HELANE L. MORRISON (Cal. Bar No. 127752)
JOHN S. YUN (Cal. Bar No. 112260)
ROBERT L. MITCHELL (Cal. Bar No. 161354)
CAROLYN A. SAMIERE (Cal Bar No. 118353)

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 1100
San Francisco, California 94104
Telephone: (415) 705-2500
Telecopier: (415) 705-2501

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. MICHAEL A. OFSTEDAHL, ROBERT D. RUTNER and WILLIAM K. KUNCZ, Defendants.	Civil Action No. COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF DEMAND FOR JURY TRIAL

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

SUMMARY OF THE ACTION

1. This case involves insider trading in the securities of two companies: Adaptec, Inc. ("Adaptec") and Puma Technology, Inc. ("Puma"). In one instance, on January 6, 1999, an Adaptec vice president, Defendant Michael A. Ofstedahl ("Ofstedahl"), tipped his friend, Defendant Robert D. Rutner ("Rutner"), that Adaptec would make a preliminary public announcement of strong quarterly earnings later that day. Ofstedahl tipped Rutner pursuant to a pre-existing agreement they had to share any profits that Rutner might make by trading on inside information. Based on the tip, Rutner spent more than $126,000 that day on short-term Adaptec call options. These options gave Rutner the right to subsequently buy shares of Adaptec stock at $17.50 or $20 per share. In addition, that same

day Rutner tipped his friend, Defendant William K. Kuncz ("Kuncz"), who bought Adaptec stock and also call options that gave him the right to subsequently buy Adaptec stock at $20 per share. When Adaptec issued its preliminary earnings announcement, the company's stock price rose 27% to close at $24 7/8. As a result, the options and stock that Rutner and Kuncz had purchased became much more valuable, and they obtained illegal profits of approximately $648,936.53 and $26,003.20, respectively, from their insider trading.

2. In the other instance, in August 1998, Rutner tipped Kuncz in advance of a preliminary announcement of lower-than-expected earnings by Puma. Rutner obtained this non-public information in his role as a member of Puma's board of directors. Based on Rutner's tip, Kuncz and a trust that Kuncz controlled on behalf of a family member sold all of their Puma stock prior to the announcement. After Puma issued its preliminary earnings announcement to the public, Puma stock dropped 28%, and Kuncz and the trust illegally avoided losses of approximately $9,462 as a result of their insider trading.

3. By tipping or trading on material, nonpublic information concerning Adaptec's financial results and preliminary earnings announcement, Ofstedahl, Rutner, and Kuncz violated Section 10(b) of the Securities Exchange Act ("Exchange Act") of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder. In addition, Rutner and Kuncz violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by tipping or trading on material, nonpublic information concerning Puma's financial results and preliminary earnings announcement.

AUTHORITY TO BRING THIS ACTION

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

5. Defendants, directly or indirectly, have engaged in transactions, acts, practices and courses of business that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

6. Defendants will, unless enjoined, continue to engage in the acts, practices and courses of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object.

JURISDICTION AND VENUE

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

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

9. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Defendants reside and transact business in the Northern District of California.

10. Assignment to the San Jose Division is appropriate pursuant to Civil Local Rule 3-2(c) and (e).

DEFENDANTS

11. Michael Ofstedahl, age 41, lives in Pleasanton, California. At all relevant times, Ofstedahl was corporate vice president of Worldwide Original Equipment Manufacturer sales at Adaptec. As such, Ofstedahl managed domestic and international sales of Adaptec products to manufacturers, who included Adaptec products as part of more comprehensive computer and software product solutions.

12. Robert Rutner, age 43, lives in Los Altos Hills, California. At all relevant times, Rutner was a dentist and was the president of Serra Park Dental Services ("Serra Park"), a closely held dental practice. Rutner was also a director of Puma.

13. William Kuncz, age 42, lives in Cupertino, California. At all relevant times, he was the chief financial officer of Serra Park.

RELEVANT ENTITIES

14. Adaptec is a Delaware corporation headquartered in Milpitas, California. Adaptec develops and markets computer components and software. Its common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades on the NASDAQ National Market. Adaptec's options trade on the AMEX.

15. Puma Technology, Inc. is a Delaware corporation headquartered in San Jose, California. Puma develops and markets computer software. Its common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades on the NASDAQ National Market.

DEFENDANTS' ILLEGAL CONDUCT

TRADING IN ADAPTEC

Ofstedahl and Rutner Plan an Insider Trading Scheme

16. At all relevant times, Ofstedahl was an Adaptec sales vice president and was routinely privy to Adaptec's non-public financial information, including information about Adaptec's projected financial performance.

17. In late 1998, Ofstedahl approached Rutner about using Ofstedahl's access to confidential, non-public information concerning Adaptec for their mutual profit. Ofstedahl offered to provide Rutner with this inside information in exchange for a portion of Rutner's trading profits. Rutner agreed to this scheme.

Ofstedahl Learns That Adaptec's Earnings Will Beat Expectations and That Adaptec Will Make a Preliminary Earnings Announcement

18. At all relevant times, Adaptec reported its financial results to the public based on a fiscal year that began on April 1 and ended on March 31. Within each fiscal year, Adaptec also reported its financial results on a quarterly basis, for the quarters ended June 30, September 30, December 31 and March 31.

19. In December 1998, the consensus estimate of securities analysts who followed Adaptec, compiled and published by a service known as Thomson/First Call (the "First Call consensus estimate") was that the company would earn $.14 per share for the quarter ended December 31, 1998 (the "December 1998 quarter"). At that time, Adaptec was scheduled to announce its earnings for the December 1998 quarter on January 25, 1999.

20. By late December 1998, however, members of Adaptec's senior management knew that the company's earnings for the December 1998 quarter would in fact be significantly higher than the First Call consensus estimate. As a result, members of Adaptec's senior management decided to

make a preliminary public announcement on January 6, 1999 that the company's earnings for the December 1998 quarter would "exceed .20" per share.

21. Ofstedahl was aware, in late December 1998, of Adaptec's strong financial performance. For example, at an internal Adaptec meeting on December 22, 1998, Ofstedahl learned that Adaptec had already booked $179.9 million dollars in revenue for the December 1998 quarter and that total revenue for the quarter was projected to be between $183.2 to $185 million, well in excess of the average Wall Street analysts' projection of $168.4 million.

22. By late December 1998, Ofstedahl knew that Adaptec would exceed analysts' expectations for revenue for the December 1998 quarter, that the company's expenses were in line with Adaptec's internal budget, and that Adaptec's quarterly earnings would therefore exceed analysts' expectations. In addition, Ofstedahl learned that on January 6, 1999 Adaptec would issue a press release announcing its preliminary earnings results for the December 1998 quarter.

Ofstedahl Tips Rutner, Who Trades And Tips Kuncz

23. On the morning of January 6, 1999, Ofstedahl and Rutner spoke by telephone. Ofstedahl told Rutner that Adaptec would make a favorable preliminary earnings announcement that day. Within minutes of the conclusion of that call, Rutner had completed the first of his several Adaptec option purchases that day. In all, based on Ofstedahl's tip, Rutner purchased 1,400 January call option contracts on January 6 at a total cost of $126,236.82.

24. Each call option contract represented the right to buy 100 shares of Adaptec stock at a specified price (the "strike price"). In this case, Rutner bought 300 call options (representing the right to buy 30,000 Adaptec shares) at a strike price of $17.50 per share and 1,100 call options (representing the right to buy 110,000 Adaptec shares) at a strike price of $20 per share. The options all expired on the Saturday following the third Friday of the month, or January 16, 1999. Rutner bought the call options because he believed, based on Ofstedahl's tip, that the price of Adaptec stock would rise before January 16, thus making the options more valuable.

25. Shortly after buying Adaptec options that morning, Rutner called his friend and business associate, Kuncz. Rutner told Kuncz that a friend who worked at Adaptec had informed Rutner that the company would make a favorable preliminary earnings announcement that day.

Rutner also told Kuncz that Rutner had purchased Adaptec January call options. Within minutes of speaking to Rutner, based on Rutner's tip, Kuncz began to purchase Adaptec securities. In total, on January 6 Kuncz purchased 50 January call option contracts (representing the right to buy 5,000 Adaptec shares) at a strike price of $20 per share and 1,000 shares of Adaptec stock, at a total cost of $22,504.75.

Adaptec Issues Its Preliminary Earnings Announcement

26. After the close of the stock market on January 6, Adaptec announced to the public that its earnings per share for the December 1998 quarter would "exceed $.20." The next day, January 7, Adaptec's stock closed at $24 7/8 per share, up $5 5/16 (27%) from its close the previous day. Adaptec traded on a volume of 13,652,000 shares, over 9 times its prior ten-day average.

27. Rutner sold all of his 1,400 option contracts on January 7 for proceeds of $775,173.35, realizing net profits of $648,936.53. The same day, Kuncz sold his 50 option contracts for gross proceeds of $23,613, realizing net profits of $20,388.20. The 1,000 shares of stock that Kuncz retained appreciated in value by $5,625.

28. On the morning of January 7, at 7:46 a.m., as Adaptec's stock price rose, Ofstedahl paged Rutner. Rutner and Ofstedahl spoke later that day. Ofstedahl asked whether Rutner had purchased Adaptec securities, and Rutner confirmed that he had. Rutner complimented Ofstedahl on the tip and told Ofstedahl that they had made some money. They agreed to meet to discuss the profits in person.

29. That meeting occurred on the morning of January 13, 1999, at a restaurant in Hayward, California. Rutner and Ofstedahl discussed the appropriate division of trading profits. Despite the surge in Adaptec's share price following the January 6 preliminary earnings announcement, Ofstedahl believed that Adaptec stock might continue to rise following the company's regularly scheduled earnings announcement on January 25. Accordingly, Ofstedahl instructed Rutner to use his share of the trading profits to purchase February Adaptec call options (i.e. call options that would expire on February 20, 1999) on Ofstedahl's behalf. Although Rutner did so, the purchase did not generate the anticipated profits and Rutner allowed the options to expire unexercised.

TRADING IN PUMA

30. Even before tipping Kuncz about Adaptec's preliminary earnings announcement, Rutner provided Kuncz with material, non-public information regarding Puma, which Rutner obtained because he was a member of Puma's board of directors.

31. On or about August 3, 1998, Puma's chief financial officer, Bruce Nakao ("Nakao"), determined that Puma had experienced a major shortfall in revenue for the quarter ended July 31, 1998. That week, Puma's management decided to issue a previously unscheduled press release warning the market of Puma's performance.

32. On or about Thursday, August 6, Nakao informed Rutner of the impending public announcement. In addition, Nakao sent a draft copy of the press release to Rutner via e-mail.

33. On or about August 6 or 7, Rutner informed Kuncz that Puma would soon issue a negative earnings release. Based on this information, on Friday, August 7, Kuncz sold all of his 5,000 shares of Puma stock at $5 per share, receiving net proceeds of $24,849.15. That same day, Kuncz sold all of the 1,800 shares of Puma held by a trust he controlled on behalf of a family member at $5 per share, for net proceeds of $8,945.70.

34. On Monday, August 10, following the close of the markets, Puma issued a press release stating that the company would fall short of "the consensus earnings per share estimate [of] $.07," and instead expected a "net loss per share in the range of $.12 to $.15." The next day, Puma shares dropped to as low as $2 1/8 per share before closing at $3 1/4, down approximately 28% from the previous day's close. By selling before Puma's negative earnings release, Kuncz and the trust avoided approximately $9,462 in losses.

CLAIM FOR RELIEF ONE

(Insider Trading)

Violations of Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5]
Promulgated Thereunder

35. Paragraphs 1 through 34 are re-alleged and incorporated herein by reference.

36. As an insider and Adaptec employee, Ofstedahl had a fiduciary duty of loyalty and confidentiality to Adaptec and its securities holders not to trade in the company's securities, either

directly or indirectly, based on material, nonpublic information concerning the company and not to disclose material, nonpublic information concerning the company. Ofstedahl breached that duty when he disclosed material, non-public information about Adaptec to Rutner on January 6, 1999 when he intended, knew or should have known, or was reckless in not knowing that Rutner would trade upon that information. Pursuant to a prior agreement, Ofstedahl was to receive a portion of Rutner's profits (which he asked Rutner to reinvest in Adaptec call options), constituting a direct, monetary benefit to Ofstedahl. In addition, by reason of their long-time personal relationship, Ofstedahl obtained a personal, non-monetary benefit by disclosing this information to Rutner so that Rutner could trade.

37. Rutner knew or should have known, or was reckless in not knowing, that Ofstedahl was acting in breach of his fiduciary duty to Adaptec and its securities holders by disclosing to Rutner material, non-public information about Adaptec on January 6, 1999. Rutner also knew or should have known, or was reckless in not knowing, that Kuncz would trade Adaptec securities based on the information Rutner provided.

38. Kuncz knew or should have known, or was reckless in not knowing, that the source of Rutner's information had acted in breach of his fiduciary duty to Adaptec and its securities holders by disclosing to Rutner material, non-public information about Adaptec on January 6, 1999, which information Rutner disclosed to Kuncz.

39. Defendants, with scienter, directly or indirectly:

a) employed devices, schemes, or artifices to defraud;

b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities;

in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange.

40. By reason of the foregoing, Defendants violated, and unless restrained and enjoined will continue to violate, 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].

CLAIM FOR RELIEF TWO

(Insider Trading)

Violations of Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5]
Promulgated Thereunder

41. Paragraphs 1 through 34 are re-alleged and incorporated herein by reference.

42. As an insider and member of Puma's board of directors, Rutner had a fiduciary duty of loyalty and confidentiality to Puma and its securities holders not to disclose material, nonpublic information concerning the company. Rutner breached that duty when he disclosed material, non-public information about Puma to Kuncz on August 6 or 7, 1998 when he intended, knew or should have known, or was reckless in not knowing, that Kuncz would trade on that information. By reason of their long-time personal relationship, Rutner obtained a personal, non-monetary benefit by disclosing this information to Kuncz so that Kuncz could trade.

43. Kuncz knew or should have known, or was reckless in not knowing, that Rutner was acting in breach of his fiduciary duty to Puma and its securities holders by disclosing to Rutner material, non-public information about Puma on August 6 or 7, 1998.

44. Defendants Rutner and Kuncz, with scienter, directly or indirectly:

a) employed devices, schemes, or artifices to defraud;

b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities;

in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange.

45. By reason of the foregoing, Defendants Rutner and Kuncz violated, and unless restrained and enjoined will continue to violate, 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin Defendants and their agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the final judgment of permanent injunction by personal service or otherwise, and each of them, from directly or indirectly violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder;

II.

Enter an Order requiring Defendants to disgorge an amount equal to their illegal trading profits from the securities transactions complained of herein, plus prejudgment interest;

III.

Enter an Order requiring Defendants to pay civil penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-l]; and

IV.

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

DATED: July 30, 2002

Respectfully submitted,

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Helane L. Morrison
John S. Yun
Robert L. Mitchell
Carolyn A. Samiere
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

JURY TRIAL DEMAND

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 3-6(a), Plaintiff Securities and Exchange Commission hereby demands a trial by jury of its claims against defendants.

Helane L. Morrison
John S. Yun
Robert L. Mitchell
Carolyn A. Samiere
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION