CMM:AXB
F. #2024R00377

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

- against -

KEN PETERMAN,

Defendant.

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INDICTMENT

Cr. No. CR-24 489

(T. 15, U.S.C., §§ 78j(b) and 78ff; T. 18, U.S.C., §§ 981(a)(1)(C), 1343, 1348, 1349, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

AZRACK, J.

DUNST, M.J.

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

1. Comtech Telecommunications Corp. ("Comtech") was a publicly traded company with its headquarters in Melville, New York. Comtech's shares traded on the NASDAQ Stock Market under the ticker symbol "CMTL."

2. On or about May 10, 2022, the defendant KEN PETERMAN was appointed to Comtech's Board of Directors and on or about July 25, 2022, he was named Chairman of the Board. On or about August 10, 2022, PETERMAN was appointed Comtech's Chief Executive Officer ("CEO"). PETERMAN held each of those positions until his termination from Comtech on or about March 12, 2024.

3. In or about and between May 2022 and September 2023, the defendant KEN PETERMAN acquired approximately 57,641 shares of Comtech's common stock, which were held in brokerage accounts PETERMAN controlled at Brokerage Firm #1 and Brokerage Firm #2, entities the identities of which are known to the Grand Jury.

4. By virtue of his positions at Comtech, the defendant KEN PETERMAN acquired material non-public information ("MNPI") concerning, among other things, Comtech's performance, financial condition and internal decision-making. PETERMAN's relationship of trust and confidence vis-à-vis Comtech's shareholders gave rise to a duty not to disclose or trade on such MNPI while PETERMAN was an officer and director of Comtech. Comtech's investment policy likewise prohibited PETERMAN from trading in Comtech's stock except during specified trading windows.

5. The defendant KEN PETERMAN obtained MNPI concerning Comtech's performance and financial condition during the second quarter of its 2024 fiscal year. For example, on or about March 4, 2024, PETERMAN attended a confidential presentation by Comtech's Chief Financial Officer ("CFO") concerning Comtech's quarter-end earnings, which were to be publicly reported on or about March 18, 2024. The confidential presentation by Comtech's CFO disclosed that Comtech's revenue had dropped over the prior quarter and its earnings would fall short of analyst estimates. Pursuant to Comtech's investment policy, PETERMAN was prohibited from trading in Comtech's stock until the second business day after such quarterly earnings information was publicly released.

6. In addition, on or about March 12, 2024, at approximately 6:39 p.m. Eastern Standard Time ("EST"), the defendant KEN PETERMAN was informed that Comtech's Board of Directors had resolved to terminate him for cause as CEO of Comtech and to remove him from Comtech's Board of Directors. As PETERMAN then knew, his termination was related to a potential violation of Comtech's code of conduct for engaging in an improper relationship with a subordinate employee. PETERMAN also knew that his removal for cause triggered the filing of a United States Securities and Exchange Commission ("SEC") Form 8-K,

a form the SEC required publicly traded companies to use to notify investors of any material event that was important to the company's shareholders.

7. Following his termination, the defendant KEN PETERMAN remained under a duty to Comtech not to disclose or trade on MNPI he had acquired by virtue of his positions as an officer and director. In addition, PETERMAN remained bound by Comtech's investment policy to abstain from trading in Comtech's stock until the second business day after Comtech's quarter-end earnings information was publicly released.

8. Nevertheless, shortly after learning of his termination, the defendant KEN PETERMAN executed, and attempted to execute, one or more trades in Comtech's stock. On March 12, 2024, beginning at approximately 7:33 p.m. EST, PETERMAN repeatedly accessed his online account at Brokerage Firm #1 and unsuccessfully attempted to trade some or all of the 49,400 shares of Comtech stock that PETERMAN held in that account. At approximately 9:02 p.m. EST, PETERMAN sent a text message to his Personal Investment Advisor, an individual whose identity is known to the Grand Jury, stating, in part, "Call me a [sic] soon as you can. It's fairly urgent." Thereafter, beginning at approximately 9:28 p.m. EST, PETERMAN repeatedly accessed his online account at Brokerage Firm #2. At approximately 9:36 p.m. EST, PETERMAN sent an email to his Personal Investment Advisor stating, in part, "Please sell/liquidate all Comtech stock (CMTL) at the first opportunity in the morning. This includes all CMTL holdings in [Brokerage Firm #1] and [Brokerage Firm #2] accounts." At approximately 11:20 p.m. EST, PETERMAN personally placed a sell order for 8,241 shares of Comtech stock that PETERMAN held in Brokerage Account #2.

9. On March 13, 2024, at or about and between 9:35 a.m. and 10:00 a.m. EST, the sale of Comtech shares that the defendant KEN PETERMAN had initiated from his account at Brokerage Account #2 the evening before was completed.

10. On or about March 13, 2024, following the public disclosure of the defendant KEN PETERMAN's termination, Comtech's stock price dropped approximately 27 percent. Subsequently, on or about March 19, 2024, following the public disclosure of Comtech's financial performance during the second quarter of its 2024 fiscal year, Comtech's stock price dropped approximately 25 percent.

11. On or about March 20, 2024, pursuant to Comtech's investment policy, the trading window for Comtech insiders, including PETERMAN, opened.

12. Based on the defendant KEN PETERMAN's successful sale of the Comtech shares held in his Brokerage Firm #2 account, he received net proceeds of approximately $40,454.54. Moreover, having sold those shares prior to the public disclosure of PETERMAN's termination and Comtech's quarter-end earnings, PETERMAN avoided thousands of dollars in market losses.

COUNT ONE
(Insider Trading)

13. The allegations contained in paragraphs one through 12 are realleged and incorporated as if fully set forth in this paragraph.

14. On or about and between March 12, 2024 and March 13, 2024, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KEN PETERMAN, together with others, did knowingly and willfully use and employ one or more manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the SEC, Title 17, Code of Federal Regulations, Section 240.10b-5, by:

(a) employing one or more devices, schemes and artifices to defraud; (b) making one or more untrue statements of material fact and omitting to state one or more material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (c) engaging in one or more acts, practices and courses of business which would and did operate as a fraud and deceit upon Comtech and one or more members of the investing public, to wit: in advance of the public announcement of Comtech's financial performance during the second quarter of its 2024 fiscal year and PETERMAN's removal for cause as an officer and director of Comtech, PETERMAN obtained MNPI concerning those matters and, based in whole or in part on that information, executed and attempted to execute securities transactions in Comtech, directly and indirectly, by use of the means and instrumentalities of interstate commerce and the mails.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT TWO
(Securities Fraud)

15. The allegations contained in paragraphs one through 12 are realleged and incorporated as if fully set forth in this paragraph.

16. On or about and between March 12, 2024 and March 13, 2024, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KEN PETERMAN, together with others, did knowingly and intentionally execute and attempt to execute a scheme and artifice to (a) defraud one or more persons in connection with any security of an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and that was required to file reports under section 15(d) of the Securities Exchange Act of 1934, and (b) obtain, by means of one or more false and fraudulent pretenses,

representations and promises, money and property in connection with the purchase and sale of such security, to wit: PETERMAN schemed to defraud Comtech and one or more members of the investing public by obtaining MNPI about Comtech through his position as an officer and director of Comtech and then converting that information to his own use for the purpose of executing one or more securities transactions in Comtech common stock.

(Title 18, United States Code, Sections 1348, 1349, 2 and 3551 et seq.)

COUNT THREE
(Wire Fraud)

17. The allegations contained in paragraphs one through 12 are realleged and incorporated as if fully set forth in this paragraph.

18. On or about and between March 12, 2024 and March 13, 2024, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KEN PETERMAN, together with others, did knowingly and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, and attempting to do so, did transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals and pictures, to wit: having obtained MNPI by virtue of his position as an officer and director of Comtech, PETERMAN sent and caused to be sent one or more electronic transmissions to Brokerage Firm #1 and Brokerage Firm #2 for the purpose of executing one or more trades in shares of Comtech stock that PETERMAN held in those accounts.

(Title 18, United States Code, Sections 1343, 1349, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

19. The United States hereby gives notice to the defendant that, upon his conviction of any of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offenses.

20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

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

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

[redacted]

FOREPERSON

[redacted]

BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK