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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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<b>U. S. SECURITIES AND EXCHANGE</b>		)
<b>COMMISSION,</b>		)
		)
	<b>Plaintiff,</b>	)
		)
<b>v.</b>		) <b>Civil Action No.</b>
		)
<b>CLAY CAPITAL MANAGEMENT, LLC,</b>		)
<b>JAMES F. TURNER II,</b>		)
<b>SCOTT A. VOLLMAR,</b>		)
<b>SCOTT A. ROBARGE, and</b>		)
<b>MARK A. DURBIN,</b>		)
		)
	<b>Defendants.</b>	)
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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff U.S. Securities and Exchange Commission (“Commission”), 175 W. Jackson Boulevard, Suite 900, Chicago, IL 60604, brings this action against Defendants Clay Capital Management, LLC (“Clay Capital”), 47 Maple Street, Suite 202, Summit, New Jersey 07901, James F. Turner II (“Turner”), 319 Sixth Street, Traverse City, Michigan 49684, Scott A. Vollmar (“Vollmar”), 4678 Mitchell Loop Road, Florence, Oregon 97439, Scott A. Robarge (“Robarge”), 1818 Eisenhower Drive, Louisville, Colorado 80027, and Mark A. Durbin

(“Durbin”), 3861 Fairhaven Drive, West Linn, Oregon 97068, (collectively, the “Defendants”) and alleges as follows:

### **SUMMARY**

1. This case involves an unlawful insider trading scheme perpetrated by Turner, his New Jersey hedge fund company, his family, his friends, and others during the first half of 2008. The sources of the inside information were Vollmar, a director of business development at Autodesk, Inc. (“Autodesk”), and Robarge, a recruiting technology manager at Salesforce.com, Inc. (“Salesforce”). The inside information that Defendants illegally passed to one another and traded on concerned market moving events, including a tender offer and quarterly earnings announcements. In total, Defendants’ scheme generated nearly \$3.9 million in illicit gains.

2. The unlawful trading involved inside information concerning three separate companies: Moldflow Corporation (“Moldflow”), Autodesk and Salesforce. Specifically:

- a. Between January and May 2008, Vollmar tipped Turner, his brother-in-law, and Durbin, his neighbor, with material nonpublic information about Autodesk’s planned tender offer for Moldflow in advance of a public merger announcement on May 1, 2008. Turner traded on the information in his personal accounts, his family members’ accounts and the account of his hedge fund, Clay Capital Fund, LP (“Clay Fund”). Turner tipped Robarge about the merger and also recommended that several other friends and family members purchase Moldflow stock. Durbin and Robarge traded on the information in their personal accounts. Robarge also recommended that one of his friends purchase Moldflow stock.
- b. In February 2008, Vollmar tipped Turner with material nonpublic information about Autodesk’s fourth quarter 2008 earnings in advance of

Autodesk's public earnings announcement on February 26, 2008. Turner traded on the information in his personal accounts, his family members' accounts and the Clay Fund's account. Turner again tipped Robarge, who traded on that information in his personal accounts. Turner also recommended that several other friends and family members sell short Autodesk stock and purchase Autodesk put options.

c. In February 2008, Robarge tipped Turner with material nonpublic information about Salesforce's fourth quarter 2008 performance in advance of Salesforce's public earnings announcement on February 27, 2008. Turner traded on the information in his personal accounts, his family members' accounts and the Clay Fund's account. Turner also recommended that several other friends and family members, including Vollmar, purchase Salesforce stock and call options. Robarge likewise traded on the information in his own account and also recommended that one of his friends purchase Salesforce securities.

3. As a result of their insider trading, Clay Capital, Turner and Vollmar violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3]. Robarge and Durbin violated and, unless enjoined, will continue to violate Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

## **JURISDICTION AND VENUE**

4. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. §§ 77t(b)] and Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78u-1] seeking permanent injunctions, disgorgement of trading profits, prejudgment interest, and civil penalties against each of the Defendants.

5. The Court has jurisdiction over this action pursuant to Sections 20(b) and 22 of the Securities Act [15 U.S.C. §§ 77t(b) and 77v] and Sections 21(d), 21(e), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1 and 78aa]. The Defendants have, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices and courses of business alleged in this Complaint.

6. Venue is proper in this Court pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the acts, transactions and courses of business constituting the violations alleged in this Complaint occurred within the jurisdiction of the United States District Court for the District of New Jersey.

## **DEFENDANTS**

7. **Clay Capital Management, LLC** is a Delaware limited liability company with its principal office in Summit, New Jersey. Turner and three partners founded Clay Capital in June 2006 in order to start a hedge fund that would utilize Turner's investment prowess. Turner and his three partners own Clay Capital in equal shares. Clay Capital operated the Clay Fund from January 2007 to December 2010. While the investments of Turner and his partners remain in the Clay Fund as its only assets, in December 2010 the Clay Fund liquidated and distributed the assets of its other investors.

8. **James F. Turner II** is 44 years old and resides in Traverse City, Michigan. Turner has been a principal and the Chief Investment Officer of Clay Capital from its inception. From 1994 to 2003, Turner worked as a securities analyst and portfolio manager for two financial services companies and a hedge fund.

9. **Scott A. Vollmar** is 44 years old and resides in Florence, Oregon. He was employed by Autodesk from October 1997 to June 2009. From November 2007 to June 2009, Vollmar served as a director of business development for Autodesk and worked on Autodesk's mergers and acquisitions. Vollmar is currently unemployed.

10. **Scott A. Robarge** is 43 years old and resides in Louisville, Colorado. From November 2003 to May 2010, he worked as a recruiter and recruiting technology manager for Salesforce. In March 2008, Robarge started a business developing recruiting software called Oak Avenue, LLC ("Oak Avenue"). Turner was a primary investor in Oak Avenue. Robarge is currently self-employed as a corporate recruiter.

11. **Mark A. Durbin** is 49 years old and resides in West Linn, Oregon. Durbin and Vollmar own houses next-door to each other in West Linn, Oregon.

#### **RELEVANT ENTITIES**

12. Moldflow Corporation was a Delaware corporation with its headquarters in Framingham, Massachusetts. Moldflow developed and marketed plastics simulation software. On May 1, 2008, Autodesk and Moldflow announced that Autodesk would acquire Moldflow through a tender offer. Until its acquisition by Autodesk on June 25, 2008, Moldflow's stock was publicly traded on the NASDAQ under the symbol MFLO.

13. Autodesk, Inc. is a Delaware corporation with its headquarters in San Rafael, California. Autodesk operates as a design software and service company. Its stock trades on the NASDAQ under the symbol ADSK.

14. Salesforce.com, Inc. is a Delaware corporation with its headquarters in San Francisco, California. Salesforce provides customer and collaboration relationship management services. Its stock trades on the New York Stock Exchange under the symbol CRM.

## FACTS

### **I. Background of the Defendants' Relationships and the Origins of Their Insider Trading**

15. Turner worked in the investment industry for more than ten years prior to starting Clay Capital, including as a securities analyst and a portfolio manager.

16. Turner formed Clay Capital in 2006 with three partners. In January 2007, Clay Capital started the Clay Fund, a start-up hedge fund. Turner and his partners started Clay Capital and the Clay Fund to take advantage of Turner's investment prowess, and Turner made all investment decisions for the Clay Fund.

17. The initial assets of the Clay Fund consisted almost entirely of money contributed by the partners and their friends and family, including at least \$1 million invested by Turner. According to its marketing materials, the Clay Fund was intended to be a "catalyst-driven" hedge fund with "a consistent informational advantage through the use of industry and channel checks."

18. Vollmar and Turner attended business school together and have been close friends and family members for many years. They are married to sisters, and Vollmar was the best man at Turner's wedding. Vollmar and Turner regularly discussed investments and invested in the securities of some of the same companies. At all relevant times, Turner knew that Vollmar

worked for Autodesk. Similarly, at all relevant times, Vollmar knew that Turner was the Chief Investment Officer of his own hedge fund company.

19. Robarge and Turner attended college together and have been close friends for many years. Robarge and Turner regularly discussed investments and invested in the securities of some of the same companies. At all relevant times, Turner knew that Robarge worked for Salesforce. Similarly, at all relevant times, Robarge knew that Turner was the Chief Investment Officer of his own hedge fund company. Robarge also knew that Turner's brother-in-law worked for Autodesk.

20. Between April 2006 and October 2007, Vollmar worked for Autodesk in its Paris, France office as a director of finance for Southern Europe. In May 2007, Vollmar agreed to transfer to Autodesk's Lake Oswego, Oregon office and become a director of business development. In his new position, Vollmar focused on Autodesk's mergers and acquisitions.

21. In September 2007, Vollmar learned that Autodesk was interested in potentially acquiring a company. Vollmar called Turner on September 24, 2007. During that conversation or others around that time, Vollmar told Turner about the potential acquisition. On September 25, 2007, Turner began buying that company's stock for the Clay Fund, and in October 2007, he began buying the company's call options for the Clay Fund.

22. In November 2007, Vollmar started his new position and joined a team of Autodesk employees who were working on the potential acquisition. Vollmar provided Turner with updates about the potential acquisition as Autodesk's discussions with the company progressed. By November 30, 2007, Turner had made the company's stock and call options the largest positions in the Clay Fund and in several of his personal accounts.

23. In early 2008, Autodesk's discussions with the company broke down and Turner began selling the company's securities.

## **II. Defendants' Insider Trading in Moldflow Securities**

### **A. Autodesk's Tender Offer for Moldflow**

24. Vollmar was heavily involved in the acquisition discussions between Autodesk and Moldflow, which began on December 19, 2007, when Autodesk contacted Moldflow to express interest in acquiring it.

25. Vollmar knew that information about the acquisition was confidential. Indeed, Vollmar sent a copy of Autodesk's non-disclosure agreement to Moldflow on December 20, 2007, and Vollmar signed the agreement on behalf of Autodesk. Vollmar and other Autodesk employees used a code name when discussing Moldflow and took steps to limit the number of Autodesk employees who were aware of the discussions.

26. On Thursday, January 24, 2008, Vollmar attended a meeting with representatives from Moldflow during which the parties discussed the potential acquisition. Following the meeting, Vollmar told a co-worker that he could see the deal happening fast.

27. That night, Vollmar called Turner's home. During that conversation or others around that time, Vollmar told Turner material nonpublic information about the potential acquisition.

28. The next morning, Turner added Moldflow's upcoming earnings announcement to his electronic calendar. Turner began purchasing Moldflow stock in the Clay Fund's account on January 28, 2008 and in his personal account on February 1, 2008. Turner had not previously purchased Moldflow stock.

29. On February 5 and February 6, 2008, Vollmar traveled to Moldflow's offices to discuss Moldflow's products and technology. While there, Vollmar told a co-worker that he was highly confident that Autodesk's objective was to develop a term sheet and "no shop" agreement for the prospective acquisition within the next couple of weeks.

30. Vollmar called Turner twice on February 5 and February 6, 2008 while attending the meetings. During those conversations or others around that time, Vollmar provided Turner with material nonpublic information regarding the potential acquisition.

31. Turner began purchasing Moldflow stock in a second personal account on February 5 and in his children's, parents' and sister's accounts on February 6.

32. Vollmar visited Turner's home in Michigan from February 11 to February 13, 2008 and received emails regarding the Moldflow acquisition while there.

33. On February 26, 2008, when Moldflow stock was trading around \$16.80 per share, a Clay Capital partner stated in an email message that Moldflow "could be a nice fit for a larger player" and provided a price target of \$21.

34. On Thursday, March 20, 2008, Autodesk sent Moldflow a proposal offering to acquire the company for \$21 per share. During the next few days, Vollmar participated in conference calls with Moldflow representatives to discuss the terms of a potential merger agreement.

35. On Monday, March 24, 2008, an employee in Autodesk's legal department sent an email to Vollmar and other members of the Moldflow team reminding them that all information related to the transaction was "strictly confidential."

36. On Friday, March 28, 2008, Autodesk and Moldflow finalized a term sheet reflecting an agreed price of \$22 per share.

37. On Saturday, March 29, 2008, Vollmar called Turner. During that conversation or others around that time, Vollmar provided Turner with material nonpublic information regarding the pending acquisition.

38. Over the next three business days, Turner purchased an additional 43,685 shares of Moldflow stock for his personal accounts and 40,000 shares of Moldflow stock for the Clay Fund.

39. After the market closed on May 1, 2008, Autodesk announced that it had signed a definitive agreement to acquire Moldflow for \$22 per share through a cash tender offer. The next day, Moldflow's stock closed at \$21.82, an increase of 11% from the previous day's closing price of \$19.61.

**B. Turner's Insider Trading**

40. Turner controlled and made investment decisions for at least twelve accounts: one account for the Clay Fund; seven accounts for him, his wife and his children; two accounts for his parents; one account for his sister; and one account for Oak Avenue. Between January 28 and April 30, 2008, Turner directed the purchase of at least 374,161 shares of Moldflow stock at a cost of more than \$6.2 million in these accounts. These shares represented more than 3% of the total outstanding shares of Moldflow stock.

41. The following chart summarizes Turner's 2008 purchases of Moldflow stock:

Accounts	Dates of Purchases (2008)	Total Moldflow Shares Purchased	Total Costs	Total Gains
Clay Fund's Account	1/28 – 4/30	138,061	\$2,349,493	\$658,255
Turner's Seven Accounts	2/1 – 4/30	216,600	\$3,584,326	\$1,139,915
Turner's Parents Two Accounts	2/6 – 4/22	7,500	\$126,379	\$37,153
Turner's Sister's Account	2/6 – 4/22	6,000	\$101,745	\$29,074
Oak Avenue's Account	3/24 – 4/3	6,000	\$104,016	\$26,651
Totals		374,161	\$6,265,959	\$1,891,048

42. Turner purchased the shares of Moldflow stock on the basis of the material nonpublic information that he received from Vollmar.

43. Turner invested more than 53% of the Clay Fund's assets in Moldflow stock. He did this even though the Clay Fund's marketing materials stated that it "generally" would invest no more than 10% of its assets in a single security. Turner had not previously invested 50% or more of the Clay Fund's assets in any other security.

44. By April 30, 2008, Turner had invested more than 80% of the funds in each of his immediate family's seven accounts in Moldflow stock. In total, Turner's immediate family held more than \$4.2 million worth of Moldflow stock, including over \$1.3 million on margin.

45. By April 30, 2008, Turner had invested 100% of the funds in his parents', his sister's and Oak Avenue's accounts in Moldflow stock. In total, these accounts held more than \$385,000 worth of Moldflow stock, including over \$170,000 on margin.

### **C. Turner's Tipping and Recommendations**

46. In or around February 2008, Turner recommended buying Moldflow stock to his three partners at Clay Capital. Turner's partners often purchased the same investments for their personal accounts as Turner purchased for the Clay Fund, and they relied on Turner for

investment advice. Turner's partners purchased Moldflow stock based on Turner's recommendation.

47. Turner spoke with one of his brothers-in-law, a different individual than Vollmar, by telephone on February 14, 2008. During that conversation or others around that time, Turner recommended Moldflow stock. Turner's brother-in-law knew that Turner worked for a hedge fund and often sought investment advice from Turner. Based on Turner's recommendation, Turner's brother-in-law began buying Moldflow stock on February 15, 2008.

48. Turner called Robarge on Friday, February 15, 2008. During that conversation or others around that time, Turner provided Robarge with material nonpublic information about Autodesk's pending acquisition of Moldflow. Turner told Robarge, among other things, that Moldflow was a takeover target and that Autodesk would be the acquiring company. Turner had previously told Robarge that one of his brothers-in-law worked for Autodesk, and Robarge understood that Turner's statements were based on nonpublic information from his brother-in-law.

49. On February 19, 2008, Robarge began purchasing shares of Moldflow stock in two of his personal accounts. Robarge made these purchases on the basis of the material nonpublic information that he received from Turner. Robarge had not previously bought Moldflow stock.

50. Robarge recommended Moldflow stock to one of his friends on the basis of the material nonpublic information that he received from Turner. Robarge spoke with his friend by telephone on February 28, 2008. During that conversation or others around that time, Robarge told his friend that Moldflow was a takeover target and that Autodesk would be the acquiring

company. On February 29, 2008, Robarge's friend began buying Moldflow stock. He had not previously purchased Moldflow stock.

51. Turner spoke with another one of his friends by telephone twice on April 29, 2008. During those conversations or others around that time, Turner recommended buying Moldflow stock. Turner's friend knew that Turner worked for a hedge fund and often sought investment advice from Turner. Based on Turner's recommendation, Turner's friend began buying shares of Moldflow stock on April 29, 2008.

52. The following chart summarizes the trading by Turner's partners, Turner's brother-in-law, Robarge, Robarge's friend and Turner's friend in Moldflow stock:

Accounts	Dates of Purchases (2008)	Total Moldflow Shares Purchased	Total Costs	Total Gains
Clay Capital Partner 1's Two Accounts	2/1 – 4/25	33,150	\$577,260	\$144,997
Clay Capital Partner 2's Two Accounts	2/6 – 4/29	7,075	\$124,119	\$29,941
Turner's Brother-in-Law's Two Accounts	2/15 – 4/22	3,597	\$61,172	\$17,315
Clay Capital Partner 3's Account	2/19 – 4/28	17,900	\$332,710	\$56,593
Robarge's Two Accounts	2/19 – 4/4	21,173	\$364,427	\$97,367
Robarge's Friend's Two Accounts	2/29 – 4/17	9,716	\$166,026	\$45,890
Turner's Friend's Two Accounts	4/29 – 4/30	6,000	\$117,528	\$13,253
Totals		98,611	\$1,743,242	\$405,356

#### **D. Durbin's Insider Trading**

53. Vollmar moved into the house next-door to Durbin in October 2007. Around that time, Vollmar told Durbin that he worked in mergers and acquisitions for Autodesk.

54. In April 2008, Vollmar provided Durbin with material nonpublic information about Autodesk's pending acquisition of Moldflow. Among other things, Vollmar told Durbin that Autodesk would acquire Moldflow and advised him of the price and timing of the tender offer.

55. Durbin purchased 3,600 shares of Moldflow stock at a cost of \$70,036 between April 28 and May 1, 2008. The day after Autodesk's public announcement of the tender offer, Durbin sold the shares for a gain of \$8,391.

56. Durbin purchased the shares of Moldflow stock on the basis of the material nonpublic information that he received from Vollmar.

57. Weeks after Autodesk publicly announced the tender offer for Moldflow, Vollmar asked Durbin whether he had purchased Moldflow stock. Vollmar also told Durbin that he had provided information about Autodesk's pending tender offer for Moldflow to his brother-in-law and that his brother-in-law had invested heavily in Moldflow stock.

58. Subsequently, Vollmar told Durbin that he should use a cover story in the event that he was asked about his trading in Moldflow stock. Specifically, Vollmar told Durbin to say that he overheard Vollmar discussing his travel plans and decided to purchase Moldflow stock after researching several companies headquartered near Vollmar's destination.

### **III. Defendants' Insider Trading in Autodesk Securities**

#### **A. Autodesk's Fourth Quarter 2008 Earnings Announcement**

59. On January 15, 2008, an Autodesk finance manager sent Vollmar messages reflecting confidential information about Vollmar's division's revenues and budget. The messages indicated that the division likely would exceed its revenue targets for the fourth quarter ending January 31, 2008.

60. The next morning, Vollmar called Turner. During that conversation or others around that time, Vollmar provided Turner with material nonpublic information about Autodesk's anticipated higher earnings.

61. That evening, a Clay Capital partner stated in an email that Autodesk likely would beat consensus revenue for the quarter and raise its earnings guidance. Nevertheless, Turner and Clay Capital did not trade in Autodesk stock at the time.

62. On Saturday, February 16, 2008, the same finance manager sent a message to Vollmar indicating that Autodesk's outlook had changed, namely that its operating expenses were significantly higher than expected for the quarter ended January 31, 2008 and that it would be challenging for the company to meet its targets for the next two quarters. The message also stated that Autodesk was cutting 3% from its budget for the next two quarters.

63. Twenty minutes after receiving the email, Vollmar called Turner. During that conversation or others around that time, Vollmar provided Turner with material nonpublic information about the negative outlook for Autodesk's earnings.

64. The next business day, as described below, Turner began short selling Autodesk stock in the Clay Fund's account, and a Clay Capital partner stated in an email that Clay Capital was shorting Autodesk in advance of its quarterly earnings announcement because the firm expected Autodesk to lower its earnings guidance.

65. On February 26, 2008, after the market closed, Autodesk announced its earnings for the fourth quarter of 2008 and lowered its earnings guidance for the next quarter and the full year. The next day, Autodesk's stock price fell more than 15% from \$39.10 to \$32.99.

**B. Turner's Insider Trading**

66. Between February 19 and February 26, 2008, Turner directed the purchase of put options on Autodesk stock for the Clay Fund, his personal accounts, his parents' accounts and his sister's account. He also sold short Autodesk stock for the Clay Fund.

67. Turner traded the Autodesk securities on the basis of the material nonpublic information that he received from Vollmar.

68. The following chart summarizes Turner's trading of Autodesk securities:

Accounts	Dates of Purchases (2008)	Total Shares Shorted	Total Put Options Purchased	Total Costs	Total Gains
Clay Fund's Account	2/19 - 2/25	20,000	600	\$780,189	\$295,022
Turner's Three Accounts	2/22 - 2/26	0	1,600	\$227,352	\$492,323
Turner's Parents' Account	2/25 - 2/26	0	50	\$10,180	\$22,824
Turner's Sister's Account	2/25 - 2/26	0	50	\$10,180	\$23,773
Totals		20,000	2,300	\$1,027,901	\$833,942

**C. Turner's Tipping and Recommendations**

69. Turner and Robarge spoke by telephone on the morning of February 21, 2008. During that conversation or others around that time, Turner provided Robarge with material nonpublic information about Autodesk's earnings. Turner told Robarge, among other things, that Autodesk would come up short when it reported earnings later that month. Turner had previously told Robarge that his brother-in-law worked for Autodesk, and Robarge understood that Turner's statements were based on nonpublic information from his brother-in-law.

70. On the basis of the confidential information that he received from Turner, Robarge began buying put options on Autodesk stock on the afternoon of February 21, 2008.

71. After Vollmar tipped him about Autodesk's negative outlook, Turner recommended buying Autodesk put options and shorting Autodesk stock to his three partners at Clay Capital and the same friend who would later purchase Moldflow stock based on the information he received from Turner. Turner's partners and his friend often relied on Turner for investment advice. Between February 21 and February 26, 2008, Turner's partners and his friend purchased Autodesk put options and sold short Autodesk stock based on Turner's recommendations.

72. The following chart summarizes the trading by Robarge, the Clay Capital partners and Turner's friend in Autodesk stock and put options:

Account	Dates of Purchases (2008)	Total Shares Shorted	Total Put Options Purchased	Total Cost	Total Gains
Robarge's Two Accounts	2/21 – 2/26	0	145	\$23,264	\$48,457
Turner's Friend's Two Accounts	2/25 - 2/26	0	450	\$47,864	\$111,278
Clay Capital Partner 1's Account	2/25 - 2/26	0	320	\$43,838	\$93,680
Clay Capital Partner 2's Account	2/26	200	6	\$8,306	\$3,177
Clay Capital Partner 3's Account	2/26	0	30	\$3,492	\$6,975
Totals		200	951	\$126,764	\$263,567

#### **IV. Defendants' Insider Trading in Salesforce Securities**

##### **A. Salesforce's Fourth Quarter 2008 Earnings Announcement**

73. In February 2008, Robarge obtained material nonpublic information regarding Salesforce's new customers, sales and hiring by accessing internal databases and discussing Salesforce's performance with his supervisor and other employees. The confidential databases

contained aggregate raw sales data about Salesforce's current and prospective customers and allowed Robarge to compare Salesforce's projected sales data to its actual sales results. Robarge asked his supervisor and other Salesforce employees whether Salesforce had met its goals for the fourth quarter ended January 31, 2008. Robarge's supervisor and the other employees told him that Salesforce had a "blow out" quarter and that the sales staff was celebrating.

74. Robarge was familiar with Salesforce's insider trading policy which prohibited employees from: (i) disclosing material nonpublic information; (ii) trading in Salesforce securities while in possession of material nonpublic information; and (iii) trading Salesforce securities during restricted periods. In December 2007, Robarge received a notice from Salesforce stating that Salesforce employees were prohibited from trading the company's securities between January 1 and March 3, 2008.

75. On February 27, 2008, after the market closed, Salesforce announced its earnings for the fourth quarter of 2008. The next day, Salesforce's stock price increased more than 17% from \$52.62 to \$61.66.

**B. Trading of Salesforce Securities**

76. In violation of Salesforce's insider trading policy, Robarge purchased call options on Salesforce stock between February 5 and February 27, 2008. Robarge purchased the call options on the basis of material nonpublic information that he obtained through his employment.

77. On February 5, 2008, Robarge called the same friend who he tipped about Autodesk's acquisition of Moldflow. During that conversation or others around that time, Robarge recommended buying Salesforce stock and call options. Based on Robarge's recommendation, Robarge's friend began buying Salesforce call options on February 5, 2008.

78. Robarge called Turner on February 6, 2008. During that conversation or others around that time, Robarge provided Turner with material nonpublic information about Salesforce's performance. On the basis of the material nonpublic information that he received from Robarge, Turner began buying Salesforce stock the next day.

79. The following chart summarizes the trading by Robarge, Robarge's friend and Turner in Salesforce stock and call options:

Accounts	Dates of Purchases (2008)	Total Shares Purchased	Total Call Options Purchased	Total Costs	Total Gains
Robarge's Account	2/5 - 2/27	0	56	\$14,666	\$23,878
Robarge's Friend's Account	2/5 - 2/22	0	70	\$15,459	\$17,000
Capital Fund's Account	2/7 - 2/27	11,000	160	\$620,352	\$109,545
Turner's Five Accounts	2/21 - 2/27	25,500	110	\$1,371,724	\$204,331
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Totals		36,500	396	\$2,022,201	\$354,754

80. Turner and Vollmar spoke on the phone at least six times between February 5 and February 7, 2008. During those conversations or others around that time, Turner recommended buying Salesforce stock to Vollmar. Vollmar purchased Salesforce stock based on Turner's recommendation.

81. In February 2008, Turner recommended buying Salesforce stock and call options to his partners at Clay Capital and the same friend to whom Turner provided nonpublic information about Autodesk and Moldflow. Turner's partners and his friend often relied on Turner for investment advice. Between February 7 and February 27, 2008, one of Turner's partners and his friend each purchased Salesforce stock and call options based on Turner's recommendations.

82. The following chart summarizes the trading by Vollmar, Turner's partner and Turner's friend in Salesforce stock and call options:

Accounts	Dates of Purchases (2008)	Total Shares Purchased	Total Call Options Purchased	Total Costs	Total Gains
Vollmar's Account	2/7	2,500	0	\$119,188	\$26,873
Clay Capital Partner 1's Account	2/8 – 2/27	5,500	80	\$309,116	\$57,813
Turner's Friend's Two Accounts	2/20 – 2/27	5,000	112	\$294,190	\$47,303
<b>Totals</b>					
		13,000	192	\$722,494	\$131,989

### COUNT I

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

83. The Commission realleges and incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

84. The information concerning (i) Autodesk's tender offer for Moldflow, (ii) Autodesk's fourth quarter 2008 earnings announcement and (iii) Salesforce's fourth quarter 2008 earnings announcement was, in each case, material and nonpublic.

85. Vollmar obtained material nonpublic information regarding (i) Autodesk's tender offer for Moldflow and (ii) Autodesk's fourth quarter 2008 earnings announcement from his employer and as a result of a relationship of trust and confidence. Robarge obtained material nonpublic information regarding Salesforce's fourth quarter 2008 earnings announcement from his employer and as a result of a relationship of trust and confidence.

86. Vollmar breached a fiduciary duty, or other relationship of trust and confidence, by providing material nonpublic information about (i) Autodesk's tender offer for Moldflow and

(ii) Autodesk's fourth quarter 2008 earnings announcement to his tippees, and he knew, or was reckless in not knowing, that the information he conveyed was material and nonpublic. Robarge breached a fiduciary duty, or other relationship of trust and confidence, by providing material nonpublic information about Salesforce's fourth quarter 2008 earnings announcement to his tippees, and he knew, or was reckless in not knowing, that the information he conveyed was material and nonpublic.

87. Vollmar and Robarge tipped their respective tippees with the expectation of receiving a benefit.

88. Turner, Clay Capital, Robarge and Durbin knew, or were reckless in not knowing, that the information they received regarding Autodesk's tender offer for Moldflow was material and nonpublic. Turner, Clay Capital, Robarge and Durbin knew, or were reckless in not knowing, that such information was conveyed in breach of a fiduciary duty or similar relationship of trust and confidence. Turner, Clay Capital, Robarge and Durbin traded on the basis of the material nonpublic information. Turner and Robarge also tipped others to trade with the expectation of receiving a benefit.

89. Turner, Clay Capital and Robarge knew, or were reckless in not knowing, that the information they received regarding (i) Autodesk's fourth quarter 2008 earnings announcement and (ii) Salesforce's fourth quarter 2008 earnings announcement was material and nonpublic. Turner, Clay Capital and Robarge knew, or were reckless in not knowing, that such information was conveyed in breach of a fiduciary duty or similar relationship of trust and confidence. Turner, Clay Capital and Robarge traded on the basis of the material nonpublic information. Turner also tipped others to trade with the expectation of receiving a benefit.

90. By engaging in the conduct described above, the Defendants, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, directly or indirectly:

(a) employed a device, scheme, or artifice to defraud;

(b) made an untrue statement of material fact or omitted 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

(c) engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon another person.

91. By engaging in the conduct described above, the Defendants, directly or indirectly, violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## **COUNT II**

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

92. The Commission realleges and incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

93. After Autodesk had taken substantial steps to commence a tender offer for Moldflow's stock, Vollmar, Turner and Robarge communicated material nonpublic information relating to the tender offer for Moldflow stock that they knew or were reckless in not knowing was nonpublic, and knew or had reason to know had been acquired, directly or indirectly, from the offering person, Autodesk, or an officer, director, partner, employee or other person acting on

behalf of Autodesk under circumstances in which it was reasonably foreseeable that such communication was likely to result in the purchase of Moldflow stock.

94. After Autodesk had taken substantial steps to commence a tender offer for Moldflow's stock, Clay Capital, Turner, Robarge and Durbin purchased or caused to be purchased Moldflow stock while in possession of material nonpublic information relating to the tender offer that they knew or had reason to know was nonpublic, and knew or had reason to know had been acquired, directly or indirectly, from the offering person, Autodesk, or an officer, director, partner, employee or other person acting on behalf of Autodesk.

95. By engaging in the conduct described above, the Defendants, directly or indirectly, violated, and unless enjoined will again violate, 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].

### **COUNT III**

#### **Violations of Securities Act Section 17(a)(1) (Against Clay Capital, Turner and Vollmar)**

96. The Commission realleges and incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

97. By engaging in the conduct described above, Clay Capital, Turner, and Vollmar, in the offer or sale of Autodesk securities, by the use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly, employed a device, scheme or artifice to defraud.

98. Clay Capital, Turner and Vollmar acted with scienter when they engaged in the conduct alleged above.

99. By engaging in the conduct described above, Clay Capital, Turner, and Vollmar, directly or indirectly, violated, and unless enjoined will again violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

#### **COUNT IV**

##### **Violations of Securities Act Sections 17(a)(2) and 17(a)(3) (Against Clay Capital, Turner and Vollmar)**

100. The Commission realleges and incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

101. By engaging in the conduct described above, Clay Capital, Turner, and Vollmar, in the offer or sale of Autodesk securities, by the use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly, obtained money or property by means of an untrue statement of a material fact or an omission 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 engaged in a transaction, practice or course of business which operated or would operate as a fraud or deceit upon the purchaser.

102. By engaging in the conduct described above, Clay Capital, Turner, and Vollmar, directly or indirectly, violated, and unless enjoined will again violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

#### **RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that this Court enter a Final Judgment:

**I.**

Permanently restraining and enjoining each of the Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];

**II.**

Permanently restraining and enjoining Clay Capital, Turner and Vollmar, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3)];

**III.**

Ordering each of the Defendants to disgorge, with prejudgment interest, all illicit trading profits and other ill-gotten gains received as a result of the conduct alleged in this Complaint, including, as to each of the Defendants, their own illicit trading profits and other ill-gotten gains and the trading profits and other ill-gotten gains of their direct and downstream tippers;

**IV.**

Ordering each of the Defendants to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

**V.**

Granting such other and further relief as this Court may deem just and proper.

**JURY TRIAL DEMAND**

The Commission requests a trial by jury.

August 31, 2011

Respectfully Submitted,

**UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION**

/s/ Benjamin J. Hanauer

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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 other court, or of any pending arbitration or administrative proceeding.

August 31, 2011

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