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**ORIGINAL FILED**

JUN 15 2000

Richard W. Wieking  
Clerk, U.S. District Court  
Northern District of California  
San Jose

10 UNITED STATES DISTRICT COURT  
11  
12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN JOSE DIVISION  
C-00

20655 JW

14 -----  
15 SECURITIES AND EXCHANGE COMMISSION,  
16 Plaintiff,

Civ. Action No. \_\_\_\_\_ ( ) **EAI**

17 - v. -

18 MICHAEL R. HENDRIX, DOUGLAS S. SAWAMURA,  
19 JEFFREY S. SUMMERLIN, JAMES A.S. LEWIS,  
20 CRAIG A. LARREW, SAN H. MAI, BICH THI  
HOANG, LINH NGOC VU, NICK S. PARK,  
21 JOHN H. OH, TIMOTHY J. HELMS and  
RAYMOND L. HELMS,  
22 Defendants.

COMPLAINT **ADR**

23 -----  
24 Plaintiff Securities and Exchange Commission ("Commission")  
25 or "SEC") alleges as follows:  
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SUMMARY

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1. This case involves insider trading and tipping by twelve individuals in the common stock of Xylogics, Inc. All of the trading took place during the two trading days before the public announcement, on September 6, 1995, that Bay Networks, Inc. would acquire Xylogics.

2. While working for Bay Networks, Michael Hendrix learned, before any public announcement, of Bay Networks' agreement to acquire Xylogics. Hendrix then proceeded to purchase 6,215 shares of Xylogics stock in five accounts during the two trading days before the announcement. To fund these purchases, Hendrix sold nearly all the holdings in his, his wife's and their minor children's securities accounts. After the announcement, the 6,215 Xylogics shares Hendrix had purchased increased in value by at least between \$12 and \$14 per share. Hendrix and his family made at least \$104,885.63 from Hendrix's Xylogics trading.

3. Hendrix also contacted several friends and former colleagues who quickly bought Xylogics. Some of these persons, in turn, contacted others who also quickly bought. These individuals purchased at least 43,932 shares of Xylogics on the very day before the merger was announced. Hendrix and others who learned of the merger before its announcement directly or indirectly through him included the following nine defendants: James A. S. Lewis, Jeffrey S. Summerlin, Douglas S. Sawamura, Craig A. Larrew, San H. Mai, Bich Thi Hoang, Linh Ngoc Vu, John H. Oh and Nick S. Park. These ten defendants, and others whose trading stemmed directly or indirectly from Hendrix's

1 recommendation, made at least \$644,000 in illegal profits from  
2 their purchases of Xylogics.

3 4. Separate and apart from Hendrix, while working in Bay  
4 Networks' public relations department, Timothy Helms also learned  
5 of Bay Networks' imminent acquisition of Xylogics. After  
6 learning this information, Helms telephoned his father, Raymond,  
7 who bought 3,000 shares of Xylogics the day before the  
8 announcement, making illegal profits totaling \$36,000.

9 5. By engaging in this conduct, Hendrix and the other  
10 defendants violated the antifraud provisions of the Securities  
11 Exchange Act of 1934 (the "Exchange Act"), and will continue to  
12 do so unless restrained and enjoined by this Court. Accordingly,  
13 the SEC seeks injunctions against future violations, disgorgement  
14 of unlawful trading profits, and statutory money penalties.

15 JURISDICTION

16 6. This Court has jurisdiction over this action pursuant to  
17 Sections 21(d) and (e) and Section 27 of the Exchange Act [15  
18 U.S.C. §§ 78u(d) and (e) and 78aa].

19 INTRA-DISTRICT ASSIGNMENT

20 7. Assignment to the San Jose Division is appropriate  
21 pursuant to Civil Local Rule 3-2(e) because a substantial part of  
22 the conduct alleged herein occurred in the County of Santa Clara,  
23 in the Northern District of California.



1 16. Nick S. Park, age 38, resides in West Linn, Oregon.  
2 During the relevant period, Park was Oh's employer.

3 17. Craig A. Larrew, age 40, resides in San Jose,  
4 California. During the relevant period, Larrew was a friend of  
5 Hendrix's.

6 18. Timothy J. Helms, age 41, resides in Livermore,  
7 California. During the relevant period, he worked as a manager  
8 in Bay Networks' public relations department.

9 19. Raymond L. Helms, age 73, resides in San Rafael,  
10 California, and is Timothy Helms' father. During the relevant  
11 period, he was a retired real estate agent.

12 MERGER PARTICIPANTS

13 20. Xylogics, Inc., was a Delaware corporation with its  
14 executive offices in Burlington, Massachusetts, which  
15 manufactured and marketed remote access network products. At all  
16 relevant times, Xylogics' stock was registered with the  
17 Commission pursuant to Section 12(g) of the Exchange Act, and  
18 quoted on the Nasdaq National Market System. As of November 9,  
19 1995, the record date of the merger, approximately 5.5 million  
20 shares of Xylogics stock were outstanding. After the  
21 acquisition, Xylogics became a wholly-owned subsidiary of Bay  
22 Networks.

23 21. Bay Networks, Inc., was a Delaware corporation with its  
24 executive offices located in Santa Clara, California, which  
25 manufactured and marketed data networking products and services.  
26 At all relevant times, Bay Networks' common stock was registered  
27 with the Commission pursuant to Section 12(b) of the Exchange Act

1 and traded on the New York Stock Exchange. In 1998, Bay Networks  
2 merged with, and became a wholly-owned subsidiary of, Northern  
3 Telecom Limited, which was renamed Nortel Networks.

4 BACKGROUND

5 22. By the end of August 1995, officers of Bay Networks and  
6 Xylogics had agreed to recommend that their respective boards  
7 approve Bay Networks' acquisition of Xylogics through a stock-  
8 for-stock merger. The officers had also agreed on the price and  
9 share exchange ratios that they would recommend to their boards.

10 23. By Friday, September 1, 1995, the companies had begun to  
11 prepare for the joint public announcement of their anticipated  
12 merger agreement. During the ensuing weekend—which included the  
13 Labor Day holiday—representatives of Xylogics and Bay Networks  
14 completed their due diligence and finalized the terms of the  
15 merger. On the day after Labor Day, Tuesday, September 5<sup>th</sup>, the  
16 boards of each company met and approved the merger.

17 24. Before trading opened on the following day, Wednesday,  
18 September 6<sup>th</sup>, Bay Networks announced that it had signed a  
19 binding agreement to acquire Xylogics in a stock exchange. Until  
20 this announcement, the facts and terms of the merger were both  
21 material and non-public.

22 25. After the announcement, Xylogics' stock opened at  
23 \$50.50—up more than 36%—from its previous trading day's closing  
24 price of \$37. Xylogics' stock reached a high of \$50.75 that day,  
25 before closing at \$48.875 on extremely heavy volume.  
26

HENDRIX LEARNS OF THE ACQUISITION AND BUYS XYLOGICS

1  
2 26. By the early afternoon of Friday, September 1, 1995,  
3 Hendrix had learned that Bay Networks would acquire Xylogics. At  
4 the time, Hendrix worked in Bay Networks' Santa Clara, California  
5 office, as a manager of strategic alliances.

6 27. At approximately 1:00 p.m. (PDT)<sup>1</sup> on Friday, September 1,  
7 1995, Hendrix, in breach of duties he owed Bay Networks, began  
8 purchasing Xylogics stock. First, Hendrix placed an order to buy  
9 3,800 shares of Xylogics stock in his Individual Retirement  
10 Account ("IRA"). After the market closed that day, Hendrix  
11 placed a limit order to buy another 2,000 shares of Xylogics in  
12 his joint account with his wife.

13 28. Then, on the next trading day, September 5<sup>th</sup>—just  
14 minutes after the market opened—Hendrix changed that limit order  
15 to a market order. Over the next hour, Hendrix placed additional  
16 orders to buy Xylogics stock in accounts for his three minor  
17 children.

18 29. All told, through five accounts, Hendrix purchased 6,215  
19 shares of Xylogics stock on September 1<sup>st</sup> and September 5<sup>th</sup>,  
20 investing approximately \$221,000. In order to come up with these  
21 funds, Hendrix sold all the holdings in four of the five accounts  
22 and 96% of the holdings in the fifth account. In total, the  
23 Hendrix family made a profit of at least \$104,885.63 from  
24 Hendrix's trading in Xylogics.  
25  
26

27 <sup>1</sup> All times given herein are in Pacific Daylight Time.

1                    HENDRIX CONTACTS FRIENDS AND COLLEAGUES DURING THE DAYS  
2                    BEFORE THE MERGER ANNOUNCEMENT, WHO BUY XYLOGICS

3                    30. Not only did Hendrix invest heavily in Xylogics himself,  
4 but also beginning on September 1, 1995 and continuing through  
5 September 5, 1995, in breach of his duties to Bay Networks,  
6 Hendrix contacted at least six friends and colleagues, tipping  
7 some and recommending that others buy Xylogics.

8                    31. On Friday afternoon, September 1, 1995, after the market  
9 closed, Hendrix telephoned three friends: James A. S. Lewis,  
10 Jeffrey Summerlin, and Douglas Sawamura. All three bought  
11 Xylogics' stock minutes after the market opened after the Labor  
12 Day holiday, on September 5<sup>th</sup>. And, like Hendrix, each invested  
13 considerable portions of their available resources in Xylogics.

14                    Hendrix Tips Lewis, Who Buys Xylogics Stock  
15                    and Recommends Xylogics to a Friend

16                    32. Prior to September 5, 1995, Hendrix told Lewis material,  
17 non-public information about Bay Networks' acquisition of  
18 Xylogics. Lewis knew or was reckless in not knowing that Hendrix  
19 had communicated this information pursuant to a breach of  
20 Hendrix's duties to Bay Networks.

21                    33. On September 5, 1995, beginning at 6:55 a.m., Lewis  
22 purchased 3,800 shares of Xylogics in three separate accounts:  
23 his IRA account, his wife's IRA account, and a joint margin  
24 account that he opened with his purchases of Xylogics stock.  
25 Also, on September 5<sup>th</sup>, Lewis recommended Xylogics to a friend  
26 and colleague, who purchased 1,300 shares of Xylogics. Lewis made  
27 a \$45,700 profit from his trading, and his friend realized

1 profits of \$16,575. At the time he placed his orders to buy  
2 Xylogics stock, Lewis told his broker that he wanted to buy 4,000  
3 shares, but ultimately bought 3,800 shares because he lacked  
4 sufficient funds in his accounts to buy more.

5 Hendrix Tips Summerlin, Who Buys Xylogics Stock

6 34. Also prior to September 5, 1995, Hendrix told Summerlin  
7 material, non-public information about Bay Networks' acquisition  
8 of Xylogics. Summerlin knew or was reckless in not knowing that  
9 Hendrix communicated this information pursuant to a breach of  
10 Hendrix's duties to Bay Networks.

11 35. On September 5, 1995, at approximately 6:45 a.m.,  
12 Summerlin showed up in person at his stockbroker's office. After  
13 telling his stockbroker that he wanted to sell all the securities  
14 in his brokerage account and invest the proceeds in Xylogics,  
15 Summerlin took out a margin loan and bought 3,200 shares of  
16 Xylogics. Summerlin invested \$117,600 in Xylogics and realized  
17 profits totaling \$39,200 from his purchases of Xylogics stock.

18 Hendrix Tips Sawamura, Who Buys Xylogics Stock

19 36. Prior to September 5, 1995, Hendrix communicated,  
20 directly or indirectly, material, non-public information  
21 concerning Bay Networks' acquisition of Xylogics to his friend  
22 and former co-worker, Sawamura. Sawamura knew or was reckless in  
23 not knowing that Hendrix had communicated this information  
24 pursuant to a breach of Hendrix's duties to Bay Networks.

25 37. On September 5, 1995, beginning at 6:46 a.m., Sawamura  
26 purchased 10,217 shares of Xylogics in two separate accounts with  
27 two different brokerage firms, including an account that Sawamura  
28

1 opened with his purchase of Xylogics stock. In one of these  
2 accounts, Sawamura sold all of his holdings and used the  
3 proceeds, approximately \$94,000, to buy Xylogics. In all,  
4 Sawamura invested approximately \$375,000 in Xylogics, and made  
5 \$124,615.38 in profits from his purchases of Xylogics stock.

6 Hendrix Tips Larrew, Who Buys Xylogics Stock

7 38. On the morning of September 5, 1995, Hendrix telephoned  
8 his friend, Craig Larrew. Larrew called his broker just one  
9 minute after getting off the telephone with Hendrix.

10 39. On or before September 5<sup>th</sup>, Hendrix communicated,  
11 directly or indirectly, material, non-public information  
12 concerning Bay Networks' acquisition of Xylogics to Larrew.  
13 Larrew knew or was reckless in not knowing that Hendrix had  
14 communicated this information pursuant to a breach of Hendrix's  
15 duties to Bay Networks.

16 40. After receiving the information, on September 5, 1995,  
17 Larrew purchased 2,980 shares of Xylogics. To finance these  
18 purchases, like Hendrix, Larrew sold all of the securities in his  
19 securities accounts and used the proceeds, over \$108,000, to  
20 purchase Xylogics shares. Larrew made profits of \$36,838.78 from  
21 his purchases of Xylogics stock.

22 Hendrix Recommends the Purchase of  
23 Xylogics to His Broker, William Gerdts,  
24 Who Buys and Recommends that His Clients Buy

25 41. On or before September 5, 1995, Hendrix recommended that  
26 his stockbroker, William Gerdts, purchase Xylogics stock. At the  
27 time, Hendrix knew or was reckless in not knowing that it was

1 foreseeable that Gerdts would purchase Xylogics and that Gerdts  
2 would recommend the purchase of Xylogics stock to his clients.

3 42. On September 5, 1995, after Hendrix's recommendation,  
4 Gerdts bought 1,500 shares of Xylogics for his own account and  
5 recommended that his clients purchase 3,800 shares of Xylogics,  
6 which they did. Gerdts and his clients made profits totaling  
7 \$66,437.59 from their purchases of Xylogics stock.

8 Mai Learns of the Merger through  
9 Hendrix and Buys Xylogics Stock

10 43. Prior to September 5, 1995, defendant San Mai learned  
11 material, non-public information concerning Bay Networks'  
12 acquisition of Xylogics, directly or indirectly, through his  
13 friend and former co-worker, Hendrix. Mai knew or was reckless  
14 in not knowing that he had received this information pursuant to  
15 a breach of duty.

16 44. On September 5, 1995, beginning at 7:09 a.m., Mai  
17 purchased 2,785 shares of Xylogics. He made profits of  
18 \$34,720.63 from his purchases of Xylogics stock.

19 Mai Tips Others, Who Also Buy Xylogics Stock

20 45. On or before September 5, 1995, Mai communicated,  
21 directly or indirectly, material, non-public information  
22 concerning Bay Networks' acquisition of Xylogics to his mother  
23 (Bich Thi Hoang), his uncle (Linh Ngoc Vu), his friend (John Oh)  
24 and his friend's employer (Nick Park). After receiving that  
25 information, defendants Hoang, Vu, Oh, and Park each purchased  
26 Xylogics stock.

1 46. Hoang, Vu, Oh, and Park each knew or was reckless in not  
2 knowing that he or she had received information concerning Bay  
3 Networks' acquisition of Xylogics pursuant to a breach of duty.

4 47. On September 5, 1995, beginning at 6:41 a.m., just  
5 eleven minutes after the market opened, Hoang bought 500 shares  
6 of Xylogics in one joint account with her brother-in-law Vu (an  
7 account which was opened that very day), and 100 shares in  
8 another joint account with Vu. On an investment of \$22,000,  
9 Hoang made a profit of \$7,375.

10 48. Also on September 5<sup>th</sup>, beginning at 6:35 a.m., just five  
11 minutes after the market opened, Vu used four different accounts  
12 (including his two joint accounts with Hoang) at three different  
13 brokerage firms to buy 2,600 shares of Xylogics. Vu's Xylogics  
14 profits—not including profits from his joint trading with  
15 Hoang—totaled \$24,625.

16 49. On September 5<sup>th</sup>, at 8:41 a.m., a call was placed to  
17 Mai's direct office line from the computer retail business where  
18 Mai's friend John Oh worked, and where Oh's boss and friend, Nick  
19 Park, also worked. Immediately after this call, at 8:43 a.m., Oh  
20 purchased 2,500 shares of Xylogics on margin in an account that  
21 he opened with this buy. Eight minutes later, Oh opened another  
22 account and purchased an additional 250 shares of Xylogics on  
23 margin. To pay for his margined purchase of approximately  
24 \$100,000 worth of Xylogics stock, Oh borrowed \$51,000 from Park.  
25 Oh made profits of \$34,437.50 from his purchases of Xylogics  
26 stock.

1 50. Finally, at 12:24 p.m. on September 5<sup>th</sup>, a second call  
2 was placed to Mai's direct office line from the store where Oh  
3 and Park worked. Beginning at 12:35 p.m.—just five minutes  
4 after the conclusion of that call—Park bought, through two  
5 accounts, a total of 9,000 shares of Xylogics. From his  
6 purchases of Xylogics stock, Park made profits totaling \$108,625.

7 TIMOTHY HELMS TIPS HIS FATHER, WHO BUYS XYLOGICS STOCK

8  
9 51. By September 1, 1995, Timothy Helms had learned of Bay  
10 Networks' acquisition of Xylogics through his work in Bay  
11 Networks' public relations department. On Friday afternoon,  
12 September 1<sup>st</sup>, Timothy Helms placed a one-minute call to his  
13 father; and his father, Raymond, placed a 28-minute call to his  
14 son that evening.

15 52. On or before September 5, 1995, in breach of his duties  
16 to Bay Networks, Timothy Helms communicated, directly or  
17 indirectly, material, non-public information concerning Bay  
18 Networks' acquisition of Xylogics to his father.

19 53. Raymond Helms knew or was reckless in not knowing that  
20 he had received the information about the acquisition pursuant to  
21 his son's breach of duty to Bay Networks.

22 54. After receiving material, non-public information  
23 concerning Bay Networks' acquisition of Xylogics from his son,  
24 Raymond Helms made his Xylogics purchases, which totaled 3,000  
25 shares, beginning early on the morning of Tuesday, September 5,  
26 1995. Raymond Helms made a profit of \$36,000 from these  
27 purchases.

1 55. By reason of the foregoing, the defendants each violated  
2 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule  
3 10b-5 thereunder [17 C.F.R. § 240.10b-5].

4 PRAYER FOR RELIEF

5 WHEREFORE, the Commission respectfully requests that this  
6 Court:

7 I.

8 permanently enjoin the defendants from violating Section  
9 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17  
10 C.F.R. § 240.10b-5] promulgated thereunder;

11 II.

12 order Hendrix to disgorge his illegal trading profits and  
13 the trading profits of Gerdts and Gerdts' clients as described  
14 herein (plus prejudgment interest thereon) and to jointly and  
15 severally disgorge the illegal trading profits of Sawamura,  
16 Summerlin, Lewis, and Larrew (plus prejudgment interest thereon);

17 III.

18 order Lewis to disgorge his illegal trading profits and the  
19 trading profits of his friend described herein (plus prejudgment  
20 interest thereon);

21 IV.

22 order Mai to disgorge his illegal trading profits as  
23 described herein (plus prejudgment interest thereon) and to  
24 jointly and severally disgorge the illegal trading profits of  
25 Hoang, Vu, Oh, and Park (plus prejudgment interest thereon);  
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V.

1  
2 order Sawamura, Summerlin, Lewis, and Larrew to each  
3 disgorge his respective illegal trading profits as described  
4 herein (plus prejudgment interest thereon), jointly and severally  
5 with Hendrix;

6 VI.

7 order Hoang, Vu, Oh, and Park to each disgorge his or her  
8 respective illegal trading profits as described herein (plus  
9 prejudgment interest thereon), jointly and severally with Mai;

10 VII.

11 order Vu to jointly and severally disgorge the illegal  
12 trading profits of Hoang as described herein (plus prejudgment  
13 interest thereon);

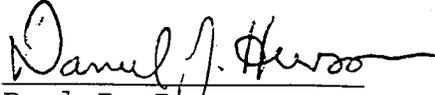
14 VIII.

15 order the defendants to pay civil penalties pursuant to  
16 Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

IX.

1  
2 grant such other relief as this Court may deem just and  
3 appropriate.

4 Respectfully submitted,

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