 a fiduciary duty and duty of trust and confidence to Ontrak and its
16 shareholders.

17 3. A stock "warrant" gave the holder the right to purchase a
18 public company's stock at a specific price. A stock warrant was
19 issued directly by the company. When the holder exercised a stock
20 warrant, the shares that fulfilled the obligation came directly from
21 the company. Once the stock warrant was exercised, the new shares
22 operated identically to any other shares and could be held or sold by
23 the holder.

24 4. A "Rule 10b5-1 plan" under the Exchange Act allowed a
25 corporate insider of a publicly traded company to set up a trading
26 plan for selling stock that he or she owned. If the corporate
27 insider followed the requirements of Rule 10b5-1, the trades pursuant
28 to the plan were insulated against charges of insider trading. Rule

1 10b5-1 required that the corporate insider establishing the plan
2 could not possess material nonpublic information about the company at
3 the time he or she entered into the plan; if the insider did have
4 material nonpublic information at the time he or she entered into the
5 plan, the plan provided no defense to insider trading charges.
6 Additionally, trading pursuant to a Rule 10b5-1 plan provided no
7 defense to insider trading charges if the plan was not entered into
8 in good faith or was entered into as part of an effort or scheme to
9 evade the prohibitions of Rule 10b5-1.

10 5. A "cooling-off period" was a specified time period,
11 commonly used in the securities industry, during which an executive
12 waited a certain number of days after establishing a Rule 105b-1 plan
13 to begin trading. Cooling-off periods were used to ensure that
14 enough time passed between when the executive established a plan and
15 when the plan began to execute trades to minimize the likelihood that
16 the executive was trading on the basis of material nonpublic
17 information.

18 6. Ontrak had an Insider Trading Policy, which governed
19 defendant PEIZER's trading in Ontrak's stock. The Insider Trading
20 Policy prohibited trading while in possession of material nonpublic
21 information. The policy defined material nonpublic information as
22 "information that has not been previously disclosed to the general
23 public and is otherwise not available to the general public," which
24 included negative information concerning Ontrak. The policy stated
25 that information was material "if there is a reasonable likelihood
26 that it would be considered important to an investor in making an
27 investment decision regarding the purchase or sale of [Ontrak]'s
28 securities." The policy identified certain "categories of

1 information that [were] particularly sensitive and, as a general
2 rule, should always be considered material," including a "material
3 agreement (or termination thereof)." Ontrak's agreements with
4 certain customers constituted material agreements. The policy
5 required Exchange Act Section 16 officers and directors, such as
6 defendant PEIZER, to submit Pre-Trading Clearance Certifications to
7 Ontrak's Chief Financial Officer ("CFO") before allowing the officer
8 or director to trade pursuant to a 10b5-1 plan. The Pre-Trading
9 Clearance Certification required the officer or director to certify
10 "that this proposed dealing was not a result of access to, or receipt
11 of Material Nonpublic Information as described in the Company's
12 Insider Trading Policy."

13 7. Cigna was a healthcare and insurance company based in
14 Bloomfield, Connecticut. Cigna provided health insurance and related
15 products and services for millions of Americans. Beginning by at
16 least in or about July 2020, Ontrak provided services to Cigna's
17 insured patients under a \$90 million contract. The contract was
18 intended to last for three years, although it allowed Cigna to
19 terminate the contract upon 30 days' notice.

20 B. DEFENDANT PEIZER'S ACCESS TO NONPUBLIC INFORMATION REGARDING
21 CIGNA

22 8. In or around March 2021, defendant PEIZER stepped down as
23 CEO of Ontrak and became the Executive Chairman and Chairman of the
24 Board of Directors. Despite the change in title, defendant PEIZER
25 continued to receive nonpublic information about Ontrak, including
26 its relationship with customers on a regular basis.

27 9. For example, between in or around March 2021 and in or
28 around May 2021, defendant PEIZER learned, by virtue of his role as

1 Ontrak's Executive Chairman and Chairman of the Board of Directors,
2 that its then-largest customer, Cigna, had raised numerous issues
3 concerning its relationship with Ontrak and that Ontrak was in
4 serious danger of Cigna terminating its agreement with Ontrak, which
5 was nonpublic information that a reasonable investor would consider
6 important in deciding whether or not to trade in Ontrak securities.

7 a. Specifically, defendant PEIZER knew the following:

8 i. In or around February 2021, Cigna began
9 significantly reducing the number of its members that it referred per
10 month to Ontrak for services; by at least in or around May 2021,
11 Cigna had reduced the number of patients that it referred from
12 several thousand members per month to approximately 50 members per
13 month – thereby substantially reducing Ontrak's potential billings to
14 Cigna;

15 ii. Cigna had informed Ontrak, in or around at least
16 April 2021, that its contract with Ontrak would need to be
17 renegotiated (with less favorable terms for Ontrak);

18 iii. Cigna had determined that its contract with
19 Ontrak did not result in the cost savings it had anticipated;

20 iv. Cigna was concerned that Ontrak was spending
21 funds under the current contract with Cigna too quickly; and

22 v. Cigna had halted discussions on any potential
23 expansion of Ontrak's services to Cigna.

24 b. Defendant PEIZER also knew that the loss of Cigna as a
25 customer would have a material adverse effect on Ontrak. Indeed, on
26 or about February 28, 2021, Ontrak's then-largest customer, Aetna,
27 had provided notice that it was terminating its contract with Ontrak.
28 On or about March 1, 2021, following Ontrak's public announcement of

1 the loss, Ontrak's stock price dropped nearly 46% in value. As
2 Ontrak's largest shareholder, defendant PEIZER lost approximately
3 \$280 million in the value of his Ontrak securities following the
4 announcement of Aetna's termination of its contract with Ontrak.

5 c. Defendant PEIZER also knew that, after the loss of
6 Aetna as a customer, the serious jeopardy facing Ontrak's
7 relationship with its next biggest customer, Cigna, would be of
8 particular importance to investors.

9 d. On or about May 6, 2021, Ontrak filed a Form 10-Q
10 quarterly report with the Securities and Exchange Commission ("SEC")
11 stating, among other things, that "Our business currently depends
12 upon four large customers; the loss of any one such customers would
13 have a material adverse effect on us."

14 e. As Executive Chairman and Chairman of the Board of
15 Directors, defendant PEIZER had direct access to and regular
16 conversations with Ontrak's CEO, who provided him with regular
17 updates about the status of Ontrak's negotiations with Cigna.

18 f. Defendant PEIZER's communications with Ontrak
19 executives and consultants between in or around March 2021 and in or
20 around May 2021 reflected his knowledge and understanding of the
21 deteriorating relationship between Ontrak and Cigna. For example:

22 i. On or about March 31, 2021, defendant PEIZER
23 described himself as "fixated" on Cigna in a text message to an
24 Ontrak consultant;

25 ii. On or about April 2 and 14, 2021, defendant
26 PEIZER wrote in text messages with the same consultant that Ontrak's
27 management needed to "save Cigna";

28

1 iii. On or about April 15, 2021, defendant PEIZER
2 wrote in a text message to Ontrak's CEO: "Please just save Cigna ..
3 then we will get back 'OnTrak'";

4 iv. On or about April 24, 2021, in response to an
5 update on the Ontrak-Cigna relationship, defendant PEIZER wrote that
6 "This feels eerily like Aetna" and that "Baby is losing his hair from
7 chemo," which was a reference to Ontrak's potential loss of Cigna as
8 a customer;

9 v. On or about April 30, 2021, in response to
10 another update concerning Cigna, defendant PEIZER wrote in a text
11 message to the consultant, "Doesn't sound optimistic"; and

12 vi. On or about May 1, 2021, defendant PEIZER sent a
13 text message to the consultant concerning the Ontrak-Cigna
14 relationship saying, "What a nightmare."

15 g. By at least on or about May 4, 2021, defendant PEIZER
16 was well aware that Cigna had expressed serious concerns about
17 maintaining its contract with Ontrak and that a meeting with Cigna's
18 Chief Medical Officer - who was managing the Ontrak-Cigna
19 relationship on Cigna's side - had been scheduled for May 18, 2021,
20 to discuss the status of the relationship.

21 h. On or about May 18, 2021, during the meeting with
22 Cigna, Cigna informed Ontrak of its intent to terminate their
23 contract by the end of the year.

24 C. THE INSIDER TRADING SCHEME

25 10. Beginning on an unknown date but no later than in or around
26 May 2021, and continuing through in or around August 2021, in Los
27 Angeles County, within the Central District of California, and
28 elsewhere, defendant PEIZER, together with others known and unknown

1 to the Grand Jury, knowingly and with intent to defraud, devised,
2 participated in, and executed a scheme to defraud a person in
3 connection with the securities of Ontrak.

4 11. The fraudulent scheme operated, in substance, as follows:

5 Defendant PEIZER Entered into a Rule 10b5-1 Plan in May 2021 and
6 Sold his Ontrak Securities Based on Inside Information that
7 Ontrak was at Serious Risk of Losing its Contract with Cigna

8 a. On or about May 4, 2021, in advance of Ontrak's May
9 18, 2021, meeting with Cigna, defendant PEIZER contacted Broker A to
10 set up a Rule 10b5-1 plan in order to sell shares of Ontrak valued at
11 approximately \$19 million.

12 b. According to publicly available SEC filings, defendant
13 PEIZER had previously only sold his Ontrak shares twice since 2003:
14 once in 2008 for approximately \$220,000; and once in 2011 for
15 approximately \$118,000.

16 c. After defendant PEIZER contacted Broker A to set up a
17 10b5-1 plan, he was informed that Broker A required the 10b5-1 plan
18 to have a cooling-off period. After learning that Broker A required
19 a cooling-off period, defendant PEIZER declined to set up a 10b5-1
20 plan with Broker A and instead, that same day, contacted another
21 brokerage company, Broker B, to discuss setting up a 10b5-1 plan with
22 Broker B.

23 d. Although Broker B did not require a cooling-off
24 period, Broker B warned defendant PEIZER in an e-mail that not
25 following the industry best practice of a 30-day cooling-off period,
26 together with the "rapid transaction executions subsequent to plan
27 adoption" might "create an appearance of impropriety and call into
28 question whether a plan adopter had MNPI [material non-public

1 information] at the time of plan adoption." In response, defendant
2 PEIZER insisted that the plan not have a cooling-off period and
3 instead that he be allowed to start selling his shares as soon as
4 possible.

5 e. To obtain approval of the 10b5-1 plan, defendant
6 PEIZER falsely certified to Ontrak's CFO that "this proposed dealing
7 was not a result of access to, or receipt of Material Nonpublic
8 Information as described in the Company's Insider Trading Policy"
9 when, as defendant PEIZER then knew, he possessed material nonpublic
10 information, to wit, Ontrak's endangered relationship with Cigna and
11 the serious risk that Cigna would terminate its contract with Ontrak.

12 f. On or about May 10, 2021, eight days before Cigna
13 informed Ontrak of its intent to terminate the contract by the end of
14 the year, defendant PEIZER entered into a Rule 10b5-1 plan (the "May
15 Trading Plan") through Broker B. The May Trading Plan was in the
16 name of Acuitas Group Holdings, an investment company wholly owned by
17 defendant PEIZER and used by defendant PEIZER to hold his ownership
18 interests in numerous companies, including his Ontrak shares. As
19 part of the May Trading Plan, defendant PEIZER falsely certified to
20 Broker B that he was not in possession of material nonpublic
21 information when, as defendant PEIZER then knew, he did possess
22 material nonpublic information regarding the serious risk that Cigna
23 would terminate its contract with Ontrak. Despite the cautionary
24 advice by Broker B to implement a cooling-off period between the
25 establishment of the May Trading Plan and the sale of defendant
26 PEIZER's Ontrak shares, defendant PEIZER directed Broker B to begin
27 selling his Ontrak shares the next day.

28

1 g. The May Trading Plan was attached as an exhibit to an
2 amended Schedule 13D filed with the SEC by Acuitas Group Holdings and
3 signed by defendant PEIZER on or about May 11, 2021.

4 h. Pursuant to the May Trading Plan, defendant PEIZER
5 exercised approximately 686,000 Ontrak stock warrants on a cashless
6 basis, resulting in his acquisition of approximately 585,000 shares.
7 Thereafter, defendant PEIZER began selling these shares on or about
8 May 11, 2021.

9 i. On or about May 18, 2021, Cigna notified Ontrak of its
10 intent to terminate its contract with Ontrak by the end of the year.
11 That same day, Ontrak's CEO notified defendant PEIZER of this
12 information. This information was not publicly disclosed.

13 j. Defendant PEIZER continued to sell his Ontrak shares
14 pursuant to the May Trading Plan until on or about July 20, 2021. In
15 total, the sales from on or about May 11, 2021, to on or about July
16 20, 2021, resulted in approximately \$18,906,000 in proceeds.

17 Defendant PEIZER Entered into a Second Rule 10b5-1 Plan in
18 August 2021 and Sold Additional Securities Based on Inside
19 Information About Ontrak's Impending Loss of Cigna as a Customer

20 k. Between in or around May 2021, and in and around
21 August 2021, defendant PEIZER continued to receive information that
22 Cigna was ending its relationship with Ontrak, which was nonpublic
23 information that a reasonable investor would find to be material.

24 l. For example, on or about July 15, 2021, an Ontrak
25 consultant sent a text message to defendant PEIZER that Cigna was
26 "really throttling members being sent to us. It's a trickle at this
27 point." As another example, on or about August 13, 2021, defendant
28 PEIZER called Ontrak's Senior Vice President and General Manager of

1 Customer Strategy and Solutions, who was leading the contract
2 renegotiations with Cigna, to find out about the likelihood of Ontrak
3 retaining Cigna as a customer. On that call, the employee informed
4 defendant PEIZER that he believed Cigna was likely to formally
5 terminate its relationship with Ontrak.

6 m. That same day, on or about August 13, 2021,
7 approximately one hour after his call with the Ontrak employee
8 informing defendant PEIZER that the employee believed Cigna was
9 likely to end its relationship with Ontrak, defendant PEIZER entered
10 into a second Rule 10b5-1 plan (the "August Trading Plan") to further
11 sell his Ontrak shares.

12 n. Prior to implementing the August Trading Plan,
13 defendant PEIZER falsely certified to Ontrak's CFO, pursuant to
14 Ontrak's Insider Trading Policy, that "this proposed dealing was not
15 a result of access to, or receipt of Material Nonpublic Information
16 as described in the Company's Insider Trading Policy" when, as
17 defendant PEIZER then knew, he possessed material nonpublic
18 information including, among other things:

19 i. Cigna's prior notification to Ontrak on May 18,
20 2021, of its intention to terminate its contract with Ontrak by the
21 end of the year;

22 ii. Cigna's continued reduction in the number of
23 members sent to Ontrak;

24 iii. Cigna's disinterest in renegotiating the terms of
25 any contract with Ontrak;

26 iv. That certain Ontrak executives, including its
27 lead negotiator with Cigna, held the view that Cigna would formally
28 terminate its contract with Ontrak; and

1 v. That a meeting was scheduled with Cigna personnel
2 for August 18, 2021 concerning Ontrak's attempts at salvaging the
3 relationship.

4 o. On or about August 13, 2021, defendant PEIZER, through
5 Acuitas Group Holdings, entered into the August Trading Plan through
6 Broker B. As he had done in connection with the May Trading Plan,
7 defendant PEIZER again falsely certified to Broker B that he was not
8 in possession of material nonpublic information when, as defendant
9 PEIZER then knew, he did possess material nonpublic information
10 including the facts listed in the preceding subparagraph. Like the
11 May Trading Plan, the August Trading Plan did not implement a
12 cooling-off period. Defendant PEIZER began selling Ontrak shares the
13 next trading day after the plan was implemented and increased the
14 daily number of shares sold pursuant to his plan to 15,000 per day
15 from 11,000 shares per day under the May Trading Plan.

16 p. The August Trading Plan was attached as an exhibit to
17 an amended Schedule 13D filed with the SEC by Acuitas Group Holdings
18 and signed by defendant PEIZER on or about August 16, 2021.

19 q. Prior to Ontrak's public announcement that Cigna had
20 terminated its contract with Ontrak, defendant PEIZER sold
21 approximately 45,000 Ontrak shares over the course of three trading
22 days, from on or about August 16 to on or about August 18, 2021,
23 resulting in approximately \$900,000 in proceeds.

24 r. On or about August 18, 2021, during the scheduled call
25 that defendant PEIZER was aware of at the time he entered in the
26 August Trading Plan, Cigna formally notified Ontrak that it would
27 terminate its contract with Ontrak. On or about August 19, 2021,
28 Ontrak filed a Form 8-K with the SEC disclosing for the first time

1 the termination of its relationship with Cigna. Following the
2 announcement, Ontrak's stock price fell approximately 44%.

3 Defendant PEIZER Avoided Approximately \$12.5 Million in Losses
4 through Insider Trading

5 12. Based on the May Trading Plan that defendant PEIZER adopted
6 while he possessed material nonpublic information, defendant PEIZER's
7 stock sales on the basis of material nonpublic information, and the
8 decrease in the price of Ontrak shares following the public
9 disclosure of this information, defendant PEIZER avoided
10 approximately \$12,069,000 in losses from the exercise of his Ontrak
11 warrants and sale of the resulting Ontrak shares pursuant to the May
12 Trading Plan.

13 13. Based on the August Trading Plan that defendant PEIZER
14 adopted while he possessed material nonpublic information, defendant
15 PEIZER's stock sales on the basis of material nonpublic information,
16 and the decrease in the price of Ontrak shares following the public
17 disclosure of this information, defendant PEIZER avoided
18 approximately \$463,000 in losses from the exercise of his Ontrak
19 warrants and sale of the resulting Ontrak shares pursuant to the
20 August Trading Plan.

21 D. EXECUTIONS OF THE INSIDER TRADING SCHEME

22 14. From on or about at least May 4, 2021, through at least on
23 or about August 19, 2021, defendant PEIZER, in the Central District
24 of California, and elsewhere, for the purpose of executing the
25 aforesaid scheme and artifice to defraud, made, and caused to be
26 made, false and misleading representations to Ontrak's shareholders
27 and the investing public about defendant PEIZER's possession of
28 material nonpublic information about Ontrak's relationship with its

1 largest customer, Cigna, through the execution of -- and filing of,
2 with the SEC, as attachments to Schedules 13D -- the May Trading Plan
3 and the August Trading Plan.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNTS TWO AND THREE

[15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2(b)]

15. The Grand Jury re-alleges paragraphs 1 through 9 and 11 through 13 of this Indictment here.

16. On or about the dates set forth below, in Los Angeles County, within the Central District of California, and elsewhere, defendant PEIZER, directly and indirectly, by the use of the means and instrumentalities of interstate commerce and of the facilities of national securities exchanges, in connection with the sale of Ontrak securities, employed a device, scheme, and artifice to defraud members of the investing public and engaged in acts, practices, and a course of business that operated and would operate as a fraud and deceit upon a person, in that defendant PEIZER executed and willfully caused to be executed the securities transactions listed below on the basis of material nonpublic information that he used in breach of a duty of trust and confidence that he owed directly and indirectly to the issuer of those securities, to the shareholders of the issuer, and to other persons and entities that were the source of the material nonpublic information:

COUNT	DATE	SECURITIES TRANSACTION
TWO	05/11/2021	Sale of 11,000 Ontrak shares at an average price of approximately \$30.52 per share pursuant to the May Trading Plan for a total price of approximately \$336,190.80.
THREE	08/16/2021	Sale of 15,000 Ontrak shares at an average price of approximately \$23.36 per share pursuant to the August Trading Plan for a total price of approximately \$348,144.00.

FORFEITURE ALLEGATION

[18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

17. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), in the event of the defendant TERREN SCOTT PEIZER's conviction of the offenses set forth in any of Counts One through Three of this Indictment.

18. Defendant PEIZER, if so convicted, shall forfeit to the United States of America the following:

(a) All right, title, and interest in any and all property, real or personal, constituting, or derived from, any proceeds traceable to the offenses; and

(b) To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

19. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), defendant PEIZER, if so convicted, shall forfeit substitute property, up to the value of the property described in the preceding paragraph if, as the result of any act or omission of defendant PEIZER, the property described in the preceding paragraph or any portion thereof

(a) cannot be located upon the exercise of due diligence; (b) has been transferred to, sold to, or deposited with a third party;

(c) has been placed beyond the jurisdiction of the court; (d) has


//

1 been substantially diminished in value; or (e) has been commingled
2 with other property that cannot be divided without difficulty.

3
4 A TRUE BILL

5
6 /s/
7 Foreperson

8
9 E. MARTIN ESTRADA
United States Attorney

10 
11 *Scott M. Garringer*
Deputy Chief, Criminal Division For:

12 MACK E. JENKINS
Assistant United States
13 Attorney
Chief, Criminal Division

14 RANEE A. KATZENSTEIN
Assistant United States
15 Attorney
Chief, Major Frauds Section

16 SCOTT PAETTY
Assistant United States
17 Attorney
18 Deputy Chief, Major Frauds
Section

19 ALI MOGHADDAS
20 Assistant United States
Attorney
21 Major Frauds Section

GLENN S. LEON
Chief, Fraud Section
Criminal Division
U.S. Department of Justice

MATTHEW REILLY
CHRISTINA MCGILL
Trial Attorneys
Fraud Section
Criminal Division
U.S. Department of Justice