UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

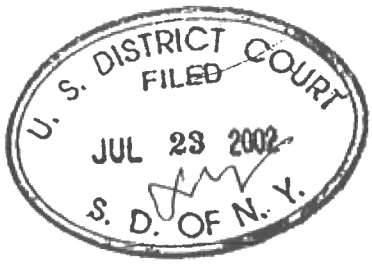
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v.-

ARJUN SEKHRI, *et al.*

Defendants,



98 Civ. 2320 (RPP)

#02,1357

DOC #: 120

FINDINGS, ORDER AND FINAL JUDGMENT OF PERMANENT INJUNCTION AGAINST DEFENDANTS SHARAD KAPOOR AND ROHINA SHARMA KAPOOR

Plaintiff Securities and Exchange Commission ("SEC"), having commenced this action by filing its Complaint, Amended Complaint, and Second Amended Complaint for Permanent Injunction and Other Equitable Relief (the "Complaint"), defendants Sharad Kapoor ("Kapoor") and Rohina Sharma Kapoor ("Sharma") having filed their answers to the Complaint; the SEC having moved this Court for an Order granting summary judgment and a permanent injunction against defendants Kapoor and Sharma; the Court having jurisdiction over the parties and the subject matter of this action, the Court being fully advised in the premises, and there being no just reason for delay, THE COURT HEREBY FINDS AS FOLLOWS:

FACTS ESTABLISHING LIABILITY

1. This is an action charging the defendant Arjun Sekhri ("Sekhri"), the tipper, and those he tipped, including defendants Kapoor and Sharma, with, among other things, violating the antifraud provisions of the federal securities laws in connection with a scheme to engage in insider trading on confidential information with regard to publicly traded stocks between October 1997 and February 1998. The SEC's Complaint was filed on April 1, 1998,[1] against Sekhri, Amolak Sehgal, Pratima Rajan, Fuad Dow, Gordon W. Cochrane, and Martin Thifault, the SEC's Amended Complaint was filed on April 15, 1998 to add Rohina Sharma as an additional defendant, and the Second Amended Complaint was filed on May 19, 1998 to add Sharad Kapoor as a defendant (collectively "Complaint"). The Complaint alleges that these individuals engaged in insider trading in the common stock and/or stock options of MCI Communications Corp. ("MCI"), Brooks Fiber Properties, Inc. ("BFP"), Carson Pirie Scott & Co., Inc. ("CPS"), Central and South West, Corp. ("CSW"), and Southern New England Telecommunications Corp. ("SNET") shortly before significant public announcements concerning these companies. The defendants made a total of approximately $2.5 million from these trades. Of this amount defendant Kapoor's clients made at least $208,793.54 in profits and his wife, defendant Sharma, made $58,322.61. (2d Davison 4/14/98 Decl. ¶ 12-19; Davison 5/19/98 Decl. ¶ 16-41).

2. Up until May 7, 1998, Kapoor was a registered representative at Merrill Lynch Pierce, Fenner & Smith ("Merrill Lynch") in San Jose, California. He started at Merrill Lynch in 1993. Kapoor had owned a townhouse in San Jose, the same address that Kapoor's wife, Sharma

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[1]On the same day, Criminal Complaints were also filed by the United States Attorney's Office for the Southern District of New York.

and defendant Pratima Rajan ("Rajan") listed in their brokerage records as their address (3692 Rocky Creek Court). (Davison 3/31/98 Decl. ¶ 22 and Ex. 8; 2d Davison 4/14/98 Decl. ¶ 11 and Ex. 1; Davison 5/19/98 Decl. ¶¶ 4, 10). According to Kapoor, Rajan is a friend of his whom he met when he lived in Florida. (Davison 5/19/98 Decl. ¶ 14).

3. Sekhri joined Salomon Brothers ("Salomon") as an associate in the investment banking generalist group. Salomon later transferred him to the mergers and acquisitions group. At the time of the filing of the complaint in this action, Sekhri was 32 years old, a resident of New Jersey, and a citizen of India. (Davison 3/31/98 Decl. ¶ 4 and Ex. 2).

4. Kapoor has known Sekhri, the source of the inside information, since the late 1980's when they both went to college in Florida. Kapoor and Sekhri have remained in contact over the years and talked "very often" during the time of the relevant trading. In fact, in May of 1993, when Kapoor applied for a job with Merrill Lynch, Kapoor identified Sekhri as a reference. Kapoor knew that Sekhri worked in the corporate finance department of Salomon. (Davison 5/19/98 Decl. ¶ 12 and Ex. 1).

5. Salomon is a global, full-service securities and investment banking firm. Salomon's principal executive offices are located in New York City. (Davison 3/31/98 Decl. ¶ 12).

6. On May 24, 1996, Sekhri executed Salomon's notice regarding confidential information, in which Sekhri acknowledged that, in the course of his employment with Salomon, he might "receive, or have knowledge of or access to, information that is confidential." He also acknowledged that he understood that he had an obligation to maintain the confidentiality of all confidential information. (Davison 3/31/98 Decl. ¶¶ 13-14 and Ex. 20).

7. Among other things, Sekhri specifically agreed to maintain the confidentiality of non-public information concerning any "potential or pending tender offer, merger, acquisition ... or similar transaction." Sekhri also agreed not to use confidential information in trading for his "own (or affiliated) accounts or in advising relatives, friends or other persons with respect to trading." (Davison 3/31/98 Decl. ¶ 14 and Ex. 20).

8. Sekhri was directly involved in Salomon's work for at least one of the two merger announcements between WorldCom, Inc. ("WorldCom") and MCI, as described below. In addition, Sekhri, as a trusted Salomon employee, had access to other Salomon employees' work areas, had access to the Salomon computer system, and was privy to normal information flow among the professional staff of Salomon. (Davison 3/31/98 Decl. ¶ 5). As a member of the mergers and acquisitions group, Sekhri had access to confidential information in Salomon's possession concerning at least six of the corporate transactions described below. (Davison 3/31/98 Decl. ¶¶ 18, 20, 27, 32, 37, 42). Indeed, Sekhri later confirmed in his allocution to the criminal charges of federal securities fraud and conspiracy to violate the federal securities laws, that, as an associate at Salomon, he had access to confidential market-sensitive inside information about pending business transactions, including mergers. (2d Gumagay Decl. ¶ 3 and Ex. B, p. 20).

9. Sekhri disclosed confidential market-sensitive inside information about pending business transactions, including mergers and acquisitions, to Fuad Dow, Sharad Kapoor, Martin Thifault and others, with the understanding that they would purchase the securities before the information became public and thereby profit from the confidential information. He knew that his actions were unlawful. (2d Gumagay Decl. ¶ 3 and Ex. B, pp. 20-25). Specifically, Sekhri

admitted disclosing confidential market sensitive inside information about pending business transactions to Kapoor, among others, and being aware Kapoor traded on the information. (Id.)

KAPOOR AND SHARMA'S STOCK TRADING AND PHONE CALLS WITH SEKHRI COINCIDED WITH THEIR PURCHASES AND SALES OF SECURITIES AT THE TIME OF THE PUBLIC ANNOUNCEMENTS OF THE ACQUISITIONS AND MERGERS

10. Kapoor's wife, Sharma, and eight different Merrill Lynch clients for whom Kapoor was the registered representative, collectively purchased stock in all six of the same companies that the other defendants (including Kapoor's friend, Rajan) had purchased, on or about the same time. (Davison 5/19/98 Decl. ¶ 4). Each of the six companies was engaged in an acquisition or merger that had not been made publicly available at the time of the purchases by Kapoor's clients, information that Sekhri had provided to Kapoor. Kapoor's clients realized profits of approximately $208,793.54. (Davison 5/19/98 Decl. ¶ 20, 25, 30, 40). Sharma realized total profits of $58,322.61 in connection with trading call options and stock in advance of public announcements involving MCI, CPS, and SNET. (2d Davison 4/14/98 Decl. ¶ 13, 15, 17, 19). Telephone records reflect numerous calls between Kapoor (both at home and at Merrill Lynch in San Jose) and Sekhri (both at home in Jersey City, New Jersey and at Salomon in New York City) at the time of the trading by Kapoor's clients at Merrill Lynch. (Davison 5/19/98 Decl. ¶ 4).

11. The trading by Kapoor's clients paralleled trades by his wife, Sharma, and his friend, Rajan. (Davison 5/19/98 Decl. ¶ 13). During a little more than three months at the end of 1997, Sharma realized total profits of $58,322.61 in connection with purchasing call options and stock in advance of public announcements involving MCI, CPS, and SNET. (Davison 5/19/98

Decl. ¶ 13). Sharma was living with Kapoor in San Jose at the time of the trading in her account. (Davison 5/19/98 Decl. ¶ 13).

12. Like Sharma, during the end of 1997, Rajan realized total profits of $85,625.40 by purchasing call options and stock before the same public announcements involving MCI and CPS. (Davison 3/31/98 Decl. ¶ 23, 30, 35).

KAPOOR, SHARMA AND RAJAN'S ILLEGAL INSIDER TRADING

Insider Trading Before The MCI And BFP Announcements

13. On October 1, 1997, WorldCom announced a tender offer for MCI. The price of MCI's stock, which had been trading at around $27 to $29 per share, rose almost $6 per share following this announcement. Salomon was a financial advisor to WorldCom, and Sekhri was a member of the "deal team."[2] (Davison 5/19/98 Decl. ¶ 16).

14. That same day, October 1, 1997, WorldCom and BFP publicly announced a definitive agreement to merge valued at about $2.9 billion. On the day of the announcement, BFP's stock closed up $8 per share from the previous day's closing price. Salomon acted as financial advisor to BFP.[3] (Davison 5/19/98 Decl. ¶ 17).

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[2]Indeed, the resume which Sekhri provided to CS First Boston in connection with his application for employment stated that Sekhri was "[r]esponsible for the valuation and merger analysis for WorldCom's $37 billion bid [for MCI]." (Davison 3/31/98 Decl. ¶ 4 and Ex. 2).

[3]Sekhri was involved directly in Salomon's efforts in at least one of the mergers (the two WorldCom/MCI announcements). As an associate in the investment banking generalist group, Sekhri had access to confidential information in Salomon's possession concerning other transactions as well. On or about October 1, 1997, Sekhri formally became a member of the mergers and acquisitions group at Salomon. On information and belief, Sekhri, as a trusted employee, had access to other Salomon employees' work areas, had access to the Salomon computer system, and was privy to normal information flow among the professional staff of an investment banking firm such as Salomon. (Davison 5/19/98 Decl. ¶ 17 and footnote 5).

15. Just before the October 1, 1997 announcement about WorldCom's tender offer for MCI, but after telephone contacts between Kapoor and Sekhri,[4] three Merrill Lynch clients for whom Kapoor was the registered representative collectively bought 3,500 shares of MCI stock, and Kapoor's wife, Sharma, bought 40 MCI calls. (Davison 5/19/98 Decl. ¶ 18; Davison 4/14/98 Decl. ¶ 13).

16. For example, on September 25, Kapoor called Sekhri's home at 6:33 p.m. and 8:07 p.m. The second call lasted for 21 minutes. On the next day, Kapoor's client, Robert Jones, bought 2,000 shares of MCI. On September 28, Kapoor called Sekhri at Salomon at 11:18 p.m. for 1 minute, and Sekhri's home at 11:38 p.m. for 24 minutes. On the next day, Kapoor's clients, Hemant and Rashmi Kirpekar bought 1,000 MCI shares, and Mushtaque and Rezwana Habib bought 500 MCI shares. (Davison 5/19/98 Decl. ¶ 19). On September 29, three days after she opened her Schwab account, Sharma deposited a $6,000 cashier's check and purchased 40 MCI calls. (Davison 4/14/98 Decl. ¶ 13). That same day, prior to WorldCom's announcement of its merger with BFP, Kapoor's client, Jones, bought 1,000 shares of BFP stock. (Davison 5/19/98 Decl. ¶ 19).

17. On October 1, the day of the two WorldCom announcements, Sekhri called Kapoor's home one time and Kapoor's number at Merrill Lynch three times. (Davison 5/19/98 Decl. ¶ 19). That day, Kapoor's wife, Sharma, sold her MCI calls and realized a profit of $14,856.33. (Davison 4/14/98 Decl. ¶ 13). Kapoor's client, Jones, sold his BFP stock on

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[4]All references to calls from Kapoor refer to calls from his home phone number (408) 270-9100, which is the same phone number identified on the brokerage statements for Sharma and Rajan. (Davison 5/19/98 Decl. ¶ 18 and Ex. 2). Copies of Sekhri's home phone records for mid-September 1997 through mid-January 1998 have been previously submitted to the Court. (Davison 5/19/98 Decl. ¶ 18 and Ex. 3). Sekhri's home phone had been disconnected. Copies of phone records from Sekhri's number at Salomon for December 1996 through December 1997 have also been previously submitted to the Court. (Davison 3/31/98 Decl. ¶ 21 and Ex. 11).

October 1 for a profit of $9,671.97. Kapoor's clients, the Kirpekars and Habibs still owned the MCI stock at the time of the filing of the Complaint. Jones transferred his 2,000 MCI shares out of his account on November 4. (Davison 5/19/98 Decl. ¶ 20).

18. Kapoor's friend Rajan, as well as defendants Sehgal, Dow, Cochrane, and Thifault also bought MCI and/or BFP securities just before the October 1 announcements and, except for Sehgal, who sold his MCI securities after a second WorldCom/MCI announcement on November 10, 1997, all of the Defendants sold just after the announcements. (Davison 5/19/98 Decl. ¶ 21).

Insider Trading Before The CPS Announcement

19. On October 29, 1997, Proffitt's, Inc. announced an agreement to acquire CPS. The price of CPS stock, which had been trading at around $36 to $38 per share, rose over $8 per share following that announcement. Salomon was a financial advisor to Proffitt's. (Davison 5/19/98 Decl. ¶ 22).

20. Shortly before the October 29 announcement, but after telephone contacts between Kapoor and Sekhri, five Merrill Lynch clients for whom Kapoor was the registered representative collectively bought 7,000 shares of CPS stock, and Kapoor's wife, Sharma, bought 10 CPS calls. (Davison 5/19/98 Decl. ¶ 23, 24).

21. For example, on October 17, Sekhri called Kapoor's home at 7:27 p.m. and spoke for 20 minutes, and at 7:47 p.m. and spoke for 11 minutes. On October 21, Kapoor called Sekhri's home once and Sekhri called Kapoor's home twice. Sekhri's two telephone calls to Kapoor's home were at 10:26 p.m. for 1 minute, and again at 11:10 p.m. for 33 minutes. On that same day, Sharma bought 10 CPS calls. On October 27, Kapoor called Sekhri's home at 6:34 p.m. for 1 minute. The next day, Kapoor's clients made the following purchases: Jose and Daisy

Gonzaga Ison bought 500 CPS shares, the Kirpekars bought 1,000 CPS shares, Jones bought 4,000 CPS shares, Richard and Nellie Tatum bought 1,000 CPS shares, and the Habibs bought 500 CPS shares. On October 29, the day of the announcement, Sekhri called Kapoor's home six times from 12:18 a.m. through 10:05 p.m., and Kapoor called Sekhri's home at 6:46 p.m. and spoke for 2 minutes. (Davison 5/19/98 Decl. ¶ 24).

22. Immediately after the October 29 announcement, on October 30, Sharma sold her 10 CPS calls and realized a profit of $4,786.05. (Davison 4/14/98 Decl. ¶ 15). From October 31 through November 6, all of Kapoor's clients sold their CPS stock and realized total profits of $80,769.10. (Davison 5/19/98 Decl. ¶ 25).

23. Kapoor's friend Rajan, as well as defendants Sehgal, Dow, and Cochrane also bought CPS securities just before the October 29, 1997 announcement and sold just after the announcement. (Davison 5/19/98 Decl. ¶ 26).

Insider Trading Before The Second MCI Announcement

24. On November 10, 1997, MCI announced that it had accepted WorldCom's increased bid, valued at $37 billion. The price of MCI's stock increased over $4 per share following this announcement. Solomon had continued to advise WorldCom and Sekhri had remained part of the deal team. (Davison 5/19/98 Decl. ¶ 27).

25. Just before the November 10 announcement, but after telephone contacts between Kapoor and Sekhri, six Merrill clients for whom Kapoor was the registered representative collectively bought 8,500 shares of MCI stock, and Kapoor's wife, Sharma, bought 50 MCI calls and 2,000 MCI shares. (Davison 5/19/98 Decl. ¶ 28; Davison 4/14/98 Decl. ¶ 17).

26. For example, on November 6, Kapoor called Sekhri's home at 6:13 a.m. for 1 minute, and Sekhri called Kapoor's home at 9:05 a.m. for 2 minutes. On that same day, Kapoor's wife, Sharma, bought 50 MCI calls and 2,000 shares of MCI stock, and Kapoor's clients made the following purchases: the Habibs bought 2,000 MCI shares, Jones bought 2,000 MCI shares, and William and Jane Sanchez bought 2,000 MCI shares. (Davison 4/14/98 Decl. ¶ 17; Davison 5/19/98 Decl. ¶ 29).

27. On the next day, November 7 (the last business day before the November 10 announcement), Kapoor's clients made the following purchases: the Isons bought 1,000 MCI shares, Richard and Nellie Tatum bought 500 MCI shares, and Edward Tatum bought 1,000 MCI shares. (Davison 5/19/98 Decl. ¶ 29).

28. Sekhri called Kapoor's home on November 8 at 12:25 a.m. for 1 minute, and Kapoor called Sekhri's home on November 9 at 7:05 p.m. and spoke for 2 minutes. (Davison 5/19/98 Decl. ¶ 29).

29. Shortly after the November 10 announcement, on November 12, Sharma began selling her 50 MCI calls and 2,000 shares of MCI stock and realized profits of $21,551.36. (Davison 4/14/98 Decl. ¶ 17). From March 3 through March 18, 1998, Kapoor's client, Jones, sold his 4,000 MCI shares and realized profits of $43,599.77. The Sanchezes sold their MCI stock on April 1, profiting $24,827.16. Kapoor's clients, the Habibs, Isons, and Tatums, still owned the MCI stock on the date the complaint was filed. (Davison 5/19/98 Decl. ¶ 30).

30. Kapoor's friend Rajan, as well as Defendants Sehgal, Dow, Cochrane, and Thifault also bought MCI securities just before the Nobember 10, 1997 announcement and sold them shortly after the announcement. (Davison 5/19/98 Decl. ¶ 31).

Insider Trading Before The CSW Announcement

31. On December 22, 1997, American Electric Power Co., Inc. ("AEP") announced that it had agreed to acquire CSW for about $6.6 billion. On the day of the announcement, CSW stock closed up $1-1/8 per share from the previous day's closing price. (Davison 5/19/98 Decl. ¶ 32). Salomon was a financial advisor to AEP.

32. Shortly before the December 22 announcement, but after telephone contacts between Kapoor and Sekhri, five Merrill clients for whom Kapoor was the registered representative collectively bought 4,150 shares of CSW stock. (Davison 5/19/98 Decl. ¶ 33).

33. For example, on December 7, Kapoor called Sekhri three times: once at Salomon and twice at home. The last call to Sekhri's home at 7:41 p.m. was for 24 minutes. On December 10, Sekhri called Kapoor's home at 11:30 p.m. and spoke for 52 minutes. On the next day, Kapoor's clients made the following purchases: the Isons bought 650 CSW shares, Jones bought 1,000 CSW shares, and the Habibs bought 500 CSW shares. That night, Sekhri called Kapoor's home at 6:58 p.m. On December 13, Kapoor called Sekhri's home at 11:00 a.m. and spoke for 32 minutes. On December 15, Jones bought 1,000 CSW shares and the Kirpekars bought 500 CSW shares. On December 16, Jones bought another 500 CSW shares. (Davison 5/19/98 Decl. ¶ 34).

34. Except for Jones, all of Kapoor's clients still owned their CSW stock at the time the SEC filed its Complaint. Jones transferred 2,000 CSW shares out of his account in March. (Davison 5/19/98 Decl. ¶ 35).

35. Defendant Dow also bought CSW securities just before this announcement and sold them shortly after the announcement. (Davison 5/19/98 Decl. ¶ 36).

Insider Trading Before The SNET Announcement

36. On January 5, 1998, SBC Communications Inc. announced that it had agreed to merge with SNET. The price of SNET's stock, which had been trading at around $47 to $50 per share, rose $10 per share following the announcement. Salomon was a financial advisor to SNET. (Davison 5/19/98 Decl. ¶ 37).

37. Shortly before the January 5 announcement, but after telephone contacts between Kapoor and Sekhri, three Merrill clients for whom Kapoor was the registered representative collectively bought 3,500 shares of SNET stock, and Kapoor's wife, Sharma, bought 2,000 shares of SNET. (Davison 5/19/98 Decl. ¶ 38; Davison 4/14/98 Decl. ¶ 19).

38. For example, on December 21, Kapoor called Sekhri at home at 9:01 a.m. and spoke for 3 minutes, Kapoor called Sekhri at Salomon at 12:22 p.m. and spoke for 25 minutes, and Sekhri called Kapoor's home at 6:17 p.m. for .02 minutes. The next day, Kapoor's clients made the following purchases: the Isons bought 500 SNET shares, the Kirpekars bought 1,000 SNET shares, and Jones bought 2,000 SNET shares. That night, Kapoor called Sekhri's home at 7:52 p.m. and spoke for 2 minutes. (Davison 5/19/98 Decl. ¶ 39). On December 31, 1998, Sharma bought 2,000 shares of SNET stock. (Davison 4/14/98 Decl. ¶ 19).

39. After the announcement on January 5, Sharma sold her SNET stock and realized profits of $17,128.87. (Davison 4/14/98 Decl. ¶ 19). From January 26 through February 26, Kapoor's clients sold their SNET positions and realized total profits of $49,925.54. (Davison 5/19/98 Decl. ¶ 40).

40. Defendants Sehgal, Dow, Cochrane, and Thifault also bought SNET securities just before the January 5, 1998 announcement and sold them just after the announcement. (Davison 5/19/98 Decl. ¶ 41).

KAPOOR AND SHARMA'S ABRUPT DEPARTURE FROM THE UNITED STATES TO AVOID PROSECUTION

41. On or about January 21, 1998, Sekhri resigned from Salomon to accept a position with Credit Suisse First Boston Corp. ("CSFB") as an associate in the equity capital markets department. (Davison 3/31/98 Decl. ¶ 6 and Ex. 3).

42. The SEC began its investigative contacts with Sekhri's confederates on January 23, 1998, and had issued its first investigative subpoenas on January 26, 1998. (Pl.'s Mem. in Opp'n to Mot. for Relief at n.2.).

43. On January 27, 1998, Sekhri called Kapoor and Sharma's San Jose residence, at 12:38 a.m. for 37 minutes, and again on January 28, 1998 from Queens, New York, at 8:46 p.m. for 12 minutes. (Davison 4/9/99 Decl. ¶ 2 and Ex. 1). Shortly thereafter, Sekhri left his position at CSFB and traveled to India. (Davison 3/31/98 Decl. ¶ 6 and Ex. 4; 2d Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 64, 65).

44. On January 30, 1998, Sekhri sent an email from India advising CSFB that he could not begin a new job because he "was forced to come to India on very short notice and was unable to give you any advance warning," allegedly due to the illness of his grandfather. (Davison 3/31/98 Decl. ¶6 and Ex. 4). That same day, Kapoor purchased airline tickets to India for himself and Sharma. (Davison 4/9/99 Decl. ¶ 3 and Ex. 2).

45. In late January or early February 1998, Kapoor and his wife Sharma suddenly left the United States and moved to India. Rajan's whereabouts are unknown. (Apr. 19, 1999 Tr. at 4; Pl.'s Mem. in Opp'n to Mot. for Relief, Apr. 9, 1999, at 3.).

KAPOOR'S IMPLAUSIBLE EXPLANATIONS FOR THE INSIDER TRADES

46. In a telephone interview with the SEC from India, Kapoor said that, at the time of Sharma's trading in this matter, Sharma was a housewife who "always watched CNBC." Kapoor stated that he did not know, until Merrill Lynch's counsel told him during a recent telephone interview, that his wife even had a brokerage account, much less that she had traded in MCI, CPS, and SNET securities, at or about the same time that he bought the very same securities for his clients. (Davison 5/19/98 Decl. ¶ 13).

47. Kapoor also told the SEC that he did not know, until a telephone interview with Merrill Lynch's counsel, that his friend Rajan had a brokerage account, much less that she traded in MCI and CPS securities, at or about the same time that he bought the very same securities for his clients. (Davison 5/19/98 Decl. ¶ 14). Moreover, Kapoor stated that Rajan had not been to visit him in San Jose since before 1997, long before Rajan's trading during the end of 1997. (Davison 5/19/98 Decl. ¶ 14).

48. When asked for an explanation about how it could possibly be that his wife Sharma, his friend Rajan, and his eight Merrill Lynch clients bought the same securities in the same companies before the same major corporate announcements, when the companies were being advised on the very same matters by his long-time friend Sekhri or Sekhri's colleagues at Salomon, Kapoor simply replied that it was a "highly unusual coincidence." (Davison 5/19/98 Decl. ¶ 15).

KAPOOR AND SHARMA'S TRANSFER OF FUNDS OUT OF THE COUNTRY

49. Around the time of their departure, Kapoor, Sharma and Rajan engaged in several unusual fund transfers, which had the net effect of making approximately $139,000 disappear: On January 29, 1998, $66,140 moved from two of Sharma's brokerage accounts to Rajan's Bank of America account. (Pl.'s Mem. in Opp'n to Mot. for Relief, Apr. 9, 1999, at 4; Davison 4/9/99 Decl. ¶ 4 and Ex. 3.). Around the same time, $72,849 moved from Rajan's Bank of America account into three checks payable to Sharma. The backs of these checks appear to indicate that they were "credited to the account of the named payee" (i.e., Sharma) at Union Bank of California. (Davison 4/9/99 Decl. ¶ 6 and Ex. 5). The Union Bank of California has informed the SEC that the bank does not have any accounts in the names of Kapoor or Sharma. (2d Gumagay Decl. ¶ 5 and Ex.D). Also in February 1998, an amount of $65,900 moved from Rajan's Wien brokerage account to an accountholder named "Mrs. L.V. Guna" at Midland Bank in London. (Davison 4/9/99 Decl. ¶ 5 and Ex. 4).[5]

50. On May 20, 1998, this Court granted the SEC's request to amend its Complaint to add Kapoor as a defendant in this matter. (2d Am. Compl., filed May 19, 1998). In addition, this Court issued an Order that, inter alia, froze Kapoor's assets in "any financial or brokerage institution...located within the territorial jurisdiction of the United States courts...in the name, for the benefit, or under the control of Defendant Sharad Kapoor." (T.R.O., Order to Show Cause and Orders Granting Relief As To Def. Kapoor, p. 5.). On May 27, 1998, the Court

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[5]For months, Rajan had been paying Kapoor's credit card bills, first mortgage, second mortgage, homeowner association dues, and residential and cell phone bills. (Davison 4/9/99 Decl. ¶¶ 7-12 and Exs. 6-11.

extended this order until the adjudication of the merits of this action. (Default Order As To Def. Sharad Kapoor).

51. On March 26, 1999, Kapoor sought partial relief from the freeze order. (Notice of Mot. And Mot. By Def.'s Rohina Sharma And Sharad Kapoor For Partial Relief From Asset Freeze Orders). In his motion, Kapoor argued that, under New York law, a "qualified pension plan" under the Internal Revenue Code, 26 U.S.C. § 401, would be fully exempt from collection, which presumably would protect, among other things, about $53,000 of Kapoor's 401K-Provident fund account at Merrill Lynch. (Mem. In Supp. Of Mot. By Def.'s Rohina Sharma And Sharad Kapoor For Partial Relief From Asset Freeze Orders). The motion was premised on the argument that the SEC, in seeking to enforce a disgorgement order, would somehow be seeking to collect a "debt" as defined under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et. seq. (Id., p. 10). On April 19, 1999, this Court denied Kapoor's motion and rejected his claims, inter alia, that the freeze order did not apply to his 401(k) account at Merrill Lynch.

52. Unbeknownst to the Court and to the SEC, Kapoor withdrew the funds from his 401(k) at Merrill Lynch in December 1998, about 7 months after this Court's May 19, 1998 freeze order on Kapoor's assets. The check was issued to the "Bank of Tokyo, FBO Kapoor, Sharad." (2d Gumagay Decl. ¶ 7, 8, 9 and Ex. F, G, H).

SEKHRI'S GUILTY PLEA AND ALLOCUTION

53. As mentioned above, Sekhri fled to India on or about January 30, 1998. (Davison 3/31/98 Decl. ¶ 6 and Ex. 4; 2d Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 64, 65).

54. On May 30, 1999, Sekhri was arrested in Australia on a warrant issued pursuant to a criminal complaint filed in the Southern District of New York charging him with violations of the federal securities laws. (2d Gumagay Decl. ¶ 2 and Ex. A, ¶ 65).

55. On or about October 9, 1999, Sekhri was extradited from Australia to the United States based upon the charges in the criminal complaint. (2d Gumagay Decl. ¶ 2 and Ex. A, ¶ 65).

56. On March 14, 2000, Sekhri entered a plea of guilty to a three-count indictment that charged him with conspiracy to violate Title 15, United States Code, Sections 78j(b), 78n(e) and 78ff and Title 17, Code of Federal Regulations, Sections 24.10b-5 and 240.14e-3(a) and violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5 and 14e-3. (2d Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 71, 73; 2d Gumagay Decl. ¶ 3 and Ex. B, pp. 20-21, 22-23). The violations to which he pled guilty are the same as those that are the subject matter of this litigation. (2d Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 71, 73; Compl. ¶¶ 40-44, 45-50).

57. The essence of the charges contained in the Information to which Sekhri pleaded guilty on March 14, 2000, was that Sekhri, Fuad Dow, Martin Thifault, co-conspirator II, a stockbroker with Merrill Lynch Pierce, Fenner & Smith, Inc., in San Jose, California, and others violated the securities laws of the United States. (2d Gumagay Decl. ¶ 2 and Ex. A). The Information alleged that co-conspirator II was married to a woman who was a resident of San Jose, California and had at least eight different clients to whom co-conspirator II recommended stock. (2d Gumagay Decl. ¶ 2 and Ex. A, ¶ 4). The Information further alleged that Sekhri agreed to provide inside information to co-conspirator II because they were close friends, and

that Sekhri received pecuniary and other personal benefits in exchange for his tips of inside information. (2d Gumagay Decl. ¶ 2 and Ex. A, ¶ 53). Upon receipt of confidential non-public information from Sekhri, co-conspirator II and co-conspirator II's wife engaged in insider trading in the securities of MCI, BFP, CPS, CSW, and SNET in accounts in the name of co-conspirator II's wife and several of his customers shortly before significant public announcements concerning these companies. (2d Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 54-61).

58. On June 25, 1998, Fuad Dow Pleaded guilty to one count of conspiracy to commit securities fraud and one count of securities fraud. United States v. Fuad Dow, 98 Cr. 0635 (JSM) (S.D.N.Y. June 25, 1998). On July 16, 1998, Gordon Cochrane pleaded guilty to one count of conspiracy to commit securities fraud. United States v. Cochrane, 98 Cr. 740 (HB) (S.D.N.Y. July 16, 1998). On January 26, 1999, Martin Thifault pleaded guilty to one count of conspiracy to commit securities fraud. United States v. Thifault, 98 Cr. 792 (HB) (S.D.N.Y. January 26, 1999).

59. Sekhri was found guilty by this Court of conspiracy to commit securities fraud and of the charge that between September 1997 and February 1998, in the Southern District of New York and elsewhere, Sekhri unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances in connection with purchases and sales of securities in or issued by MCI, CPS, SNET, and CSW, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 (Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section

240.10b-5). (2d Gumagay Decl. ¶ 3 and Ex. B, pp. 16, 22-25; 2d Gumagay Decl. ¶2 and Ex. A, ¶ 71).

60. Sekhri was also found guilty by this Court of the criminal charge that, from in or about September 1997 up to and including February 1998, in the Southern District of New York and elsewhere, Sekhri unlawfully, willfully, and knowingly did engage in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer in that, after the offering entity, WorldCom, had taken substantial steps to commence a tender offer for the common stock of MCI, Sekhri and others, while in possession of confidential, material and nonpublic information relating to such tender offer, which information Sekhri knew and had reason to know was confidential, material and nonpublic, and which had been acquired directly and indirectly from WorldCom and from persons acting on behalf of WorldCom, purchased and sold, and caused others to purchase and sell the securities and options to obtain the securities that were to be sought by WorldCom without first publicly disclosing such information and its source, all in violation of Section 14(e) of the Exchange Act and Rule 14e-3 (Title 15, United States Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Section 240.14e-3(a). (2d Gumagay Decl. ¶ 3 and Ex. B, pp. 17, 21-22, 25; 2d Gumagay Decl. ¶2 and Ex. A, ¶ 73).

61. As part of his allocution at the sentencing hearing, Sekhri made several admissions on his plea that establish the facts relevant to this motion. (2d Gumagay Decl. ¶ 3 and Ex. B). Sekhri admitted that, from July 1996 to January 1998, he was employed as an associate at Salomon Smith Barney, Inc. and had access to confidential market-sensitive inside information about pending business transactions, including mergers. During that same period, according to Sekhri, he unlawfully disclosed confidential inside information to Fuad Dow,

Sharad Kapoor, Martin Thifault and others, and that he was aware that these individuals traded on their accounts based on information that Sekhri had provided to them. (2d Gumagay Decl. ¶ 3 and Ex. B, p. 20).

62. On February 21, 2001, Sekhri was deposed in this case, but he refused to testify and invoked his Fifth Amendment privilege against self-incrimination to all substantive questions relating to the matters that are the subject of this litigation. (2d Gumagay Decl. ¶4 and Ex. C).

63. The amount of disgorgement due from Kapoor for his client's trades and Rajan's trades is $294,418.94 plus prejudgement interest of approximately $115,838.21[6], and maximum civil penalties of approximately $883,256.82.[7]

64. The amount of disgorgement due from Sharma is $58,322.61 plus prejudgment interest of approximately $22,946.83[8], and maximum civil penalties of approximately $174,967.83.[9]

CONCLUSIONS OF LAW

I. Summary Judgment Standard

Summary judgment shall be granted if the movant establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

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[6]Prejudgment interest is calculated from February 1, 1998 (first day of the month following each such violation) to May 31, 2002 (the last day of the month preceding the month in which payment of disgorgement is made). 17 C.F.R. § 201.600(a). (Gumagay Decl. ¶ 10 and Ex. J).

[7]Three times the illegal profits of $294,418.94.

[8]Prejudgment interest is calculated from February 1, 1998 to May 31, 2002. 17 C.F.R. § 201.600(a). (Gumagay Decl. ¶ 11 and Ex. J).

[9]Three times the illegal profits of $58,322.61.

Fed. R. Civ. P 56(c). The opposing party must set forth specific facts showing that there is a genuine issue for trial, and cannot rest on the mere allegations or denials of his pleadings. Fed. R. Civ. P. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). In view of the defendants Kapoor and Sharma, by their attorneys, having filed a notice of not filing an opposition, plaintiff's motion for partial summary judgment is granted.

II. Proscriptions of 10b-5 and 14e

Section 10(b) of the Exchange Act and Rule 10b-5 prohibit any person from employing any device, scheme or artifice to defraud, making misrepresentations or misleading omissions, and engaging in any transaction, practice or course of business which operates as a fraud, in connection with the purchase or sale of securities. Section 14(e) of the Exchange Act and Rule 14e-3, the other provisions charged in this case, similarly prohibit fraudulent or deceptive conduct in connection with tender offers for securities.

Thus, Sections 10b-5 and 14(e) have been interpreted to include within their proscriptions inside trading of confidential information by those who owe a fiduciary duty to their employer in connection with an acquisition or merger. United States v. O'Hagan, 521 U.S. 642, 651-52 (1997). Tippee liability attaches to those who trade on inside information obtained from insiders in circumstances in which the person who receives the confidential information knows or has reason to know that it was confidential information obtained in violation of the tipper's fiduciary duty. Dirks v. SEC, 463 U.S. 646, 664 (1983); United States v. Falcone, 257 F.3d 226, 234 (2d Cir. 2001); United States v. Libera, 989 F.2d 596, 600 (2d Cir. 1993).

III. Kapoor and Sharma Violated Section 10(b) of the Exchange Act and Rule 10b-5

In this case, Sekhri's plea and allocution, the timing of Sharma, Rajan, and Kapoor's clients' trades combined with phone records also establish that Kapoor and Sharma received confidential information about mergers and acquisition from Sekhri in violation of Sekhri's fiduciary duty, and that they knew or should have known that Sekhri breached his duty when he provided them with that information.

A. Sekhri's Plea And Allocution Is Admissible To Prove The Truth Of The Matters Asserted Against Kapoor And Sharma

As explained above, Sekhri pled guilty to two counts of violations of the securities laws and one count of conspiracy to violate the securities laws. He admitted in his plea that he had access to confidential information, that he provided that information to others, including Kapoor, with knowledge that they, including Kapoor, upon receipt of the confidential non-public information from Sekhri, would engage in insider trading in the common stock and/or options on the stock of MCI, BFP, CPS, CSW, and SNET shortly before significant public announcements concerning these companies. (2d Gumagay Decl. ¶ 2 and Ex. B, pp. 20-25). Sekhri's plea and allocution are admissible to prove the truth of the matters asserted against Kapoor and Sharma. Fed. R. Evid. 803(22). Under this rule, evidence of a final judgment entered after a trial or upon a plea of guilty is not inadmissible hearsay to prove any fact essential to prove a judgment against persons other than the accused in collateral civil actions. The facts underlying the conviction are not conclusive, and may be rebutted by contrary credible evidence, but the conviction is clearly probative of the facts underlying the conviction against other persons, including Kapoor and

Sharma in this case. Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A., 2001 WL 99506 *3 (S.D.N.Y. Feb. 6, 2001); Am. Int'l Specialty Lines Ins. Co. v. Towers Fin. Corp., 1997 WL 906427 *4 n. 7 (S.D.N.Y. Sept. 12, 1997). Thus, Sekhri's plea and allocution that he provided confidential non-public information to Kapoor and others regarding several confidential corporate transactions are probative of the fact that Sekhri provided confidential information to Kapoor in violation of his fiduciary duty to his employer, Salomon, Salomon's clients, and the clients' shareholders.

B. Kapoor And Sharma Traded Based On Sekhri's Illegal Tips

The documentary evidence in this case irrefutably shows that Kapoor and Sharma traded on the stocks that were the object of Sekhri's tips. Kapoor's clients and his wife Sharma bought either calls or stock of the five different stocks about which Sekhri admitted providing Kapoor with confidential information shortly prior to the public announcements. The companies were MCI, BFP, CPS, CSW, and SNET. (2d Gumagay Decl. ¶ 2 and Ex. B, pp. 20-25.) The documentary evidence shows that Kapoor and Sharma had telephone conversations with Sekhri before and after the public announcements. The documentary evidence also shows that Kapoor's clients and his wife Sharma profited on those purchases after the information became public. (2d Davison 4/14/98 Decl. ¶ 12-19; Davison 5/19/98 Decl. ¶ 16-41).

C. Kapoor And Sharma Knew Or Were Reckless In Not Knowing That Sekhri Provided Them With Confidential Information In Breach Of Sekhri's Duty To Salomon

A tippee is liable under Sections 10(b) and 14(e) and the SEC's implementing rules where an insider transmits the information to him or her and "receives a direct or indirect personal benefit from the disclosure, such as pecuniary gain or a reputational benefit that will

translate into future earnings ... [or] when an insider makes a gift of confidential information to a trading relative or friend." Dirks, 463 U.S. at 663-64. Moreover, to prove such violations, the SEC is "simply required to prove a breach by . . . the tipper . . . of a duty owed to the owner of the misappropriated information, and [the tippee's] knowledge that the tipper had breached the duty." Falcone, 257 F.3d at 234; see Libera, 989 F.2d at 600; Dirks, 463 U.S. at 660; SEC v. Musella, 748 F. Supp. 1028, 1038 (S.D.N.Y. 1989) aff'd, 898 F.2d 138 (2d Cir. 1990). Accordingly, "tippees" like Kapoor and his wife Sharma, who know or are reckless in not knowing that their trading was based on misappropriated material nonpublic information, violate Rule 10b-5. Musella, 748 F. Supp. at 1038.

Kapoor and Sharma's knowledge or reckless disregard of the fact that they were trading on confidential information provided to them in violation of Rule 10b-5 may be established by circumstantial evidence. See Herman & MacLean v. Huddleston, 459 U.S. 375, 390 n.30 (1983). In cases of tippee trading, actual knowledge that the information on which a trade was based was obtained from an insider is relevant circumstantial evidence of a trader's scienter. See United States v. Mylett, 97 F.3d 663, 668 (2d Cir.1996). Here, there is a long-standing relationship between Sekhri, Kapoor, and Sharma. Kapoor knew that Sekhri worked in the corporate finance department at Salomon and was in a position likely to have access to confidential information. Kapoor admitted that he had several contacts with Sekhri during the relevant trading period. Sekhri had made several phone calls to Kapoor, Sharma, and Rajan's residence in San Jose, California, during the relevant trading period. The suspicious timing of Kapoor, Sharma, and Rajan's trades in the stocks of not one but five companies are confirmed by Sekhri's admissions that he tipped Kapoor with confidential information shortly before the information became public

and by the telephone records. The evidence is strong that Kapoor, Sharma and Rajan knew the source of their inside information. "[C]onscious avoidance of the source of the confidential information in the context of insider trading does not defeat scienter." Musella, 748 F. Supp at 1038 n.5.

The undisputed circumstantial evidence in this case, as well as Sekhri's admissions, establish that Kapoor and Sharma engaged in insider trading with the requisite level of scienter in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

D. Kapoor and Sharma Received Information That Was Material And Nonpublic

A person is liable under Section 10(b) and Rule 10b-5 when he obtains material, nonpublic information intended to be used only for a proper purpose and then misappropriates or otherwise misuses that information in breach of a fiduciary duty, or other duty arising out of a relationship of trust and confidence, to make "secret profits." Dirks, 463 U.S. at 654; O'Hagan, 521 U.S. at 652. Information is "material" for purposes of Sections 10(b) and 14(e) and Rules 10b-5 and 14e-3 if there is "a substantial likelihood that a reasonable investor would view it as significantly altering the 'total mix' of information available." United States v. Cusimano, 123 F.3d 83, 88 (2d Cir. 1997) (citing Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988)). Few matters are more material than a corporation's involvement in a possible merger or acquisition. E.g., Basic, 485 U.S. at 231-32; SEC v. Geon Indus., Inc., 531 F.2d 39, 47-48 (2d Cir. 1976); Musella, 748 F. Supp. at 1040-1041; SEC v. Tome, 638 F. Supp. 596, 623 (S.D.N.Y. 1986). Moreover, the materiality of the information is confirmed by the substantial increase in the stock price upon the public announcement of the merger. Tome, 638 F. Supp. at 623 (immediate

increase in stock price upon public announcement of tender offer indicates materiality of such information).

Information remains "nonpublic" until such time as either (i) the information has been disclosed "to achieve a broad dissemination to the investing public generally and without favoring any special person or group," SEC v. Mayhew, 121 F.3d 44, 50 (2d Cir. 1997) (quoting Dirks, 463 U.S. at 653); or (ii) the information is known only by a few persons, but their trading on it "has caused the information to be fully impounded into the price of the particular stock," Mayhew, 121 F.3d at 50 (quoting Libera, 989 F.2d at 601).

In this case, Kapoor and his wife Sharma traded on material information that had a substantial impact on the stock prices when it became public. For example, when the first announcement was made, MCI's stock price rose about 20%, or $6, above a price range of $27 to $29 a share, and MCI's stock price increased $4 per share following the second announcement. On the day of its announcement, BFP's stock price rose $8 per share following the public announcement, about 16% above the prior trading range of $39-46 per share. (Compl. ¶ 18). CPS's stock rose $8 per share following the public announcement, or about 20% above its trading range of $36 to $38 per share. After CSW's public announcement, CSW shares rose $1.125 per share from its $24 to $26 trading range. (Compl. ¶35). SNET rose $10 per share following its public announcement, or about 20% above its trading range of $47-$50 per share. Before these announcements, there were no indications that the information concerning the mergers and acquisition was known by the investing public.

IV. Kapoor and Sharma Violated Section 14(e) of the Exchange Act and Rule 14e-3

"One violates Rule 14e-3(a) if he trades on the basis of material nonpublic information concerning a pending tender offer that he knows or has reason to know has been acquired 'directly or indirectly' from an insider of the offeror or issuer, or someone working on their behalf." O'Hagan, 521 U.S. at 669 (quoting United States v. Chestman, 947 F.2d 551, 557 (2d Cir. 1991) (en banc), cert. denied, 503 U.S. 1004 (1992)). Rule 14e-3 imposes liability on persons who trade on material, nonpublic information in connection with a tender offer without regard to whether the trader owes a fiduciary duty to respect the confidentiality of the information. SEC v. Mayhew, 121 F.3d 44, 49 (2d Cir. 1997).

One of the transactions in this case involved a tender offer -- WorldCom's tender offer for MCI. As explained above, Kapoor and Sharma traded in MCI securities while in possession of inside information concerning MCI that they knew or had reason to know had been acquired from Sekhri, who was at the time personally working on the tender offer at Salomon. The SEC need not show that the defendants' actions were "fraudulent under the common law or Section 10b to prove a violation of Section 14 (e) or Rule 14e-3(a)." O'Hagan, 521 U.S. at 672. Nevertheless, the SEC has done so here, and therefore has proven that Kapoor and Sharma have violated not only Section 10(b) and Rule 10b-5, but Section 14(e) and Rule 14e-3 as well.

V. Injunctive Relief

To obtain a permanent injunction against the statutory violations charged in the Complaint, the SEC must show that a violation has occurred and there is a "reasonable likelihood" that the defendant, if not enjoined, will engage in future violations. SEC v. Commonwealth Chem. Sec., Inc., 574 F.2d 90, 99-100 (2d Cir. 1978). In determining whether to grant an injunction, the factors that a court may consider are (1) the likelihood of future

violations; (2) the degree of scienter involved; (3) the sincerity of defendant's assurances against future violations; (4) the isolated or recurrent nature of the infraction; (5) defendant's recognition of the wrongful conduct; and (6) the likelihood, because of defendant's professional occupation, that future violations might occur. SEC v. Universal Major Indus. Corp., 546 F.2d 1044, 1048 (2d Cir. 1976), cert. denied sub nom. Homans v. SEC, 434 U.S. 834 (1977); SEC v. Federated Alliance Group, Inc., 1997 WL 374207, at *2 (W.D.N.Y. 1997); see also, First Jersey, 101 F.3d at 1477 (an injunction is warranted particularly where a violation was founded on systematic wrongdoing, rather than an isolated occurrence, and the defendant's degree of culpability).

Analysis of these factors demonstrates that an injunction is warranted here. As shown, Kapoor's scheme involved using illegal inside information to earn commissions from his clients' trades, and the sharing of this illegal inside information with his wife Sharma and their friend Rajan to profit from the use of that information, which Kapoor and Sharma knew had been stolen by Sekhri from Salomon and Salomon's clients. Upon learning about the SEC's investigation in late January or early February 1998, Kapoor and his wife Sharma suddenly left the United States and moved to India. (Apr. 19, 1999 Tr. at 4; Pl.'s Mem. in Opp'n to Mot. for Relief, Apr. 9, 1999, at 3.). These actions by Kapoor and Sharma are evidence of the highest degree of scienter when violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3.

Kapoor and Sharma's illegal conduct was not an isolated occurrence, but rather was "founded on systematic wrongdoing"; therefore, the likelihood of future violations is great. Kapoor and Sharma's scheme lasted more than one year, from December 1996 to January 1998, and involved the disclosure of confidential information regarding five major corporate transactions. Communications between Kapoor, Sharma, Sekhri, and the other defendants were

conducted through cell phones, home phones, and pagers, while the transactions were initiated through multiple accounts --- ways that potentially could have avoided detection. Based on the serious and systematic nature of the fraud, it is reasonable to infer a likelihood of future violation. See, e.g., SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1168 (D.C. Cir. 1978) (factors supporting injunction "obviously present" where past conduct, including securities fraud conviction, is "highly suggestive" of defendant's propensity to commit future violations); SEC v. Management Dynamics, Inc., 515 F.2d 801, 807 (2d Cir. 1975) ("Certainly, the commission of past illegal conduct is highly suggestive of the likelihood of future violations"); Musella, 748 F. Supp. at 1042.

There is no assurance that Kapoor and Sharma would not commit future violations of the federal securities laws. Kapoor and Sharma's illegal acts generated at least $352,741.55 in ill-gotten gains. To avoid an order of disgorgement, Kapoor, Sharma and Rajan moved money between several brokerage and bank accounts in order to mask their identity and move funds overseas. (Pl.'s Mem. in Opp'n to Mot. for Relief, Apr. 9, 1999, at 4; Davison 4/9/99 Decl. ¶ 4-6 and Ex. 3-5; 2d Gumagay Decl. ¶ 5 and Ex.D). Furthermore, in total disregard of this Court's freeze order, Kapoor withdrew $51,655.91 from his 401(k) account at Merrill Lynch and transferred these funds out of the country. (2d Gumagay Decl. ¶ 7, 8, 9 and Ex. F, G, H).

Kapoor and Sharma clearly do not recognize the wrongfulness of their conduct and, because of Kapoor's professional occupation as a stockbroker and Sharma's status as an active investor, there is a great likelihood that future violations of the securities laws will occur. So far, in this proceeding, Kapoor and Sharma have maintained that they are blameless for their conduct in connection with the insider trading scheme, (Answer of Def. Sharad Kapoor To Second Am. Compl.; Answer of Def. Rohina Sharma To Second Am. Compl.), despite the overwhelming

evidence assembled against them. Accordingly, based on the evidentiary record in this case, permanent injunctive relief is appropriate against Kapoor and Sharma.

VI. Kapoor and Sharma Shall Pay Disgorgement and Prejudgment Interest

A. Disgorgement Is Appropriate

The courts have long recognized that disgorgement of illegally obtained profits is an appropriate remedy for violations of the federal securities laws to prevent unjust enrichment. See e.g., SEC v. Tome, 833 F.2d 1086, 1096 (2d Cir. 1987), cert. denied, 486 U.S. 1014 (1988) (quoting SEC v. Blavin,, 760 F.2d 706, 713 (6th Cir. 1985) ("'Once the Commission has established that a defendant has violated the securities laws, the district court possesses the equitable power to grant disgorgement...' Whether or not any investors may be entitled to money damages is immaterial. The paramount purpose of enforcing the prohibition against insider trading by ordering disgorgement is to make sure that wrongdoers will not profit from their wrongdoing."); SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989) ("Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws.")

As the D.C. Circuit explained in First City, "disgorgement is rather routinely ordered for insider trading violations despite a lack of specific authorizations for that remedy under the securities law." 890 F.2d at 1230. "[I]f securities laws violators were not required to disgorge illicit profits, 'the deterrent effect of an SEC enforcement action would be greatly undermined.'" Bilzerian, 814 F. Supp. at 121 (quoting Manor Nursing Centers, 458 F.2d at 1104).

The amount of disgorgement due from Sharma for her own trades is $58,322.61. Since Rajan paid Kapoor and Sharma's bills, listed Kapoor and Sharma's address on her bank and brokerage

accounts, and traded at the same time as Kapoor's clients and Sharma, Kapoor and Sharma should also be jointly and severally liable to disgorge Rajan's trading profits of $85,625.40.

B. Kapoor Should Disgorge His Clients' Profits

In First City, the Court held that "the Court may exercise its equitable power only over property causally related to the wrongdoing." 890 F.2d at 1231; see Bilzerian, 814 F. Supp. at 121. A defendant must disgorge all profits that "proceed[ed] directly and proximately from the violation claimed." Bilzerian, 814 F. Supp. at 121 (quoting Wellman v. Dickinson, 682 F.2d 355, 368 (2d Cir. 1982)).

In this case, all the profits from the trades made by Kapoor's clients were proximately caused by Kapoor's wrongdoing. Sekhri provided the inside information knowing he had an obligation to keep the information confidential, and knowing that those he tipped would use the information to trade stocks and generate illegal profits. Kapoor knew that he was receiving illegal inside information from Sekhri, and Kapoor knew that Sekhri disclosed the inside information in breach of Sekhri's duty to Salomon, Salomon's clients, and the clients' shareholders. Despite this knowledge, Kapoor used the illegal inside information to generate profits for his clients. Thus, Kapoor's illegal acts directly and proximately generated his clients' profits. In addition, Kapoor acted in concert with his wife Sharma and friend Rajan, the benefit of both inured to Kapoor.

Accordingly, the courts have uniformly held that "a person who is in possession of inside information and discloses that information to others can be held liable for violating Section 10(b) and Rule 10b-5 as a "tipper" even if he or she did not trade on the inside information." SEC v. Alexander, 160 F. Supp. 2d 642, 650 (S.D.N.Y. 2001) (citing Shapiro v. Merrill Lynch, Pierce, Fennner & Smith, Inc., 495 F.2d 228, 237 (2d Cir. 1974)). "A tippee's gains are attributable to the tipper, regardless

whether benefit accrues to the tipper," and the tipper may be held liable for the illegally obtained profits of his tippees. SEC v. Hirshberg, 1999 WL 163992, **4 (2d Cir. 1999) (unpublished opinion) (quoting SEC v. Warde, 151 F. 3d 42, 49 (2d Cir. 1998)). The rationale for this rule is an outgrowth of the basic purpose of permitting an award of disgorgement for the tipper's own profits. Holding a person liable for knowingly using illegal inside information to benefit others (e.g., brokerage clients, relatives, and friends) is a necessary deterrent to the evasion of Rule 10b-5 liability by preventing the wrongdoer from enriching a friend or relative, or tipping others with the expectation of reciprocity. SEC v. Texas Gulf Sulphur Co., 446 F. 2d 1301, 1308 (2d Cir. 1971); SEC v. Clark, 915 F.2d 439, 454 (9th Cir. 1990). Therefore, a person in Kapoor's situation must be held liable for generating profits for his clients through the use of illegal inside information.

The amount of disgorgement due from Kapoor for his client's trades is $208,793.54.

C. Kapoor And Sharma Shall Pay Prejudgment Interest

The Court further awards prejudgment interest on Kapoor and Sharma's disgorgement. An award of prejudgment interest, like an award of disgorgement, will deprive Kapoor and Sharma each of his or her ill-gotten gain and will prevent his or her unjust enrichment. See, e.g., SEC v. Stephenson, 732 F. Supp. 438, 439 (S.D.N.Y. 1990). In the context of Section 10(b) and Rule 10b-5 actions, proof of a defendant's scienter is sufficient to justify an award of prejudgment interest. See Musella, 748 F. Supp. at 1043 (citing Rolf v. Blyth, Eastman Dillon & Co., 637 F.2d 77, 87 (2d Cir. 1980). In this case, the evidence of Kapoor and Sharma's scienter is substantial.

The interest will be calculated in accordance with the rate used by the Internal Revenue Service for tax underpayments, compounded quarterly. It is appropriate to charge Kapoor and Sharma with interest calculated using this rate. Other government agencies use such rate schedules,

and courts have approved their use as an appropriate method for calculating prejudgment interest amounts in order to approximate the time value of money. See E.E.O.C. v. Guardian Pools, Inc., 828 F.2d 1507, 1512 (11th Cir. 1987) (directing back pay in a Title VII case by applying the IRS interest rate schedule); United States v. Exxon Corp., 773 F.2d 1240, 1277, 1279 (Temp. Emer. Ct. App. 1985), cert. denied, 474 U.S. 1105 (1986) (affirming district court's decision to calculate prejudgment interest based on Department of Energy's interest rate schedule which had higher rates than the Internal Revenue Service schedule for the same period).

The amount of interest, calculated pursuant to this method, is $82,149.16, $22,946.83, and $33,689.05 for Kapoor, Sharma, and Rajan, respectively. (2d Gumagay Decl. ¶¶10-12 and Ex. I, J, K). Kapoor and Sharma should be jointly and severally liable for prejudgment interest on Rajan's trading profits.

VII. Kapoor and Sharma Shall Pay Civil Money Penalties

Section 21A(a)(2) of the Exchange Act provides that the Court may levy a civil penalty for insider trading of up to three times the loss avoided by unlawful trading. The legislative history of the Insider Trading Sanctions Act, the predecessor to the current statute, makes clear that Congress intended the penalty to serve as a deterrent mechanism because disgorgement alone "merely restores a defendant to his original position without extracting a real penalty for his illegal behavior." H.R. Rep. No. 98-355, 98th Cong., 2d Sess., 7-8 (1984), reprinted in 1984 U.S.C.C.A.N. 2274, 2280-81, as cited in SEC v. Shah, 1993 WL 288285 at *6, Fed. Sec. L. Rep. (CCH) ¶98,374 at 90,392 (S.D.N.Y. 1993).

The elements to consider in determining the penalty include the defendant's culpability, the amount of profits gained, the repetitive nature of the unlawful act and the deterrent effect of a penalty

given the defendant's net worth. SEC v. Ferrero, 1993 WL 625964, at *18-19 (S.D. Ind. 1993), aff'd sub nom. SEC v. Maio, 51 F.3d 623 (7th Cir. 1995) (award of treble penalty).

Kapoor and Sharma clearly meet all of the criteria for the maximum civil monetary penalty. They acted to amass as much illegal profits as they could, by buying and selling stocks in several accounts, by generating commissions through trading activities in the clients' accounts, and making at least $352,741.55 in ill-gotten gains. (Davison 3/31/98 Decl. ¶ 23, 30, 35; 2d Davison 4/14/98 Decl. ¶ 12-19; Davison 5/19/98 Decl. ¶ 16-41). Kapoor and Sharma's offense was repetitive in nature, occurring on numerous occasions, and involved five major corporate transactions. Significantly, Kapoor and his wife Sharma left the United States to avoid prosecution, but not after making sure that their ill-gotten gains had been removed from the jurisdiction of this Court. Additionally, Kapoor withdrew money that was frozen in his 401(k) account at Merrill Lynch, even after he knew that he was prohibited from invading those funds by the order of this Court.

The maximum civil penalties due from Kapoor, Rajan and Sharma are 626,380.62, $174,967.83, and $256,876.20, respectively.[10] Kapoor and Sharma should be jointly and severally liable for civil penalties based on Rajan's trading profits.

I. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the SEC's Motion for Partial Summary Judgment and Permanent Injunction Against Defendants Sharad Kapoor and Rohina Sharma Kapoor is hereby granted, and,

II. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants Sharad Kapoor and Rohina Sharma Kapoor and their agents, servants, successors, employees,

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[10] Three times the illegal profits. (Statement of Material Facts ¶ 63-65; Davison 3/31/98 Decl. ¶ 23, 30, 35; 2d Davison 4/14/98 Decl. ¶ 12-19; Davison 5/19/98 Decl. ¶ 16-41).

attorneys, and all persons in active concert or participation with any of them, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of the securities of any issuer, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange: (i) employing any device, scheme or artifice to defraud; (ii) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (iii) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of 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].

III. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants Sharad Kapoor and Rohina Sharma Kapoor and their agents, servants, successors, employees, attorneys, and all persons in active concert or participation with any of them, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in connection with any tender offer or request or invitation for tenders, engaging in any fraudulent, deceptive, or manipulative act or practice by: (i) trading in the securities sought or to be sought in such tender offer while in possession of material, non-public information relating to said tender offer which they know or have reason to know is non-public and know or have reason to know was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, without disclosing such information and its source a reasonable time prior to trading, in violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17

C.F.R. § 240.14e-3]; or (ii) communicating material, non-public information relating to a tender offer, which information they know or have reason to know is non-public and know or have reason to know was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought in the tender offer, or any person acting on behalf of the offering person or such issuer, to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

IV. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sharad Kapoor pay disgorgement of profits gained and retained from the conduct alleged in the Complaint in the amount of $ 294,418.94, plus pre-judgment interest of $115,838.21; and that Defendant Rohina Sharma Kapoor pay disgorgement of profits gained and retained from the conduct alleged in the Complaint in the amount of $58,322.61, plus pre-judgment interest of $22,946.83.

V. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Merrill Lynch shall, from the funds of defendant Sharad Kapoor held by it and currently frozen by order of this Court on May 20, 1998, deliver into this Court's registry within ten (10) business days of the entry of the Final Judgment, a check in the amount (1) all of the contents in Merrill Lynch Retirement Account No. 233-99858 N/O Sharad Kapoor that was frozen on May 20, 1998, with a balance of $3,778.48 plus interest; (2) all of the contents in Merrill Lynch Cash Management Account 233-99C65 N/O Sharad Kapoor that was frozen on May 20, 1998, with a balance of $2,294.81 plus interest; and (3) Merrill Lynch ESPP N/O Sharad Kapoor, with a balance of $3,160.58 plus interest, representing the disgorgement and prejudgment interest as described in paragraph IV., above, drawn to the order of "CLERK, UNITED STATES DISTRICT COURT FOR THE SOUTHERN

DISTRICT OF NEW YORK." The check shall bear on its face the caption "SECURITIES AND EXCHANGE COMMISSION v. SEKHRI, ET AL., No. 98 Civ. 2320 (RPP)," and be transmitted to the Clerk under cover of a letter that identifies defendant Sharad Kapoor, the caption and case number of this action, and the name of this Court. Copies of such check and accompanying cover letter shall be simultaneously transmitted to Kenneth Guido, Assistant Chief Litigation Counsel, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0911. Defendant Sharad Kapoor relinquishes all legal and equitable right, title, and interest in these funds, and no part of such funds shall be returned to Defendant Sharad Kapoor or his successors or assigns. The SEC will thereafter submit for the Court's consideration proposed orders for disposition of such funds. The Court will retain jurisdiction to determine whether Merrill Lynch shall deliver into the Court's registry the proceeds of the 401K-Provident Fund account N/O Sharad Kapoor, with a balance of approximately $53,000 at the time of the May 19, 1998 freeze order plus interest.

VI. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Charles Schwab shall, from the funds of defendant Rohina Sharma Kapoor held by it and currently frozen by order of this Court, deliver into this Court's registry within ten (10) business days of the entry of the Final Judgment, a check in the amount $81,269.44, representing the disgorgement and prejudgment interest as described in paragraph IV., above, drawn to the order of "CLERK, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK." The check shall bear on its face the caption "SECURITIES AND EXCHANGE COMMISSION v. SEKHRI, ET AL., No. 98 Civ. 2320 (RPP)," and be transmitted to the Clerk under cover of a letter that identifies defendant Rohina Sharma Kapoor, the caption and case number of this action, and the name of this Court. Copies of such check and accompanying cover letter shall be simultaneously transmitted to Kenneth

Guido, Assistant Chief Litigation Counsel, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0911. Defendant Rohina Sharma Kapoor relinquishes all legal and equitable right, title, and interest in these funds, and no part of such funds shall be returned to Defendant Rohina Sharma Kapoor or her successors or assigns. The SEC will thereafter submit for the Court's consideration proposed orders for disposition of such funds.

VII. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sharad Kapoor shall pay a civil money penalty in the amount of $883,256.82; and that Defendant Rohina Sharma Kapoor shall pay a civil money penalty in the amount of $174,967.83.

VIII. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Charles Schwab shall, from the funds of defendant Rohina Sharma Kapoor held by it and currently frozen by order of this Court, deliver into this Court's registry within ten (10) business days of the entry of the Final Judgment, a check in the amount $34,062.22, representing a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] as described in paragraph VII., above, drawn to the "SECURITIES AND EXCHANGE COMMISSION." The check shall bear on its face the caption "SECURITIES AND EXCHANGE COMMISSION v. SEKHRI, ET AL., HO-3244B," and be transmitted under cover of a letter to The Office of the Comptroller of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, that identifies defendant Rohina Sharma Kapoor, the caption and case number of this action, the name of this Court, and HO-3479B. Copies of such check and accompanying cover letter shall be simultaneously transmitted to Kenneth Guido, Assistant Chief Litigation Counsel, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0911. At such time as such funds are transmitted to the SEC's Comptroller, defendant Rohina Sharma Kapoor relinquishes all legal and equitable right,

title, and interest in the funds, and no part of such funds shall be returned to defendant Rohina Sharma Kapoor or her successors or assigns.

IX. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there being no just cause for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment of Partial Summary Judgment against Defendants Sharad Kapoor and Rohina Sharma Kapoor forthwith and without further notice.

IT IS SO ORDERED.

Dated: New York, New York
July 22, 2002

Robert P. Patterson, Jr.
U.S.D.J.

Copies of this Order sent to:

Kenneth J. Guido
Paul A. Gumagay
Securities and Exchange Commission
450 5th Street, N.W.
Washington, DC 20549-0991
Tel: 202-942-7933; 202-942-4749
Fax: 202-628-1471

Robert L. Corbin
Michael W. Fitzgerald
Corbin & Fitzgerald LLP
601 West Fifth Street, Suite 1150
Lost Angeles, CA 90071-2024
Tel: 213-612-0001
Fax: 213-612-0061

Mr. Arjun Sekhri
Sajakwani & Associates
c/o Ramesh Sahajwani

12 Ram Janki, 356 Linking Road
Khar, Mumbai 400052 India (IN)

Maranda E. Fritz, Esq.
Fritz & Miller
565 Fifth Ave., 9th Floor
New York, NY 10017
Tel: 212-983-0909
Fax: 212-983-1010

Patima Rajan
3692 Rocky Creek Court
San Jose, CA 95148

Bennett Capers, Esq.
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
Tel: 212-637-2263
Fax: 718-422-1712