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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN JOSE DIVISION**

9 SECURITIES AND EXCHANGE
10 COMMISSION,

11 Plaintiff,

12 vs.

13 PETER D. NUNAN,

14 Defendant.

Case No. _____

COMPLAINT

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

17 **JURISDICTION AND VENUE**

18 1. The Commission brings this action under Section 21(d) and 21A of the Exchange
19 Act [15 U.S.C. §§ 78u(d) and 78u-1].

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21 2. This Court has jurisdiction over this action under Sections 21(d), 21(e), 21A, and
22 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1 & 78aa]. Defendant, directly or
23 indirectly, made use of the means or instrumentalities of interstate commerce, or the mails, or the
24 facilities of a national securities exchange in connection with the transactions, acts, practices, and
25 courses of business alleged in this Complaint.
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1 7. On the morning of August 13, 2012, Tokyo Electron and FSI publicly announced
2 that they had entered into a definitive agreement for Tokyo Electron to acquire FSI, pursuant to a
3 cash tender offer, at a price of \$6.20 per share. This agreed purchase price represented a premium
4 of more than 50% over the prior closing price of FSI stock at \$4.04 per share. That day, after the
5 public announcement of the acquisition, the price of FSI stock increased over 52% on heavy
6 trading and closed at a price of \$6.16 per share. The next day Nunan sold most of his FSI stock.
7 The illicit profits from his unlawful trading and tipping totaled \$254,858.

8 8. By engaging in the conduct alleged in this Complaint, Nunan violated the antifraud
9 provisions of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 (“Exchange Act”)
10 [15 U.S.C. §§ 78j(b) and 78n(e)], and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5
11 and 240.14e-3]. The Commission seeks in this action a permanent injunction, disgorgement with
12 prejudice interest, and a civil penalty.

13 **DEFENDANT**

14 9. Peter D. Nunan (“Nunan”), age 58, currently resides in Monte Sereno, California.
15 During the relevant time period, Nunan was a Senior Engineering Fellow at Screen SPE USA,
16 LLC (formerly known as DNS Electronics, LLC), which is a subsidiary of Screen Holdings Co.,
17 Ltd. (formerly known as Dainippon Screen Manufacturing Co., Ltd.). During the relevant time
18 period, Nunan worked in Sunnyvale, California.

19 **OTHER RELEVANT ENTITIES**

20 10. TEL FSI, Inc. (formerly known as FSI International, Inc.) (“FSI”) is a Minnesota
21 corporation based in Chaska, Minnesota. FSI is a supplier of semiconductor equipment and
22 services. Prior to its acquisition by Tokyo Electron, which was completed in October 2012, FSI’s
23 common stock was registered with the Commission pursuant to Section 12(b) of the Exchange
24 Act [15 U.S.C. § 78l(b)] and traded on the NASDAQ Exchange.

1 11. Tokyo Electron Ltd. (“Tokyo Electron”) is a Japanese company headquartered in
2 Tokyo, Japan. Tokyo Electron, which is a public company traded on the Tokyo Stock Exchange,
3 is a global supplier of electronics and semiconductor equipment.

4 12. Screen SPE USA, LLC (formerly known as DNS Electronics LLC) (“Screen SPE
5 USA”) is a limited liability company based in Sunnyvale, California. It is a subsidiary of Screen
6 Holdings Co., Ltd. (formerly known as Dainippon Screen Manufacturing Co., Ltd.) (“Screen
7 Holdings”), a privately held Japanese company that develops, manufactures, and sells
8 semiconductor equipment. The U.S. subsidiary supports sales and services of the parent
9 company’s products in the U.S.
10

11 **FACTS**

12 13. At all relevant times in this Complaint, Nunan was as a Senior Engineering Fellow
13 at Screen SPE USA, the U.S. subsidiary of Screen Holdings, a Japanese semiconductor
14 equipment company. Nunan owed a duty of trust and confidence to his employer. Pursuant to his
15 employment agreement and company’s policies, Nunan had a duty not to trade on or otherwise
16 misuse confidential information.
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18 14. By December 2011, Tokyo Electron, a Japanese semiconductor equipment
19 company, had entered into negotiations to acquire FSI, a Minnesota-based semiconductor
20 equipment company. From December 2011 and continuing through August 2012, Tokyo
21 Electron took substantial steps towards commencement of a tender offer for FSI securities. This
22 included submitting a letter of interest to FSI with proposed pricing, a meeting between
23 executives of the two companies to exchange confidential information, and due diligence work.
24 The acquisition negotiations continued through the summer of 2012, and eventually resulted in an
25 acquisition agreement that the companies publicly announced on August 13, 2012.
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1 15. No later than February 2012, a member of FSI's board of directors who had a
2 professional relationship with Nunan informed Nunan that Tokyo Electron was in negotiations to
3 acquire FSI. The director told Nunan this confidential information because FSI's board of
4 directors was interested in soliciting a competing bid for FSI. Nunan worked for the U.S.
5 subsidiary of Screen Holdings, another semiconductor equipment company. The FSI director
6 knew Nunan had a professional relationship with an executive at Screen Holdings responsible for
7 evaluating potential corporate acquisitions, and Nunan acted as a conduit for information between
8 the FSI director and the executive at Screen Holdings.
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10 16. From at least early February 2012 and continuing through August 2012, the FSI
11 director provided Nunan with material, nonpublic information about Tokyo Electron's
12 negotiations to acquire FSI. This included information about proposed pricing and the timing and
13 progress of due diligence. Nunan provided this information to the executive at Screen Holdings
14 responsible for evaluating a potential competing bid, and he also gathered additional information
15 about FSI as requested by the executive. Ultimately, Screen Holdings did not submit a competing
16 bid.
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18 17. Nunan knew from the material, nonpublic information that the FSI director had
19 provided him, that Tokyo Electron was bidding to acquire FSI at a substantial premium over the
20 market price of FSI stock. Nunan received the material, nonpublic information about the
21 potential acquisition in the course of his employment, and had a duty not to trade on or otherwise
22 misuse the confidential information for his personal benefit.
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24 18. In breach of his duty, Nunan traded on the material, nonpublic information.
25 Between February 14 and August 9, 2012, Nunan purchased 105,000 shares of FSI in his personal
26 brokerage accounts at a weighted average price of approximately \$3.76 per share. Additionally,
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1 in further breach of his duty, Nunan recommended the trade to his brother, who purchased 1000
2 shares of FSI on July 23, 2012 at a price of \$3.45 per share.

3 19. On the morning of August 13, 2012, Tokyo Electron and FSI publicly announced
4 that they had entered into a definitive agreement for Tokyo Electron to acquire FSI, pursuant to a
5 cash tender offer, at price of \$6.20 per share. The agreed purchase price represented a premium
6 of more than 50% over the prior day's market closing price of \$4.04 per share. After the public
7 announcement of the acquisition, the market price of FSI stock increased more than 52% on
8 heavy trading and closed at a price of \$6.16 per share. Nunan sold most of his FSI stock the
9 following day. The illicit profits, realized and unrealized, from his unlawful trading and tipping
10 totaled \$254,858.
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12 **FIRST CLAIM FOR RELIEF**

13 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

14 20. The Commission realleges and incorporates by reference paragraphs 1 through 19,
15 above.
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17 21. Defendant, by engaging in the conduct described above, directly or indirectly, in
18 connection with the purchase or sale of securities, by use of the means or instrumentalities of
19 interstate commerce, or the mails, or the facilities of a national securities exchange:

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- 21 a. employed devices, schemes, or artifices to defraud;
 - 22 b. made untrue statements of material fact or omitted to state material facts
23 necessary in order to make the statements made, in light of the circumstances
24 under which they were made, not misleading; and/or
 - 25 c. engaged in acts, practices, or courses of business which operate or would
26 operate as a fraud or deceit upon any persons, including purchasers or sellers
27 of the securities.
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1 22. By engaging in the foregoing conduct, Nunan violated, and unless enjoined will
2 continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5
3 thereunder [17 C.F.R. § 240.10b-5].

4 **SECOND CLAIM FOR RELIEF**

5 **Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder**

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7 23. The Commission realleges and incorporates by reference paragraphs 1 through 19
8 above.

9 24. By engaging in the conduct described above, in connection with a tender offer,
10 Nunan knowingly or recklessly engaged in one or more fraudulent, deceptive, or manipulative
11 acts.

12 25. By reason of the foregoing, Nunan violated, and unless enjoined will continue to
13 violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17
14 C.F.R. § 240.14e-3].

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17 **PRAYER FOR RELIEF**

18 WHEREFORE, the Commission respectfully requests that the Court enter Final
19 Judgment:

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21 **I.**

22 Permanently restraining and enjoining Defendant from, directly or indirectly, engaging in
23 conduct in violation of Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and
24 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];

25 **II.**

26 Ordering Defendant to disgorge, with prejudgment interest, the illicit trading profits
27 resulting from the conduct alleged in this Complaint;
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III.

Ordering Defendant to pay a civil penalty pursuant to Section 21A of the Exchange Act, [15 U.S.C. § 78u-1]; and

IV.

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

DATED: May 2, 2016

Respectfully submitted,

/s/ Darren E. Long

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