

1 MARC J. FAGEL (Cal. Bar No. 154425)
fagelm@sec.gov
2 MICHAEL S. DICKE (Cal. Bar No. 158187)
dicke@sec.gov
3 SHEILA E. O'CALLAGHAN (Cal. Bar No. 131032)
ocallaghans@sec.gov
4 SAHIL W. DESAI (Cal. Bar No. 197358)
desais@sec.gov

5 Attorneys for Plaintiff
6 SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
7 San Francisco, California 94104
Telephone: (415) 705-2500
8 Facsimile: (415) 705-2501

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 SECURITIES AND EXCHANGE COMMISSION,

13 Plaintiff,

14 vs.

15 GREGORY B. RABEN and WILLIAM PATRICK
BORCHARD,

16 Defendants.
17

Case No. **CV 08**

0250

COMPLAINT

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

19 **SUMMARY OF THE ACTION**

20 1. In this insider trading matter, two employees of national accounting firm
21 PricewaterhouseCoopers LLP ("PwC") used their positions as PwC professionals to access sensitive
22 information obtained from PwC clients. On multiple occasions over a nine-month period, then-PwC
23 employee William Patrick Borchard told friend and co-worker Gregory B. Raben about the potential
24 acquisition plans of PwC clients, and Raben used the information to make small, yet highly profitable
25 trades on the news before it was released to the investing public.

26 2. From February to October 2006, PwC auditor Raben purchased the stock of six public
27 companies – MatrixOne, Lexar Media, M-Systems Flash Disk Pioneers, Aleris International,
28 Embarcadero Technologies, and Harrah's Entertainment – which were potential acquisition targets of

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1 various PwC clients. Raben received this inside information from Borchard, a senior associate in
2 PwC's Transaction Services Group, who handled financial due diligence for PwC clients interested in
3 mergers or acquisitions.

4 3. By buying stock ahead of the public announcements disclosing the acquisitions and then
5 selling his shares, Raben netted unlawful trading profits in excess of \$20,000. Raben also tipped two
6 other acquaintances about certain of the acquisitions, allowing them to make several thousand dollars
7 in unlawful trading profits.

8 4. By breaching duties of loyalty, trust, and confidence they owed to PwC and its clients,
9 Borchard and Raben violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act")
10 [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder.

11 JURISDICTION AND VENUE

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

14 6. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A, and 27 of the
15 Exchange Act [15 U.S.C. §§ 78u(e), 78u-1, and 78aa]. The defendants, directly or indirectly, have
16 made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities
17 of a national securities exchange in connection with the acts, practices and courses of business
18 alleged in this complaint.

19 7. Venue is proper in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. §
20 78aa], because the acts and transactions constituting the violations alleged in the Complaint occurred
21 within the Northern District of California.

22 INTRADISTRICT ASSIGNMENT

23 8. Assignment to the San Francisco Division is appropriate pursuant to Civil Local Rule 3-
24 2(c) because acts and omissions giving rise to the Commission's claims occurred, among other places
25 in this district, in San Francisco County.

26 DEFENDANTS

27 9. Gregory B. Raben, age 30, lives in Louisville, Kentucky. In 2006, Raben lived in
28 Campbell, California, and was a senior associate in PwC's Audit Group in the firm's San Jose office.

1 Raben resigned from PwC in February 2007. In sworn testimony during the Commission's
2 investigation, Raben declined to answer questions based on the protections afforded to him by the
3 Self-Incrimination Clause of the Fifth Amendment.

4 10. William Patrick Borchard, age 28, lives in Chicago, Illinois. In 2006, Borchard lived in
5 San Francisco, California, and was a senior associate in PwC's Transaction Services Group ("TS
6 Group") in the firm's San Francisco office. Borchard resigned from PwC in the summer of 2007. In
7 sworn testimony during the Commission's investigation, Borchard declined to answer questions
8 based on the protections afforded to him by the Self-Incrimination Clause of the Fifth Amendment.
9 Borchard obtained his license to practice as a CPA in September 2006.

10 RELEVANT ENTITIES

11 11. Aleris International, Inc., prior to being acquired by Texas Pacific Group in 2006, was a
12 Delaware corporation with its principal executive offices in Beachwood, Ohio. During the relevant
13 time period, Aleris International's securities were registered with the Commission pursuant to
14 Sections 12(b) and 12(g) of the Exchange Act [15 U.S.C. §§ 781(b), 781(g)] and listed on the New
15 York Stock Exchange under the symbol "ARS."

16 12. Embarcadero Technologies, Inc., prior to being acquired by Thoma Cressey Equity
17 Partners in 2007, was a Delaware corporation with its principal executive offices in San Francisco,
18 California. During the relevant time period, Embarcadero Technologies' securities were registered
19 with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 781(b)] and listed
20 on the NASDAQ National Market Systems under the symbol "EMBT."

21 13. Harrah's Entertainment, Inc. is a Delaware corporation with its principal executive offices
22 in Las Vegas, Nevada. During the relevant time period, Harrah's Entertainment's securities were
23 registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 781(b)]
24 and listed on the New York Stock Exchange under the symbol "HET." On December 19, 2006,
25 Harrah's Entertainment entered into a Definitive Agreement and Plan of Merger with Texas Pacific
26 Group and Apollo Management, L.P.

27 14. Lexar Media, Inc., prior to being acquired by Micron Technology, Inc. in 2006, was a
28 Delaware corporation with its principal executive offices in Fremont, California. During the relevant

1 time period, Lexar Media's securities were registered with the Commission pursuant to Section 12(g)
2 of the Exchange Act [15 U.S.C. § 78l(g)] and listed on the NASDAQ National Market Systems under
3 the symbol "LEXR."

4 15. M-Systems Flash Disk Pioneers, Inc., prior to being acquired by SanDisk Corporation in
5 2006, was an Israeli corporation with its principal executive offices in Kfar Saba, Israel. During the
6 relevant time period, M-Systems Flash's securities were registered with the Commission pursuant to
7 Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and listed on the NASDAQ National Market
8 Systems under the symbol "FLSH."

9 16. MatrixOne, Inc., prior to being acquired by Dassault Systemes S.A. in 2006, was a
10 Delaware corporation with its principal executive offices in Westford, Massachusetts. During the
11 relevant time period, MatrixOne's securities were registered with the Commission pursuant to
12 Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and listed on the NASDAQ National Market
13 Systems under the symbol "MONEE."

14 FACTUAL ALLEGATIONS

15 I. BACKGROUND

16 17. Borchard and Raben first met in October 2001, when both were hired into the Audit
17 Group in PwC's San Jose office. The two spent time together both professionally and personally and
18 frequently discussed the nature of their work and duties in their positions at PwC. In or about April
19 2004, PwC promoted Borchard to a senior associate position in the firm's TS Group. Although
20 Borchard no longer worked in the Audit Group, he kept in touch with Raben and continued to
21 socialize with him.

22 18. In his new position as a member of PwC's TS Group, Borchard performed financial due
23 diligence and other transaction-oriented tasks for PwC clients. Borchard's new position provided
24 him with access to highly sensitive, confidential information about PwC clients' planned acquisitions
25 of publicly-traded target companies.

26 19. Borchard was subject to strict confidentiality requirements in his new position. In
27 addition to PwC's general need to keep client information confidential, the TS Group in particular
28 operated on the principle that information concerning potential transactions required heightened care.

1 TS Group members were subject to an “information silo,” which prohibited them from sharing any
2 information whatsoever about a contemplated or pending transaction even among other PwC
3 employees or TS Group members not involved in a particular transaction. PwC also established code
4 names for any contemplated or pending transactions to preserve the target companies’ anonymity.

5 **II. RABEN TRADES ON BORCHARD’S TIPS**

6 20. In February 2006, Borchard began passing inside information to Raben that Borchard
7 learned about in his role as a member of PwC’s TS Group. Raben would then buy shares of stock in
8 the target company. While Raben kept each individual trade small, the overall scheme was
9 profitable. In total, Raben purchased \$97,181.27 of stock in six companies targeted for acquisition by
10 PwC clients, reaping total net profits of \$20,835.57, a 21.44% return.

11 *A. MatrixOne*

12 21. In February 2006, through his TS Group position, Borchard learned that MatrixOne was
13 an acquisition target of a PwC client. Borchard communicated the information to Raben who, on
14 February 23, purchased 850 shares of MatrixOne stock. On March 1, 2006, MatrixOne announced
15 that Dassault Systemes S.A. had agreed to acquire all outstanding MatrixOne stock. On March 2,
16 2006, Raben sold all 850 shares he owned in MatrixOne. Through his trading in MatrixOne, Raben
17 netted an unlawful profit of \$972.66.

18 *B. Lexar Media*

19 22. In February 2006, through his TS Group position, Borchard learned that Lexar Media was
20 an acquisition target of PwC client Micron Technology, Inc. Borchard communicated the
21 information to Raben, who, on February 28 and March 7, 2006, purchased a total of 1,100 shares of
22 Lexar Media stock. On March 8, 2006, Lexar Media announced that Micron Technology, Inc. had
23 agreed to acquire all outstanding Lexar Media stock. On March 9, 2006, Raben sold all 1,100 shares
24 he owned in Lexar Media. Through his trading in Lexar Media, Raben netted an unlawful profit of
25 \$1,892.04.

26 *C. M-Systems Flash*

27 23. In July 2006, through his TS Group position, Borchard learned that M-Systems Flash was
28 an acquisition target of PwC client SanDisk Corporation. Borchard communicated the information to

1 Raben, who, on July 13, July 14, and July 20, 2006, purchased a total of 500 shares of M-Systems
2 Flash stock. On July 30, 2006, M-Systems Flash announced that SanDisk Corporation had agreed to
3 acquire all outstanding M-Systems Flash stock. On July 31, 2006, Raben sold all 500 shares he
4 owned in M-Systems Flash. Through his trading in M-Systems Flash, Raben netted an unlawful
5 profit of \$2,096.55.

6 *D. Aleris International*

7 24. In July 2006, through his TS Group position, Borchard learned that Aleris International
8 was an acquisition target of PwC client Texas Pacific Group. Borchard communicated the
9 information to Raben, who, on July 18 and August 1, 2006, purchased a total of 560 shares of Aleris
10 International stock. On August 8, 2006, Aleris International announced that Texas Pacific Group had
11 agreed to buy all outstanding Aleris International stock. On August 8, 2006, Raben sold all 560
12 shares he owned in Aleris International. Through his trading in Aleris International, Raben netted an
13 unlawful profit of \$6,547.90.

14 *E. Embarcadero Technologies*

15 25. In August 2006, through his TS Group position, Borchard learned that Embarcadero
16 Technologies was an acquisition target of PwC client Thoma Cressey Equity Partners. Borchard
17 communicated the information to Raben, who, on August 24, 2006, purchased 3,000 shares of
18 Embarcadero Technologies stock. On September 7, 2006, Embarcadero Technologies announced
19 that Thoma Cressey Equity Partners had agreed to buy all outstanding Embarcadero Technologies
20 stock. On September 7, 2006, Raben sold all 3,000 shares he owned in Embarcadero Technologies.
21 Through his trading in Embarcadero Technologies, Raben netted an unlawful profit of \$4,997.85.

22 26. On or before August 28 and September 6, 2006, Raben told two other acquaintances about
23 the pending Embarcadero Technologies transaction. Raben did so despite knowing that the
24 information that he was conveying was material, non-public information that he received from
25 Borchard, who learned of the pending Embarcadero Technologies transaction through his TS Group
26 position. The two acquaintances bought 1,000 and 250 shares of Embarcadero Technologies and
27 reaped unlawful profits of \$1,665.95 and \$416.49, respectively.

1 *F. Harrah's Entertainment*

2 27. In September 2006, through his position at PwC, Borchard learned that Harrah's
3 Entertainment was an acquisition target of PwC client Texas Pacific Group. Borchard communicated
4 the information to Raben, who, on September 21 and September 26, 2006, purchased a total of 450
5 shares of Harrah's Entertainment stock. On October 2, 2006, Harrah's Entertainment announced a
6 joint proposal from Apollo Management and Texas Pacific Group to buy all outstanding Harrah's
7 Entertainment's stock. On October 2, 2006, Raben sold all 450 shares he owned in Harrah's
8 Entertainment. Through his trading in Harrah's Entertainment, Raben netted an unlawful profit of
9 \$4,328.58.

10 28. On or before September 22, 2006, Raben told an acquaintance about the pending Harrah's
11 Entertainment transaction. Raben did so despite knowing that the information that he was conveying
12 was material, non-public information that he received from Borchard, who had learned of the pending
13 Harrah's Entertainment transaction through his TS Group position. The acquaintance bought 100
14 shares of Harrah's Entertainment and reaped unlawful profits of \$961.91.

15 *G. Discovery of the Trading*

16 29. In November 2006, PwC first learned of Raben's potential insider trading when one of the
17 firm's audit partners noticed Raben's name on a list of traders in Embarcadero Technologies. The
18 auditor promptly contacted PwC's Office of General Counsel to investigate the matter.

19 **III. BORCHARD AND RABEN BREACHED THEIR DUTIES TO PWC AND ITS CLIENTS**

20 30. Borchard owed a duty of confidentiality to his employer, PwC, and to PwC's clients. By
21 disclosing material nonpublic information about the clients' confidential acquisition plans to Raben,
22 Borchard breached this duty.

23 31. Raben owed a duty of confidentiality to his employer, PwC, and to PwC's clients. By
24 trading on material nonpublic information about the clients' confidential acquisition plans, Raben
25 breached this duty. Raben further breached this duty when he tipped his acquaintances about the
26 Embarcadero Technologies and Harrah's Entertainment acquisitions. Raben also knew or was
27 reckless in not knowing that Borchard was acting in breach of a fiduciary duty by providing Raben
28 with confidential information learned from the TS Group.

1 **FIRST CLAIM FOR RELIEF**

2 *(Violations of Section 10(b) of the*
3 *Exchange Act and Rule 10b-5 Thereunder by Raben and Borchard)*

4 32. The Commission realleges and incorporates by this reference Paragraphs 1 through 31,
5 above.

6 33. By engaging in the conduct described above, Raben and Borchard, directly or indirectly,
7 in connection with the purchase or sale of securities, by the use of means or instrumentalities of
8 interstate commerce, or the mails, with scienter:

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

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

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

16 34. By reason of the foregoing, Raben and Borchard have violated, and unless restrained and
17 enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule
18 10b-5 [17 C.F.R. § 240.10b-5].

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Commission respectfully requests that this Court:

21 I.

22 Permanently enjoin Raben and Borchard from directly or indirectly violating Section 10(b) of
23 the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5];

24 II.

25 Order Raben and Borchard to disgorge any wrongfully obtained benefits, including
26 prejudgment interest;

27 III.

28 Order Raben and Borchard to pay civil penalties pursuant to Section 21A of the Exchange Act
[15 U.S.C. § 78u-1];

1 IV.

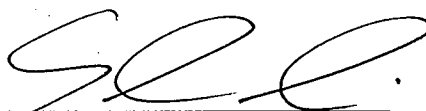
2 Retain jurisdiction of this action in accordance with the principles of equity and the Federal
3 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that
4 may be entered, or to entertain any suitable application or motion for additional relief within the
5 jurisdiction of this Court; and

6 V.

7 Grant such other relief as this Court may determine to be just and appropriate. .

8
9 DATED: January 15, 2008

Respectfully Submitted,

10 

11
12 Sahil W. Desai
13 Attorney for Plaintiff
14 SECURITIES AND EXCHANGE COMMISSION