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

11 SECURITIES AND EXCHANGE COMMISSION,  
12 Plaintiff,  
13  
14 v.  
15 JOHN GRAY, CHRISTIAN KELLER,  
KYLE MARTIN, and AARON SHEPARD,  
16 Defendants.

Case No. C-

**COMPLAINT**

17  
18 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

19 **SUMMARY OF THE ACTION**

20 1. From approximately 2009 through 2012, John Gray, an equities research analyst for a  
21 major brokerage firm, and his friend, Christian Keller, a finance employee at two public companies  
22 successively, led an insider trading scheme in which they secretly traded profitably on confidential  
23 merger and earnings information regarding Keller’s employers.

24 2. Gray and Keller arranged to use the brokerage account held in the name of a third  
25 participant in the scheme, defendant Kyle Martin, in order to keep their respective employers from  
26 learning of their trading. Gray, who acted as the hub between Keller and Martin, was primarily  
27 responsible for placing the trades in Martin’s account and splitting the trading profits among himself,  
28 Keller, and Martin.



**Defendants**

10. Christian Briggs Keller, age 40, resides in Los Altos, California. From 2005 through January 2012, Keller was a financial analyst for Applied Materials. In January 2012, Keller joined Rovi as Vice President for Investor Relations and Finance.

11. John Gray, age 38, resides in Redondo Beach, California. From 2008 through 2011, Gray was an equity research analyst and registered representative for Barclays Capital, a brokerage firm affiliated with a major international bank.

12. Kyle Martin, age 35, resides in Santa Clarita, California. From 2008 to 2012, Martin worked at a car dealership in Beverly Hills, California.

13. Aaron Shepard, age 37, resides in San Francisco, California. From 2008 to 2012, Shepard was self-employed in the business of installing car stereos.

**Other Relevant Entities and Individuals**

14. Applied Materials, Inc. is a Delaware corporation with its principal place of business in Santa Clara, California. Its shares are registered pursuant to Section 12(b) of the Exchange Act and trade on the Nasdaq Stock Market (ticker: AMAT). Applied Materials designs and supplies semiconductor fabrication equipment.

15. Semitool, Inc. was a Montana corporation with its principal place of business in Kalispell, Montana until November 2009, when it was acquired by Applied Materials. Before the acquisition, Semitool's common shares were registered pursuant to Section 12(b) of the Exchange Act and traded on the Nasdaq Stock Market (ticker: SMTL). Semitool created semiconductor manufacturing equipment.

16. Varian Semiconductor Equipment Associates, Inc. was a Delaware corporation with its principal place of business in Gloucester, Massachusetts until May 2011, when it was acquired by Applied Materials. Before the acquisition, Varian's common shares were registered pursuant to Section 12(b) of the Exchange Act and traded on the Nasdaq Stock Market (ticker: VSEA). Varian supplied ion implantation equipment used to fabricate semiconductor chips.

1 17. Rovi Corporation is a Delaware corporation headquartered in Santa Clara, California.  
2 Its shares are registered pursuant to Section 12(b) of the Exchange Act and trade on the Nasdaq Stock  
3 Market (ticker: ROVI). Rovi provides digital media entertainment solutions.

#### 4 **FACTUAL ALLEGATIONS**

##### 5 **A. Unlawful Trades Based on Keller's Access to Confidential Information at Applied 6 Materials**

###### 7 *Keller's Access to Confidential Information at Applied Materials*

8 18. From 2005 through January 2012, Keller was employed by Applied Materials as a  
9 financial analyst. From 2009 through 2011, Keller was primarily involved with Applied Materials  
10 mergers and acquisitions of other companies, including other publicly-traded companies. While at  
11 Applied Materials, Keller was subject to specific restrictions regarding confidential information that  
12 he was privy to in the course of his employment. Among other things, Keller signed a confidentiality  
13 agreement in which he agreed not disclose "confidential information," including "business plans" and  
14 "strategies," to anyone outside Applied Materials. Keller also signed non-disclosure agreements  
15 specific to particular planned acquisitions by Applied Materials that prohibited him from sharing the  
16 confidential information with anyone outside of the designated deal teams working on the  
17 acquisitions.

###### 18 *2009 Semitool Trades*

19 19. In or about August 2009, Keller learned that Applied Materials was planning to  
20 acquire Semitool. In October 2009, Keller signed a non-disclosure agreement with respect to the  
21 deal, in which he acknowledged that he would "not disclose any Confidential Information" to persons  
22 other than the designated deal team. As a member of the deal team, Keller participated in Applied  
23 Materials' due diligence of Semitool and, in the course of this work, he was entrusted with  
24 confidential information regarding the acquisition including the timing of the planned acquisition.

25 20. In or around October 2009, Keller approached Gray with an idea for an illicit trading  
26 scheme. Keller told Gray that Applied Materials planned to acquire Semitool, and suggested that  
27 they could profit from this information if Gray were to trade Semitool securities on their behalf.  
28 Keller and Gray discussed using an account held in the name of Gray's friend, Kyle Martin, in order

1 to avoid detection. Both Keller and Gray sought to conceal the trading from their respective  
2 employers as they were each subject to restrictions against trading in the securities; indeed, Gray was  
3 subject to restrictions on his ability to trade individual securities. They believed using Martin's  
4 account would avoid scrutiny since Keller was not friends with Martin.

5         21. Keller and Gray discussed a profit sharing agreement, pursuant to which the profits  
6 would be split approximately one-third each to Gray, Keller, and Martin. Gray was responsible for  
7 determining the size and timing of the trades and was primarily responsible for placing the trades.

8         22. Gray spoke with Martin about joining the trading scheme with his "buddy from  
9 Applied Materials," and he described the profit sharing agreement and the details Gray had learned  
10 from Keller about Applied Materials' expected acquisition of Semitool. Martin immediately opened  
11 a specific, new brokerage account to segregate the trades the three would place in their scheme from  
12 his existing brokerage account.

13         23. On or about November 12, 2009, Gray assisted Martin in purchasing Semitool call  
14 options in the new account. That same day, Martin purchased Semitool call options in his separate  
15 brokerage account. On November 16, 2009, Martin and Gray purchased additional Semitool call  
16 options in the new account.

17         24. On November 17, 2009, Semitool and Applied Materials announced publicly, before  
18 the close of the market, that Applied Materials would be acquiring Semitool via a tender offer for a  
19 price of \$11 per share. By the close of the market that day, Semitool's stock price increased to  
20 \$11.02 per share, a 31% jump from the prior day's closing price of \$8.40 per share.

21         25. In total, Gray, Keller, and Martin profited \$22,598.23 from the Semitool trades in the  
22 segregated account. In addition, Martin profited by another \$4,987.14 from his trades in his separate,  
23 personal account.

24         26. Keller knew, or was reckless in not knowing, that the information regarding the  
25 Semitool acquisition was material and confidential to Applied Materials and Semitool and that he had  
26 a duty to his employer to keep the information confidential.

27         27. At the time the defendants placed the Semitool trades, Gray and Martin each knew, or  
28 were reckless in not knowing, that the information they received regarding Applied Materials'

1 acquisition of Semitool was confidential and nonpublic, and had been disclosed to them by Keller in  
2 breach of his duty.

3 2011 Varian Trades

4 28. In or about January 2011, Keller, then a senior financial analyst at Applied Materials,  
5 learned that Applied Materials was planning to acquire Varian. At that time, Keller signed a non-  
6 disclosure agreement agreeing not to “disclose any Confidential Information to any person” other  
7 than persons working on the transaction as part of the deal team. Keller worked on due diligence for  
8 the acquisition and was entrusted with confidential information regarding the acquisition including  
9 that the planned announcement date was April 28, 2011.

10 29. In or about March or April 2011, Keller told Gray about the Varian acquisition, and  
11 proposed it as a further trading idea pursuant to the profit sharing agreement. In order to facilitate  
12 communications regarding the deal that would be harder to trace to either of them, Keller purchased  
13 disposable prepaid phones for himself and Gray.

14 30. Based on Keller’s disclosure of confidential information, Gray arranged for the  
15 purchase of Varian call options in the account established by Martin. Gray also told Martin about the  
16 confidential details regarding the acquisition of Varian by Applied Materials that he learned from his  
17 “buddy at Applied Materials”; based on this information, Martin also purchased additional Varian  
18 call options in his personal account.

19 31. On May 4, 2011, Varian and Applied Materials announced that Applied Materials  
20 would be acquiring Varian through an all-cash offer of \$66 per share. That day, Varian’s stock price  
21 closed at \$61.36 per share, a 51.3% jump from the prior day close of \$40.55 per share.

22 32. In total, Gray, Keller, and Martin profited \$137,623.82 from the Varian trades in the  
23 “secret” account, with Gray and Martin providing profit kickbacks in cash to Keller. Martin profited  
24 \$92,235.59 from the additional Varian trades in his personal account.

25 33. Keller knew, or was reckless in not knowing, that the information he learned regarding  
26 the Varian acquisition was nonpublic and confidential to Applied Materials and Varian and that he  
27 had a duty to his employer to keep the information confidential.  
28

1 34. In placing the trades ahead of the public announcement of Applied Materials' Varian  
2 acquisition, Gray and Martin each knew that the information they received regarding Applied  
3 Materials' acquisition of Varian was confidential, and that the information had been disclosed to  
4 them by Keller in breach of his duty of confidentiality.

5 **B. Unlawful Trades Based on Keller's Access to Confidential Information at Rovi**

6 Keller's Access to Confidential Information at Rovi

7 35. In or about January 2012, Keller joined Rovi as Vice President for Investor Relations  
8 and Finance. Keller was also prohibited from trading Rovi securities while in possession of material  
9 nonpublic information regarding Rovi's financial performance, as well as significant changes in  
10 management. Keller, as an employee at Rovi who was privy to such information, owed a duty to  
11 Rovi's shareholders to maintain the confidentiality of such information.

12 Rovi Q1 2012 Trades

13 36. In or about April 2012, Keller learned that Rovi expected to announce financial results  
14 for its first quarter of 2012 (which ended March 30, 2012) that were considered mixed, or not entirely  
15 positive. Keller also learned at about the same time in April that Rovi would also be announcing the  
16 resignation of its chief financial officer during the investor call scheduled for the purpose of  
17 discussing those results with analysts and other interested members of the public, on or around May  
18 3, 2012.

19 37. In or about April 2012, Keller told Gray about Rovi's upcoming earnings results and  
20 planned announcement of the CFO departure. Keller and Gray anticipated that Rovi's stock would  
21 decline as a result of the announcement.

22 38. To capitalize on this information, Gray traded Rovi put options in his personal  
23 account; Gray also told Martin the confidential details regarding Rovi's upcoming announcement,  
24 which he learned from Keller. Martin thus traded Rovi put options in his account pursuant to the  
25 profit sharing agreement, and Martin traded additional Rovi put options in a separate, personal  
26 account.

27 39. Gray also tipped confidential details regarding Rovi's planned Q1 2012 announcement  
28 from his "source at Rovi" to another friend, Aaron Shepard. Gray told Shepard that he had a profit

1 sharing agreement with the “source,” whom he referred to as the “right hand” of Rovi’s CFO. Based  
2 on Gray’s disclosure of confidential information regarding Rovi, Shepard purchased Rovi put options  
3 in his personal account in advance of Rovi’s Q1 2012 announcement.

4 40. After the close of market on May 3, 2012, Rovi issued a press release reporting Q1  
5 2012 financial results consistent with the confidential information that Keller had passed to Gray.  
6 Rovi also announced the CFO’s resignation during the investor call that day. In response, Rovi’s  
7 stock price decreased to \$26.86 per share, a 4.9% drop from \$28.25 per share at the close on May 3.

8 41. In total, Gray, Keller, and Martin profited \$9,488.08 from the Rovi trades in the  
9 “secret” account, with Gray providing profit kickbacks in cash to Keller. Gray, Martin, and Shepard  
10 realized profits of \$30,355.13, \$6,987.13, and \$25,956.88, respectively, from the Rovi trades in their  
11 personal accounts.

12 42. Keller knew, or was reckless in not knowing, that the information he was entrusted  
13 with regarding Rovi’s first quarter 2012 announcement – including its mixed financial results and the  
14 departure of Rovi’s chief financial officer – was nonpublic and confidential to Rovi and that he had a  
15 duty to Rovi’s shareholders to keep the information confidential.

16 43. When they placed their trades, Gray, Martin, and Shepard each knew that the  
17 information disclosed by Keller regarding Rovi’s upcoming announcement about its first quarter  
18 2012 financial results and the departure of its CFO was nonpublic and confidential, and that the  
19 information had been disclosed by Keller in breach of a duty of confidentiality to Rovi and its  
20 shareholders.

21 Rovi Q2 2012 Trades

22 44. In or about June 2012, Keller learned that Rovi would be making a public  
23 announcement before the end of its second fiscal quarter of 2012 (ended June 30, 2012) to lower its  
24 previously-stated earnings guidance for the quarter and for the full fiscal year 2012. By early July  
25 2012, Keller was personally involved in Rovi’s retention of a crisis management firm to handle the  
26 important announcement about Rovi’s lower expected earnings guidance, and Keller understood that  
27 the public announcement would take place on or around July 17, 2012.  
28

1           45.     In or about June or early July 2012, Keller told Gray about Rovi's upcoming  
2 announcement regarding its lowered earnings guidance, as a trading idea pursuant to the profit  
3 sharing agreement. In order to facilitate communications regarding the announcement and reduce the  
4 chance of detection, Keller again purchased prepaid disposable phones for himself and Gray.

5           46.     Gray told both Martin and Shepard about the confidential information regarding  
6 Rovi's announcement that he had learned from his "buddy" at Rovi. Martin traded Rovi put options  
7 pursuant to the profit sharing agreement with Gray and Keller, while Shepard traded Rovi put options  
8 in his personal account.

9           47.     On July 17, 2012, Rovi issued its preannouncement through a press release reporting  
10 that the company had lowered Q2 guidance from \$180 million to \$158 million, and lowered FY  
11 guidance. Rovi's stock price dropped to \$11.84, a 33% decrease from \$17.64 at the close of the prior  
12 trading day.

13           48.     Gray, Keller, and Martin profited \$247,758.60 from the Rovi trades as part of the  
14 profit sharing agreement, while Gray profited \$30,819.93 from the additional Rovi trades in his  
15 personal account. Shepard profited \$135,431.48 from his Rovi trades.

16           49.     Keller knew, or should have known, that the information he learned regarding Rovi's  
17 financial results and preannouncement was material and confidential to Rovi and that he had a duty to  
18 Rovi's shareholders to keep the information confidential.

19           50.     In sharing the information with Martin and Shepard, Gray knew that the information  
20 disclosed by Keller about Rovi's financial results and planned announcement was confidential, and  
21 had been disclosed by Keller in breach of his duty of confidentiality.

22           51.     Martin and Shepard also each knew that the information disclosed by Gray about  
23 Rovi's financial results and planned announcement was confidential, and had been disclosed by  
24 Keller in breach of his duty of confidentiality.

25           52.     Within a few weeks of the successful Rovi trades, Gray drove from his residence in  
26 Southern California to Keller's residence in Northern California to open a bank account. The  
27 purpose of the bank account was to facilitate cash withdrawals and share the trading profits with Gray  
28 and Keller. Martin transferred \$120,000 from his brokerage account to the new bank account, with

1 \$100,000 intended for Gray, and \$20,000 intended for the “buddy.” Shepard similarly provided  
2 \$10,000 in profit kickbacks to Gray. Gray subsequently provided profit kickbacks of cash to Keller  
3 from the new bank account.

4 **DEFENDANTS’ TOLLING AGREEMENTS**

5 53. In October 2014, Defendants Gray, Keller, and Martin each signed tolling agreements  
6 with the Commission. Each tolling agreement specifies a period of time (a “tolling period”) in which  
7 the “running of any statute of limitations applicable to any action or proceeding against [the  
8 defendant] authorized, instituted, or brought by or on behalf of the Commission or to which the  
9 Commission is a party arising out of the investigation (“any proceeding”), including any sanctions or  
10 relief that may be imposed therein, is tolled and suspended for the period beginning on October 15,  
11 2014 through January 15, 2015....” Each tolling agreement further provides that the defendant and  
12 any of his agents or attorneys “shall not include the tolling period in the calculation of any running of  
13 the statute of limitations or for any other time-related defense applicable to any proceeding, including  
14 any sanctions or relief that may be imposed therein, in asserting or relying upon any such time-related  
15 defense.”

16  
17 **FIRST CLAIM FOR RELIEF**  
18 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**  
19 **(Against Defendants Gray, Keller, Martin, and Shepard)**

20 54. The Commission re-alleges and incorporates by reference paragraphs 1 through 53, as  
21 though fully set forth herein.

- 22 55. Defendants, with scienter, directly or indirectly:
- 23 a. employed devices, schemes, or artifices to defraud;
  - 24 b. made untrue statements of material facts or omitted to state material facts necessary in  
25 order to make the statements made, in the light of the circumstances under which they  
26 were made, not misleading; and
  - 27 c. engaged in acts, practices, or courses of business which operated or would operate as a  
28 fraud or deceit upon other persons, including purchasers and sellers of securities;

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

3 56. By reason of the foregoing, defendants violated, and unless restrained and enjoined  
4 will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5  
5 thereunder [17 C.F.R. § 240.10b-5].

6 **SECOND CLAIM FOR RELIEF**  
7 **Violations of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)]**  
8 **and Rule 14e-3 [17 C.F.R. § 240.14e-3] Thereunder**  
9 **(Against Defendants Gray, Keller, and Martin)**

9 57. Paragraphs 1 through 56 are re-alleged and incorporated herein by reference.

10 58. After Applied Materials had taken a substantial step or steps to commence or had  
11 commenced a tender offer, defendants:

- 12 a. Purchased or sold or caused to be purchased or sold the securities to be sought by the
- 13 tender offer while in possession of material information relating to such tender offer
- 14 b. which information they knew or had reason to know is nonpublic, and
- 15 c. which they knew or had reason to know had been acquired directly or indirectly from
- 16 the offering company, the issuing company, or any officer, director, partner or
- 17 employee acting on behalf of the offering or issuing companies.

18 59. By reason of the foregoing, defendants violated, and unless restrained and enjoined  
19 will continue to violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17  
20 C.F.R. § 240.14e-3] thereunder.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

23 **I.**

24 Finding that Defendants Gray, Keller, Martin, and Shepard committed the violations alleged  
25 herein;

26 **II.**

27 Permanently enjoining each of Defendants Gray, Keller, Martin, and Shepard, their officers,  
28 agents, servants, employees, and attorneys, and those persons in active concert or participation with

1 them who receive actual notice of the injunction by personal service or otherwise, and each of them,  
2 from directly or indirectly violating Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)], and  
3 Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5];

4 **III.**

5 Permanently enjoining each of Defendants Gray, Keller, and Martin from directly or  
6 indirectly violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17  
7 C.F.R. § 240.14e-3] thereunder;

8 **IV.**

9 Ordering each of Defendants Gray, Keller, Martin, and Shepard to disgorge, with  
10 prejudgment interest, all illicit trading profits, other ill-gotten gains received, and/or losses avoided as  
11 a result of the conduct alleged in the Complaint, including, as to each defendant, their own illicit  
12 trading profits, other ill-gotten gains, and/or losses avoided, and the illicit trading profits, other ill-  
13 gotten gains, and/or losses avoided of their direct and downstream tippers;

14 **V.**

15 Barring Defendant Keller pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §  
16 78u(d)(2)] from acting as an officer or director of any issuer that has a class of securities registered  
17 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports  
18 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

19 **VI.**

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

22 **VII.**

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

24 Date: February 5, 2015

25 \_\_\_\_\_  
26 /s/ Jennifer J. Lee  
27 JENNIFER J. LEE  
28 Attorney for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION