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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MATTHEW H. KLUGER and
GARRETT D. BAUER,

Defendants.

Case No. 11-cv-01936-KSH

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

Plaintiff Securities and Exchange Commission (the "Commission"), 701 Market Street, Suite 2000, Philadelphia, Pennsylvania 19106, alleges as follows against defendants: Matthew H. Kluger, whose last known address is 2118 Twin Mill Lane, Oakton, Virginia 22124, and Garrett D. Bauer, whose last known address is 157 East 84th Street, Apartment 4, New York, New York 10028:

SUMMARY

1. This case involves a longstanding serial insider trading ring that made at least \$32 million in illegal profits. The scheme involved three participants: Matthew H. Kluger ("Kluger"), the source, a lawyer who over the course of several years repeatedly stole material nonpublic information about pending mergers and acquisitions from the computer system of his

former employer, Wilson Sonsini Goodrich & Rosati (“Wilson Sonsini”), a national firm that serves as legal adviser to many companies considering strategic alternatives; the Middleman (“Middleman”), who passed along the information (and himself traded in two instances); and Garrett D. Bauer (“Bauer”), the trader.

2. From at least December 2005 through March 2011, Kluger was employed at Wilson Sonsini as a corporate associate, with a focus on mergers and acquisitions. Beginning in or around April 2006, Kluger performed searches on Wilson Sonsini’s computer network to identify documents establishing that a client of the firm was about to participate in a merger or acquisition. Once he identified nonpublic information about the impending transactions, Kluger tipped the Middleman, who passed the material nonpublic information along to Bauer, using public telephones or prepaid disposable mobile telephones to avoid detection. Bauer then placed trades for himself, and on behalf of, and for the benefit of Kluger and the Middleman on the basis of the material non-public information. Once the merger or acquisition was announced, Bauer sold the stock, keeping the majority of the proceeds for himself, and passing a portion of the profits, in cash, to the Middleman, who distributed a portion of the profits to Kluger.

3. The parties deliberately structured their scheme this way to avoid detection – so that Kluger could share in the proceeds of the insider trading without fear of discovery for trading on information he obtained in the course of his employment and so that Bauer and the Middleman could profit without being connected to a source with access to inside information.

4. Despite their efforts at concealment, in mid-March 2011, Bauer and Kluger became concerned that the scheme would soon be uncovered by law enforcement. At that time, they immediately destroyed mobile telephones, computers, and other records, and Bauer even suggested that the Middleman should take the \$175,000 in cash proceeds from a recent

transaction and “burn it in a fire.” Kluger also told the Middleman, “as long as Mr. G [Garrett Bauer] keeps his mouth shut and I keep mine and you keep yours, I don’t think they’re gonna find enough of anything.”

5. To date, as a direct result of receiving material nonpublic information from Kluger, Bauer has traded in advance of at least nine (9) pending mergers and acquisitions involving companies that were advised by Wilson Sonsini. Bauer’s trades generated over \$31.6 million in illegal profits. Kluger, the Middleman, and Bauer shared the profits from the insider trading in advance of these nine public announcements. The Middleman and Kluger each profited by approximately \$342,000 as their share of the insider trading profits, most of which they received in cash.

6. The Middleman traded in advance of two (2) pending mergers and acquisitions involving companies for which Kluger provided material nonpublic information. He profited by at least \$693,000. The Middleman gave Kluger approximately \$160,000 in cash as his share of the profits from the insider trading scheme. Overall, as a result of this scheme, Kluger profited by at least \$500,000 from the insider trading and the Middleman profited by at least \$875,500.

7. By knowingly engaging in the conduct described in this Complaint, Kluger and Bauer violated Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) & 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 & 240.14e-3].

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) & 78u-1] to enjoin such acts, practices, and courses of

business, and to obtain disgorgement, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

9. 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].

10. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the acts, practices, and courses of business constituting the violations of the federal securities laws alleged herein occurred within the District of New Jersey.

DEFENDANTS

11. **Matthew H. Kluger**, age 50, currently resides in Oakton, Virginia. Kluger graduated from New York University School of Law in 1995 and is licensed to practice law in the State of New York and the District of Columbia. Kluger had his license to practice law in the State of New Jersey administratively revoked for failing to make certain required payments, effective September 27, 2010. Kluger is currently the president of a transportation company. From 1987 to 1991, Kluger worked at a real estate firm. During this time, Kluger and the Middleman were co-workers. From 1994 to 1998, Kluger was first a summer associate, and then a corporate associate, at a major international law firm based in New York. From 1998 to 2001, Kluger was a corporate associate at another major international law firm based in New York. From 2001 to 2004, Kluger continued to work as an attorney, including at a New Jersey law firm. Next, Kluger briefly became Associate General Counsel at an automotive group, before returning to private practice in late 2005. Beginning on December 5, 2005, and until approximately February 2011, Kluger was a corporate associate at Wilson Sonsini concentrating primarily on mergers and acquisitions.

12. **Garrett D. Bauer**, age 43, currently resides in New York, New York. He is self-employed. From October 1991 to January 1994, Bauer was employed at a registered broker-dealer. During a portion of this time, Bauer and the Middleman were co-workers. From April 2001 through August 16, 2010, Bauer was associated with several registered broker-dealers.

FACTS

A. Background of Kluger, the Middleman, and Bauer's Relationship and the Origins of the Insider Trading Scheme

13. The Middleman and Kluger have known each other since at least 1987, and they worked together from 1987 to 1991.

14. In or about 1992, Kluger enrolled at New York University School of Law.

15. From 1994 to 2001, Kluger was first a summer associate, and then an associate at two major law firms, both of which are based in New York. Kluger was in the corporate department at both firms and specialized in mergers and acquisitions.

16. While a summer associate at the first law firm, Kluger discovered that he had access to material nonpublic information about firm clients' impending merger and acquisitions, through the firm's computer network.

17. Kluger and the Middleman devised a plan to profit from the information and evade detection while doing so: After Kluger accessed information about impending mergers and acquisitions for clients that his law firm employers were advising, he would pass to the Middleman the material nonpublic information. The Middleman then enlisted a third person to place trades on behalf of Kluger and the Middleman, and for their benefit, in advance of the impending merger and acquisition announcements.

18. The Middleman convinced Bauer, his former co-worker to place the trades. The Middleman told Bauer about the scheme, Kluger's role in it, and the need to have Bauer place

trades on behalf of the Middleman and Kluger to conceal the scheme. The Middleman also told Bauer that he could trade on the information for his own benefit.

19. During this time, Bauer and the Middleman met in Atlantic City, New Jersey, with the understanding that gambling could provide a cover story for the expected cash disbursements Bauer would pay Kluger and the Middleman as their share of the insider trading profits. The conspirators did so to insulate themselves from any future inquiries about Bauer's repeated cash withdrawals.

20. The scheme continued while Kluger was an associate at the New York-based law firms.

B. Kluger Accessed Material Nonpublic Information During the Course of His Employment at Wilson Sonsini

21. After a brief period of time as an in-house counsel for an automotive group, in December 2005, Kluger returned to private practice as a corporate associate in Wilson Sonsini's Washington, D.C., office.

22. Wilson Sonsini is a law firm that advertises itself as a nationally recognized leader in mergers and acquisitions. Wilson Sonsini has seven offices in the United States and two offices in China.

23. As with his two former law firm employers, Kluger's position at the firm presented him with access to electronic documents containing material nonpublic information concerning impending mergers and acquisitions involving Wilson Sonsini's clients.

24. Wilson Sonsini owes a fiduciary duty of confidentiality to, among others, its clients, including the obligation to maintain the confidentiality of information obtained by, or provided to, the firm in connection with engagements.

25. Kluger, as an employee of Wilson Sonsini with access to confidential electronic and other files, owed a fiduciary duty, or an obligation arising from a similar relationship of trust and confidence to his employer to keep such information confidential. Kluger knew he was required to do so.

26. Kluger knew that he was not permitted to trade on the basis of the nonpublic client-related information he accessed in the course of his employment and could not provide others with this information.

27. Despite this, Kluger, the Middleman, and Bauer resumed their insider trading scheme within four months of Kluger's arrival at Wilson Sonsini.

28. Since at least April 2006, Kluger misappropriated and disclosed Wilson Sonsini's material nonpublic client information to reap personal benefit and to benefit the Middleman and Bauer in at least eleven (11) instances. In each of the eleven instances, Wilson Sonsini advised one party to the transaction, which provided Kluger with access to the nonpublic information.

29. Kluger accessed material nonpublic information through the firm's internal document management system. Kluger examined the titles of the documents stored on the system to determine whether a merger and acquisition deal was imminent. Kluger looked for board resolutions, press releases, and merger agreements because the titles of these documents revealed that specific companies were involved in impending mergers and acquisitions. Kluger often did not open the electronic documents stored on Wilson Sonsini's computer system. He believed that doing so would leave audit trails revealing that he had accessed the documents and possibly expose the scheme.

30. The transactions in which Kluger misappropriated material nonpublic information are summarized in the following chart:

<u>Target & Acquirer</u>	<u>Public Announcement Date</u>	<u>Target's Share Price Before</u>	<u>Target's Share Price After</u>	<u>Share Price Increase</u>	<u>Percent Increase in Share Price</u>
Advanced Digital Info. Corp.'s (acquired by Quantum Corp.)	5/2/2006	\$ 8.27	\$11.87	\$3.60	43.53%
Axiom Corp. (acquired by multiple entities)	5/17/2007	\$23.67	\$27.95	\$4.28	18.08%
Palm, Inc. (strategic recapitalization plan with Elevation Partners, Inc.)	6/4/2007	\$16.09	\$17.57	\$1.48	9.20%
3Com Corp. (proposed acquisition by Bain Capital LLC)	9/28/2007	\$3.68	\$ 4.94	\$1.26	34.24%
Visual Sciences (acquired by Omniture, Inc.)	10/25/2007	\$16.72	\$18.69	\$1.97	11.78%
Ansoft Corp (acquired by Ansys, Inc.)	3/31/2008	\$23.42	\$30.52	\$7.10	30.32%
Sun Microsystems, Inc. (acquired by Oracle Corp.)	4/20/2009	\$6.69	\$ 9.15	\$2.46	36.77%
Omniture, Inc. (acquired by tender offer by Adobe Systems, Inc.)	9/15/2009	\$17.33	\$21.88	\$4.56	26.29%
3Com Corp. (acquired by Hewlett-Packard)	11/11/2009	\$5.69	\$7.46	\$1.77	31.11%
McAfee, Inc. (acquired by Intel Corp.)	8/19/2010	\$29.93	\$47.01	\$17.08	57.07%
Zoran Corp. (acquired by CSR plc)	2/20/2011	\$9.32	\$10.74	\$1.42	15.24%

31. In each instance, when Kluger accessed and then misappropriated and disclosed confidential client information, for his and others' personal benefit, Kluger breached his duty of loyalty and confidentiality to his employer.

C. Kluger Tipped Material Nonpublic Information to Middleman with the Knowledge and Intent that it Would be Used to Trade Illegally

32. In each of the eleven instances where he misappropriated confidential client information from his employer, Kluger tipped the Middleman this material nonpublic information with the knowledge and intent that this information would be used for insider trading.

33. In at least nine (9) of these instances, the Middleman tipped Bauer the misappropriated material nonpublic information that Kluger gave him, knowing that Bauer would then trade on the basis of that information. The following chart summarizes Bauer's trading on the basis of material nonpublic information:

<u>Target Issuer</u>	<u>Number of Shares Purchased by Bauer</u>	<u>Range of Purchase Dates</u>	<u>Announcement Date</u>
Advanced Digital Info. Corp. (acquired by Quantum Corp.)	477,760	4/12/2006 – 4/28/2006	5/2/2006
Acxiom Corp. (acquired by multiple entities)	407,150	5/2/2007 – 5/10/2007	5/17/2007
Palm, Inc. (strategic recapitalization plan with Elevation Partners LP, which acquired 25% of Palm's stock)	400,000 (stock) 3,229 (June \$15.00 call options)	5/22/2007 – 5/31/2007	6/4/2007
3Com Corp. (proposed acquisition by Bain Capital LLC)	1,646,113	9/26/2007 – 9/27/2007	9/28/2007
Visual Sciences (acquired by Omniture, Inc.)	598,102	10/18/2007 – 10/25/2007	10/25/2007
Ansoft Corp. (acquired by Ansys, Inc.)	513,532	2/25/2008 – 3/27/2008	3/31/2008
Sun Microsystems, Inc. (acquired by Oracle Corp.)	4,489,375	4/17/2009 – 4/20/2009	4/20/2009
Omniture, Inc. (tender offer by Adobe Systems, Inc.)	1,280,307	8/24/2009 – 9/9/2009	9/15/2009
Zoran Corp. (acquired by CSR plc)	1,461,056	1/24/2011 – 2/17/2011	2/20/2011

34. In at least two (2) of the eleven instances, the Middleman kept the material nonpublic information received from Kluger for himself and did not pass it to Bauer. In those instances, he traded for himself, and on behalf of, and for the benefit of Kluger. Those two instances are summarized in the following chart:

<u>Target Issuer</u>	<u>Number of Shares Purchased by the Middleman</u>	<u>Range of Purchase Dates</u>	<u>Announcement Date</u>
3Com Corp. (acquired by Hewlett-Packard Co.)	90,000	10/8/2009 – 11/5/2009	11/11/2009
McAfee, Inc. (acquired by Intel Corp.)	32,000	7/28/2010 – 8/17/2010	8/19/2010

D. Bauer and the Middleman Traded on the Basis of the Material Nonpublic Information Kluger Gave to Them

35. Bauer used his own money to place trades for himself, and for the benefit of, Kluger and the Middleman. For each deal, Bauer alone decided how many shares he wanted to purchase for himself. The Middleman and Kluger would discuss how many shares each wanted Bauer to buy on their behalf and for their benefit. When the Middleman passed the material nonpublic information to Bauer, he would also tell Bauer how many shares to buy on behalf of, and for the benefit of, himself and Kluger. Bauer would then place the trades.

36. Since 2006, Bauer used five (5) accounts to place trades based on material nonpublic information he obtained from Kluger (“the Bauer Accounts”). Four of the accounts are held in Bauer’s name. The fifth account is not held in Bauer’s name, but, upon information and belief, Bauer exercised control over trades in Advanced Digital Information Corporation, Acxiom Corporation, Palm, Inc., 3Com Corporation, Visual Services, and Ansoft Corporation that were placed in that account. Certain of these accounts cleared trades through a company

with computer servers located in New Jersey. In addition, most of the trades in the Bauer Accounts were executed on the Nasdaq, which has computer servers located in New Jersey.

37. Since 2006, Bauer placed trades in the securities of nine (9) target issuers shortly before the public announcements of their mergers and acquisitions. Wilson Sonsini was legal adviser to one party in each of the nine transactions. The trades were made in the Bauer Accounts.

38. A summary of the trading profits from Bauer's trades is depicted in the chart below:

<u>Target Issuer</u>	<u>Number of Shares Purchased</u>	<u>Profits</u>
Advanced Digital Info. Corp. (acquired by Quantum Corp.)	477,760	\$1,724,209
Acxiom Corp. (acquired by multiple entities)	407,150	\$1,680,987
Palm, Inc. (strategic recapitalization plan with Elevation Partners LP, which acquired 25% of Palm's stock)	400,000 (stock) 3,229 (June \$15.00 call options)	\$507,492
3Com Corp. (acquired by Bain Capital LLC)	1,646,113	\$2,433,948
Visual Sciences (acquired by Omniture, Inc.)	598,102	\$758,467
Ansoft Corp. (acquired by Ansys, Inc.)	513,532	\$2,954,599
Sun Microsystems, Inc. (acquired by Oracle Corp.)	4,489,375	\$11,356,145
Omniture, Inc. (tender offer by Adobe Systems, Inc.)	1,280,307	\$8,299,691
Zoran Corp. (acquired by CSR PLC)	1,461,056	\$1,957,258
	Total:	\$31,672,796

39. Bauer's trading generated at least \$31.6 million in profits trading on the basis of the material nonpublic information that he received regarding the nine (9) transactions.

40. Bauer closed out of all his positions in the securities listed on the chart above within days of the public announcements of the deals. Bauer used some of the profits made on his illegal transactions to give the Middleman a share of the proceeds. Bauer made the in-person transfers in cash, typically using funds he obtained from Automated Teller Machine (“ATM”) withdrawals. After receiving the cash from Bauer, the Middleman split the profits with Kluger. On several occasions, Kluger drove from Virginia to New York in order to receive his cash in person from the Middleman.

41. For each of these nine (9) transactions, Wilson Sonsini and Kluger had possession of material nonpublic information relating to the transaction prior to the trades placed by Bauer.

42. With regard to the Adobe/Omniture transaction, substantial steps to complete the tender offer had been taken by the time Bauer began to acquire shares of Omniture. By August 24, 2009, Bauer’s first purchase, Adobe and Omniture had executed mutual nondisclosure agreements, Adobe had delivered a non-binding letter of interest to purchase Omniture for \$20 per share in cash, Omniture had engaged Wilson Sonsini and an investment bank to act as advisors, and Adobe was conducting due diligence on Omniture.

43. In late 2009, the Middleman placed trades in two of his personal brokerage accounts based on the material nonpublic information he received from Kluger shortly before the public announcements of the mergers and acquisitions. Wilson Sonsini was legal adviser to one party in each transaction. The two transactions are:

<u>Target Issuer</u>	<u>Date of Announcement</u>	<u>Middleman’s Profits</u>
3Com Corp. (acquired by Hewlett-Packard Co.)	11/11/2009	\$199,248
McAfee, Inc. (acquired by Intel Corp.)	8/19/2010	\$494,182
	TOTAL:	\$693,430

44. After each of the above Wilson Sonsini-advised deals was announced, the Middleman sold his securities. He then provided a portion of the proceeds to Kluger in cash. In connection with the nine transactions on which Bauer traded, Bauer distributed approximately \$685,000 in cash to the Middleman to be shared between the Middleman and Kluger. Of the approximately \$693,000 in profits the Middleman earned on the two transactions in which he traded, he distributed \$160,000 in cash to Kluger.

45. As a result, the Middleman profited by at least \$875,500 from his and Bauer's trading gains, and Kluger has profited by at least \$500,000.

46. In approximately March 2011, Kluger left Wilson Sonsini. Immediately thereafter, the scheme came to an end, because Kluger no longer had access to material nonpublic information about impending mergers and acquisitions of Wilson Sonsini's clients.

E. Kluger, Bauer, and the Middleman Plotted to Conceal their Fraudulent Scheme

47. Kluger, the Middleman, and Bauer carefully designed the scheme to pass material nonpublic information to Bauer so he could trade while avoiding detection.

48. Kluger, the Middleman, and Bauer also formulated procedures by which they could minimize or eliminate records of communications, and the transfers of funds between the members of the scheme.

49. For example, when Kluger, the Middleman and Bauer originally hatched their plan in the mid-1990s, Bauer and the Middleman met in Atlantic City, New Jersey, using gambling as a cover story to explain Bauer's cash withdrawals that were to be used to distribute the illegal profits to the Middleman and Kluger.

50. Throughout the scheme, in an attempt to make tracing their communications difficult, if not impossible, Kluger and the Middleman communicated with each other using public telephones and prepaid disposable mobile telephones.

51. The Middleman and Bauer also took steps to avoid detection in communicating about the scheme. Specifically, they agreed not to discuss the impending mergers and acquisitions of Wilson Sonsini's clients in e-mails, and they, too, used only prepaid disposable mobile telephones to communicate about the impending mergers and acquisitions of Wilson Sonsini clients.

52. All three participants purchased their disposable mobile telephones with cash in order to ensure that there would be no record of the purchases.

53. In addition, the Middleman took steps to ensure that Kluger's and Bauer's prepaid disposable mobile telephone numbers were not discovered. For example, the Middleman saved only two telephone numbers in his disposable telephone – Bauer's and Kluger's disposable mobile telephone numbers.

54. The trio also changed disposable prepaid mobile telephones on several occasions during the scheme, each time destroying the previous telephone and purchasing new telephones with new telephone numbers.

55. In mid-March 2011, Kluger and Bauer became concerned that the scheme had been exposed and, at that time, took additional steps to destroy any records of their communications and other activity that could demonstrate their involvement in the illegal insider trading scheme.

56. Kluger told the Middleman in mid-March 2011 that he destroyed and then threw away his prepaid disposable mobile telephone, his hard drive, and an iPhone he used to check the stock quotes of the companies he tipped.

57. Bauer told the Middleman that he also destroyed the disposable mobile telephone he had been using, threw the pieces in separate trash cans at a McDonald's and then purchased a new prepaid disposable mobile telephone.

58. When Bauer learned in March 2011 that the Middleman had yet to distribute the \$175,000 in cash that Bauer had given to him as proceeds from the insider trading in the Zoran/CSR transaction, he told the Middleman to burn the \$175,000 because Bauer's fingerprints were on the money.

59. Kluger and Bauer also took steps to attempt to ensure that none of the members of the scheme would expose the scheme to law enforcement authorities. In one telephone call on or about March 18, 2011, Bauer told the Middleman, "There is a good chance they're gonna eventually catch on, but if we all say nothing about each other, that's the only thing we can do, and that's the only way people can get caught. Because they have nothing until someone says something."

60. In another telephone call with the Middleman, Kluger stated that the transfers of money out of the accounts were not sufficient for the criminal authorities to take the case to a jury without evidence of telephone contact. Kluger said, "They don't like to go to court without phone calls, without a trail, without a – this happened at this time, that happened at – I mean look at all these cases.... They don't have any of that here." He further emphasized that he would not cooperate if approached by law enforcement because "they don't give the source the good deal."

61. Kluger and Bauer also took steps to conceal their communications and other activities during the fraudulent scheme. Their destruction of evidence and attempt to conceal the actual scheme from being disclosed demonstrate that Kluger and Bauer understood that their actions were illegal.

F. Bauer Breached a Derivative Duty, Assumed as a Tippee, to Maintain the Confidentiality of the Material Nonpublic Information to Which Kluger Had Access at Wilson Sonsini

62. Kluger breached a duty to Wilson Sonsini to keep confidential material nonpublic information about its clients.

63. In each instance of insider trading, Kluger knew or was reckless in not knowing that the information that he misappropriated from Wilson Sonsini was material and nonpublic and that he was given access to that information with the expectation that he owed, and would abide by, a fiduciary duty or similar duty of trust and confidence.

64. The steps that Kluger took to hide his misappropriation of Wilson Sonsini's client information are strong evidence that he knew his actions were in breach of his fiduciary or other similar duty of trust and confidence.

65. In each instance, when Kluger tipped the Middleman, it created a derivative duty in the Middleman to keep confidential the same material nonpublic information about Wilson Sonsini's clients. When the Middleman passed the material nonpublic information he received from Kluger to Bauer, as was the scheme that the parties originally set up, it created a derivative duty in Bauer. Given the nature of the scheme – and indeed its sole purpose – Kluger knew it was reasonably foreseeable that communicating material nonpublic information to the Middleman would likely result in improper trading. Given that the parties conspired from the outset for Kluger to misappropriate material nonpublic information regarding impending

mergers and acquisitions from his employer, Bauer knew or should have known that Kluger had access to material nonpublic information, that Kluger was under a duty to keep it confidential, that Kluger's disclosure of the information to the Middleman was in violation of that duty, and that Bauer should not trade on the basis of the information.

66. For these same reasons, Bauer knew or should have known Kluger was breaching his duty to Wilson Sonsini because of, among other reasons, the complexity surrounding the transfer of the material nonpublic information – from Kluger to the Middleman to Bauer – and the use of anonymous disposable phones were for the sole purpose of hiding any contact between Bauer, as the trader, and Kluger, as the source of the material nonpublic information.

67. Similarly, because Bauer knew the material nonpublic information about the impending Omniture tender offer came from Kluger, who worked for the legal advisor to Omniture, Bauer also knew or had reason to know that the information he received, either directly or indirectly, about the pending Omniture merger was material and nonpublic and that he was prohibited from causing the purchase or sale of the security to be sought by the tender offer.

68. The additional fact that a Middleman was used to convey the material nonpublic information and then to pass back the cash proceeds of the insider trading profits shows that Bauer knew or should have known that he should not be trading on the information. Indeed, during a telephone conversation between the Middleman and Bauer, Bauer acknowledged that if the criminal authorities identified Kluger, "it would be a disaster for us."

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against All Defendants)

69. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 68, inclusive, as if they were fully set forth herein.

70. At the time of each illegal trade identified herein, the misappropriated information was nonpublic, held by Wilson Sonsini as confidential information related to client representations.

71. In each instance, the misappropriated information was material – it would be important to a reasonable investor in making his or her investment decision, and, indeed, it was important to Kluger, when misappropriating the information, and to Bauer, when making the investment decisions. There is a substantial likelihood that the disclosure of the misappropriated information would have been viewed by a reasonable investor as having significantly altered the total mix of information available to investors.

72. At all times relevant to this Complaint, Kluger and Bauer acted knowingly and/or recklessly.

73. Defendants Kluger and Bauer, by engaging in the conduct described above, from at least December 2005 through March 2011, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- 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 light of the circumstances under which they were made, not misleading; and/or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

74. By engaging in the foregoing conduct Kluger and Bauer violated 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.

SECOND CLAIM FOR RELIEF

Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder (Against All Defendants)

75. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 74, inclusive, as if they were fully set forth herein.

76. Wilson Sonsini was the legal adviser to Omniture in connection with Adobe's tender offer for the securities of Omniture.

77. By August 24, 2009, the date on which Bauer began his illegal trading in Omniture securities, one or more substantial steps had been taken to commence the tender offer for Omniture securities.

78. Kluger, as a lawyer at Wilson Sonsini, knew or should have known that the information held by Wilson Sonsini regarding the Omniture tender offer had been acquired, directly or indirectly, from the offering entities, the target entities, and/or their advisers or representatives, and that such information was material and nonpublic. Under the law, Kluger was required to abstain from communicating this information to the Middleman when it was reasonably foreseeable that the Middleman would communicate this information to Bauer who would then use the information to unlawfully trade in Omniture securities.

79. When Kluger tipped the Middleman about the pending tender offer involving Omniture, Kluger was in possession of material nonpublic information regarding the tender offer. When the Middleman tipped Bauer about the pending tender offer involving Omniture, he was in possession of the same material nonpublic information.

80. Because Bauer knew or had reason to know that the material nonpublic information about the Omniture tender offer came from Kluger, who worked for the legal adviser to Omniture, Bauer knew or had reason to know that the information he received, directly or indirectly, about the pending merger was material and nonpublic and he was prohibited from causing the purchase or sale of the security to be sought by the tender offer.

81. By reason of the foregoing, Kluger and Bauer violated 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court issue findings of fact and conclusions of law that the Defendants committed the violations charged and alleged herein and issue orders as follows:

I.

Permanently restraining and enjoining Kluger and Bauer from, directly or indirectly, engaging in conduct 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] and from engaging in conduct 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];

II.

Ordering Kluger and Bauer to disgorge, jointly and severally, the unlawful trading profits derived from the activities set forth in this Complaint, together with prejudgment interest thereon;

III.

Ordering Kluger and Bauer to pay a civil penalty up to three times the profits made pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1], or in the alternative, Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

IV.

Granting such other and further relief as this Court may deem just, equitable, and necessary.

Respectfully submitted,

BY: s/ Michael J. Rinaldi

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Certification

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged in the foregoing Complaint is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

By: s/Michael J. Rinaldi
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