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RICHARD W. ...
CLERK, U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

1 STEVEN C. SEEGER (IL Bar No. 6243849)
seegers@sec.gov
2 STEVEN L. KLAWANS (IL Bar No. 6229593)
klawanss@sec.gov
3 KARA M. WASHINGTON (IL Bar No. 6226335)
washingtonk@sec.gov
4

5 Attorneys for Plaintiff
U.S. Securities and Exchange Commission
175 W. Jackson Boulevard, Suite 900
6 Chicago, Illinois 60604-2615 E-filing
Phone: (312) 353-7390
7 Fax: (312) 353-7398

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

C 12 5031

JSC

11 UNITED STATES SECURITIES)
12 AND EXCHANGE COMMISSION,)
13 Plaintiff,)
14 v.)
15 JAUYO ("JASON") LEE and)
16 VICTOR CHEN,)
17 Defendants,)
18 and)
19 JENNIFER CHEN,)
20 Relief Defendant.)

Civil Action No.
COMPLAINT
DEMAND FOR JURY TRIAL

21 COMPLAINT

22 The United States Securities and Exchange Commission alleges as follows:
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NATURE OF THE ACTION

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2 1. This case involves insider trading by Jauyo (“Jason”) Lee (hereinafter, “Lee”) and Victor Chen (hereinafter, “Chen”). Lee and Chen exploited highly sensitive information that Lee received as an investment banker. Lee tipped Chen about two upcoming corporate takeovers, and Chen traded on that information, leading to illicit profits of more than \$600,000.

7 2. In 2009, Chen bought stock in a company only a few days before it publicly announced that it would be acquired. In 2010, Chen achieved the same feat a second time, buying securities of a company shortly before its public merger announcement. The two companies shared a common thread: Lee’s firm served as a financial advisor on each corporate takeover.

12 3. Lee worked in the investment banking department of Leerink Swann LLC (hereinafter, “Leerink”) in 2009 and 2010. Lee accepted a position of trust with the company, and agreed to preserve the confidentiality of the information that Leerink entrusted to him. By virtue of his employment, Lee received and had access to confidential information, including information about potential mergers and acquisitions.

17 4. Lee was privy to highly sensitive information about two upcoming corporate acquisitions. In 2009, he learned that his firm was representing Syneron in connection with its acquisition of Candela. In 2010, he learned that his firm was representing Somanetics in connection with its acquisition by Covidien. In short, Lee learned that Candela and Somanetics were acquisition targets.

22 5. Lee exploited his position of trust at Leerink by divulging confidential information about the upcoming corporate acquisitions to Chen, his friend from college.

24 6. Lee and Chen communicated repeatedly – including dozens of telephone calls and text messages – in the weeks before the public announcement of each merger. The communications were unusual in frequency, and presented multiple opportunities for tipping. Some of the calls took place from Lee’s office telephone at Leerink.

28 7. Chen traded based on the material, non-public information that Lee had

1 provided. Chen bought Candela stock in 2009, and bought Somanetics stock and stock
2 options in 2010, shortly before each company publicly announced that it would be acquired.

3 8. Chen began trading in Candela less than 10 days before the company publicly
4 announced its merger with Syneron. Chen spent over \$119,000 for shares of Candela in
5 September, 2009, and reaped illicit gains of over \$62,000.

6 9. Chen began trading in Somanetics less than one week before the company
7 publicly announced its merger with Covidien. Many of the purchases involved out-of-the-
8 money stock options with short-term expiration dates. Chen spent over \$124,000 for
9 Somanetics stock and stock options in June, 2010, and reaped illicit gains of over \$547,000.

10 10. The bank records reveal a pattern of large cash withdrawals by Lee, followed
11 by large cash deposits by Chen. Chen promptly spent the money on securities of Candela
12 and Somanetics.

13 11. Chen spread his illicit trades across seven accounts at four brokerage firms.
14 Chen also engaged in illicit trades by purchasing shares of Somanetics in the retirement
15 account of his sister, Relief Defendant Jennifer Chen. Chen liquidated all of the stocks in her
16 account to purchase shares of Somanetics.

17 12. The Commission brings this action pursuant to the authority conferred upon it
18 by Sections 10(b) and 14(e) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b),
19 78n(e). The Commission seeks permanent injunctions against each of the Defendants,
20 enjoining them from further violations of the federal securities laws. The Commission also
21 seeks the disgorgement of ill-gotten gains, prejudgment interest, and civil monetary penalties.

22 JURISDICTION AND VENUE

23 13. The Commission brings this action pursuant to Sections 21(d) and 21A of the
24 Exchange Act, 15 U.S.C. §§ 78u(d) and 78u-1.

25 14. The Court has subject matter jurisdiction over this action pursuant to Sections
26 21(e), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e), 78u-1, and 78aa.

27 15. This Court has personal jurisdiction over the Defendants, and venue is proper
28 in this District. Most of the acts, transactions, and conduct which constitute the violations

1 | alleged in this Complaint occurred within this District.

2 | **INTRADISTRICT ASSIGNMENT**

3 | 16. This action arises in the San Francisco Division of this Court because a
4 | substantial part of the events which give rise to the claims occurred within the County of San
5 | Francisco.

6 | **DEFENDANTS AND RELIEF DEFENDANT**

7 | 17. **Jauyo (“Jason”) Lee**, age 28, resides in New York, New York. Lee worked
8 | in the investment banking department of Leerink in San Francisco from June, 2009 to April,
9 | 2011. Lee currently works in the financial industry for another firm.

10 | 18. **Victor Chen**, age 28, resides in Sunnyvale, California. He currently works as
11 | an engineer.

12 | 19. **Jennifer Chen**, age 26, resides in Sunnyvale, California. Ms. Chen is the
13 | sister of Victor Chen. During the period in question, Jennifer Chen and Lee had
14 | condominiums in the same building complex.

15 | **OTHER RELEVANT ENTITIES**

16 | 20. **Leerink Swann LLC** is an investment banking firm with a specialization in
17 | healthcare companies. Leerink is headquartered in Boston, Massachusetts, with an office in
18 | San Francisco, California.

19 | 21. **Candela Corporation** was a medical-device company based in
20 | Massachusetts. Candela was a publicly-traded company before its acquisition by Syneron.
21 | Chen purchased shares of Candela from September 1 to 8, 2009. On September 9, 2009,
22 | Candela publicly announced that it would be acquired by Syneron.

23 | 22. **Syneron Medical Ltd.** is a medical-products company based in Israel. In
24 | 2009, Syneron engaged Leerink to assist with its acquisition of Candela.

25 | 23. **Somanetics Corporation** was a medical-device company based in Michigan.
26 | Somanetics was a publicly-traded company before its acquisition by Covidien. In 2010,
27 | Somanetics engaged Leerink to assist with its acquisition by Covidien. From June 10 to 15,
28 | 2010, Chen purchased shares of Somanetics, as well as call option contracts for Somanetics

1 stock (hereinafter, "call options"). On June 16, 2010, Somanetics publicly announced that it
2 would be acquired by Covidien.

3 24. Covidien plc is a healthcare products company, incorporated in Ireland, with
4 offices in Massachusetts.

5 STATEMENT OF FACTS

6 The Relationship between Lee and Chen

7 25. Lee and Chen are friends from college. They attended the same university,
8 and graduated one year apart. They have maintained a social relationship since college.

9 26. In 2009 and 2010, Lee and Chen maintained a relationship through emails,
10 telephone calls, texts, and social media. They also socialized together in person.

11 27. Chen knew that Lee worked in the investment banking department of Leerink.
12 Among other things, Lee sent emails to Chen from his corporate email account at Leerink.
13 The emails reflected the fact that Lee worked at Leerink as an "Analyst" in "Investment
14 Banking."

15 28. On August 31, 2009 – the day before Chen began buying shares of Candela –
16 Lee sent an email to Chen from his email account at Leerink. He wrote: "Thanks for all of
17 your help this weekend. It's very much appreciated. You are a good friend."

18 The Relationship between Lee and Leerink

19 29. Lee began working as an analyst in the investment banking department of
20 Leerink in mid-June, 2009, and he became an associate in 2010. As a member of the
21 investment banking department, Lee was entrusted with highly sensitive information about
22 pending transactions, including potential mergers and acquisitions.

23 30. Lee had a duty to preserve the confidentiality of the information that he
24 received from Leerink in the course of his employment.

25 31. Lee agreed to preserve the confidentiality of the information that he received
26 from Leerink. Lee knew that protecting the confidentiality of the information that he
27 received from Leerink was part of his job.

28 32. Lee entered into a Confidentiality Agreement with Leerink dated June 15,

1 2009. Lee agreed to preserve the confidentiality of information received from Leerink as part
2 of his employment, including “all information relating to investment banking transactions.”

3 33. Lee accepted a position as an analyst at Leerink and signed an offer letter
4 dated June 15, 2006. By signing the offer letter, Lee agreed to the terms of employment as
5 set forth in the letter.

6 34. By accepting a position with Leerink, Lee agreed to the “Non-Disclosure of
7 Confidential Information.” Leerink prohibited Lee from disclosing confidential information
8 to outsiders, and Lee agreed to follow that policy. Lee agreed not to “directly or indirectly
9 disclose or furnish to any entity, firm, corporation or person, except as otherwise required by
10 law, any confidential or proprietary information of the Company with respect to any aspect
11 of its operations, business or clients.”

12 35. Lee knew that information about potential mergers and acquisitions was
13 highly confidential, and could not be shared with outsiders.

14 36. Leerink had a policy against insider trading. Lee received training from
15 Leerink about its policies, including orientation about insider trading. Lee knew that his
16 company prohibited insider trading, and that he had a duty to follow that policy.

17 37. On June 21, 2009, Lee signed a form in which he acknowledged and agreed to
18 follow the policy against insider trading. The document stated: “I, Jauyo Lee (print name),
19 an employee of LEERINK SWANN LLC, acknowledge that I have read and agree to adhere
20 to all its policies and provisions as outlined in the Compliance Documents: ‘General
21 Employee Policies,’ ‘Employee Trading Policy,’ and ‘Insider Trading Orientation.’”

22 38. Lee read and agreed to follow the company’s policy against insider trading.
23 The policy stated: “Trading in securities on the basis of material, non-public information
24 (‘inside information’) is prohibited and contrary to Firm policy. The penalties for insider
25 trading can be considerable, including loss of profits plus treble damages, criminal sanctions
26 including incarceration, loss of employment and permanent bar from the securities industry.
27 This policy applies to all associates of LEER.” Lee knew that the firm prohibited trading in
28 securities on the basis of material, non-public information.

1 39. Leerink’s policy against insider trading expressly prohibited tipping outsiders
2 with material, non-public information. The policy stated: “You also may not communicate
3 inside information to a second person who has no official need to know the information. . . .
4 If you receive material, non-public information as part of your legitimate business dealings
5 on behalf of LEER or its customers and you use that information to trade in securities or if
6 you transmit that information to another person for purposes of trading in securities (so-
7 called ‘tipping’), you would likely be guilty of insider trading.” Lee knew that he was
8 prohibited from disclosing material, non-public information to outsiders for the purpose of
9 trading.

10 40. Lee also received training from Leerink’s Compliance Department. During
11 the training, Leerink instructed its employees to preserve the confidentiality of information
12 received from the company.

13 41. Lee described himself to the SEC as a “respected Wall Street professional
14 who has worked with some of the largest investment banks in the world.”

15 42. As a professional in the financial industry, Lee knew that he had a duty to
16 preserve the confidentiality of information that he received from his employer. Based on his
17 experience, Lee knew that he was prohibited from tipping outsiders and divulging material,
18 non-public information that he learned from Leerink.

19 43. Chen, too, has had an interest in working in the financial industry. In college,
20 Chen had a minor in business administration. He has studied to become a Chartered
21 Financial Analyst, and has passed the exams for Levels I and II. At times, he has aspired to
22 become a hedge-fund manager.

23 44. Chen knew that he was prohibited from trading based on material, non-public
24 information. Chen knew that he could not purchase securities based on any material, non-
25 public information provided by Lee through his work as an investment banker at Leerink.

26 **Lee’s Work at Leerink**

27 45. Leerink entrusted Lee with confidential information during his tenure in the
28 investment banking department. Lee knowingly and voluntarily accepted a position of trust

1 at Leerink, and agreed to protect the confidentiality of the information that he received.

2 46. In 2009 and 2010, the investment banking department in the San Francisco
3 office of Leerink consisted of fewer than 15 people. It was a small, close-knit department.

4 47. The offices of Leerink in San Francisco were located on a single floor of an
5 office building. The employees sat in close proximity to one another.

6 48. Lee sat in a cubicle with short, half-sized wall dividers. He sat in close
7 proximity to other members of the investment banking department. He sat only a few steps
8 away from other analysts and associates, and only a short distance from other members of the
9 department. The close quarters were conducive to information-sharing.

10 49. The members of the investment banking department at Leerink, including Lee,
11 regularly spoke with one another about their work, including pending transactions. It was
12 common to share information with other members of the investment banking team, including
13 Lee, about upcoming deals.

14 50. The members of the investment banking department tended to know about
15 significant transactions that other members of the department were working on.

16 51. In light of the physical layout of the office, and the close proximity of the
17 employees, it was common to overhear employees talking about various projects.

18 52. Leerink placed information about their engagements on a shared computer
19 network drive. All members of the investment banking department had access to the shared
20 computer drive. The shared computer drive contained highly sensitive information about
21 pending transactions, including Leerink's work for Syneron and for Somanetics.

22 53. Lee had access to the shared computer drive. He regularly utilized the shared
23 computer drive as part of his day-to-day work at Leerink. Lee retrieved information about
24 pending matters from the shared computer drive as a regular part of his job.

25 54. The shared computer drive was not password protected.

26 55. Anyone with access to the shared computer drive, including Lee, could view
27 information about pending engagements. The files on the shared computer drive were not
28 restricted to the individuals working on the transactions in question.

1 with the following description: "Buyside."

2 65. On August 7, 2009, Lee and other members of the investment banking
3 department received an Activity Log. The Activity Log was a spreadsheet that contained
4 information about Leerink's engagements and pending transactions. The Activity Log dated
5 August 7, 2009, included a reference to "Project Sprite," with the following description:
6 "Buyside: Negotiating engagement letter and beginning due diligence."

7 66. Project Sprite was the code name for the proposed acquisition of Candela by
8 Syneron.

9 67. The use of the code name reflected the fact that Leerink's work for Syneron
10 was confidential.

11 68. Leerink's shared computer drive included information about Project Sprite,
12 including information about the potential buyer and seller.

13 69. On August 25, 2009, Lee sent an email to a colleague at Leerink. "How is it
14 going? Aren't you moving to NYC this weekend?" The employee responded: "Yeah man.
15 Moving on Monday. Trying to wrap things up here and get the apt packed." He added:
16 "Very busy as usual with Project Sprite"

17 70. On August 30, 2009, a member of the investment banking department sent an
18 email to Lee, saying that he was in "fairness opinion hell on 2 deals for the next 48 hours."
19 The next day, the colleague sent follow-up emails to Lee, saying that he had been "working
20 without sleep since 8 AM yesterday," and remained in "fairness opinion hell."

21 71. On September 1, 2009, Lee exchanged emails with another colleague, and
22 posed questions about who was working on the two fairness opinions. Lee wrote: "He told
23 me that you guys were working on two? Who was working on the other one then?" The
24 colleague provided names, adding: "That is project Sprite."

25 72. Lee then asked about the status of Project Sprite: "Is [name of colleague]
26 done with Sprite?" The colleague responded: "I would check in with him if it is time
27 sensitive. He is not done with Sprite but it is not on as much of a time constraint as [another
28 deal]."

1 September 5, 2009, Lee and Chen placed over 20 calls to each other, and exchanged over 90
2 text messages. Some of the telephone calls took place from Lee's office at Leerink.

3 83. The communications between Lee and Chen in late August and early
4 September, 2009 were unusual in frequency.

5 84. Lee and Chen called each other at least five times on August 26, 2009.
6 Several calls involved Lee's office phone at Leerink. They also exchanged approximately
7 eight text messages. The day before, Lee had received an email from a colleague at Leerink,
8 explaining that he was "[v]ery busy as usual with Project Sprite," the code name for the
9 Candela-Syneron deal.

10 85. Lee and Chen had another call on August 27, 2009.

11 86. On August 30, 2009, Lee called Chen from his office telephone at Leerink.
12 The call lasted fourteen minutes. That day, Lee and Chen also exchanged approximately 29
13 text messages.

14 87. On August 31, 2009, representatives of Candela met with representatives of
15 Syneron to negotiate a merger agreement.

16 88. That same day, Lee and Chen called each other five times, and exchanged
17 approximately 20 text messages.

18 89. On September 1, 2009, Chen began investing in Candela. He purchased
19 38,200 shares of Candela stock on September 1, 2009. He paid approximately \$63,399.

20 90. Specifically, Chen purchased 38,200 shares of Candela stock on September 1,
21 2009 in four separate brokerage accounts at three different brokerage firms. He purchased
22 12,000 shares of Candela stock in account no. xx1064. He purchased 7,800 shares of
23 Candela stock in account no. xx3804. He purchased 9,000 shares of Candela stock in
24 account no. xx6995. He purchased 9,400 shares of Candela stock in account no. xx7297.

25 91. Chen's purchase of 38,200 shares of Candela took place on September 1,
26 2009, the same day that Lee asked a Leerink colleague about the status of the fairness
27 opinion for Project Sprite.

28 92. That same day, Lee and Chen exchanged approximately six text messages.

1 93. On September 2, 2009, Chen placed a telephone call to Lee. Lee and Chen
2 also exchanged approximately 20 text messages.

3 94. Chen increased his investment in Candela on September 3, 2009. Chen
4 purchased 2,400 shares of Candela stock on September 3, 2009. He paid approximately
5 \$3,917.

6 95. Chen increased his investment in Candela the following day. Chen purchased
7 26,538 shares of Candela stock on September 4, 2009. He paid approximately \$43,967.

8 96. Specifically, Chen purchased 26,538 shares of Candela stock on September 4,
9 2009 in four separate brokerage accounts at three different brokerage firms. He purchased
10 13,600 shares of Candela stock in account no. xx1064. He purchased 7,988 shares of
11 Candela stock in account no. xx1160. He purchased 1,900 shares of Candela stock in
12 account no. xx6995. He purchased 3,050 shares of Candela stock in account no. xx7297.

13 97. That same day, Leerink's Fairness Opinion Committee met to discuss the
14 near-final draft of the fairness opinion for the Candela-Syneron deal.

15 98. On September 5, 2009, Lee and Chen called each other 10 times, and
16 exchanged approximately nine text messages.

17 99. Chen increased his investment in Candela on September 8, 2009, the day after
18 Labor Day. Chen purchased 4,317 shares of Candela stock on September 8, 2009. He paid
19 approximately \$7,842.

20 100. Specifically, Chen purchased 4,317 shares of Candela stock in three separate
21 brokerage accounts at three different brokerage firms. He purchased 2,200 shares of Candela
22 stock in account no. xx1064. He purchased 1,088 shares of Candela stock in account no.
23 xx1160. He purchased 1,029 shares of Candela stock in account no. xx6995.

24 101. Chen's purchase on September 8, 2009 took place only one day after Lee
25 received an email from a Leerink colleague about finalizing the fairness opinion for Project
26 Sprite.

27 102. Chen's purchase on September 8, 2009 took place on the same day that
28 Leerink finalized its fairness opinion about the acquisition of Candela.

1 103. Chen used a significant portion of his readily available cash to buy securities
2 of Candela in June, 2010

3 104. On September 9, 2009, Candela announced to the public that it had entered
4 into an agreement to be acquired by Syneron. Before September 9, 2009, the proposed
5 merger between Candela and Syneron was material, non-public information.

6 105. The price of Candela stock increased substantially after the public
7 announcement. The price of Candela stock closed at \$2.68 per share on September 9, 2009,
8 an increase of over 40% from the closing price of \$1.88 per share on September 8, 2009.

9 106. Chen sold his investment in Candela shortly after the public announcement of
10 the merger.

11 107. Chen sold 55,079 shares (net) of Candela stock on September 9, 2009. He
12 received approximately \$137,315. Those figures exclude 3,388 shares of Candela stock that
13 Chen purchased and sold on September 9, 2009.

14 108. Chen sold 14,600 shares of Candela stock on September 10, 2009. He
15 received approximately \$39,345.

16 109. Chen sold 1,776 shares of Candela stock on September 18, 2009. He received
17 approximately \$4,971.

18 110. By trading in shares of Candela, Chen profited by more than \$62,000.

19 111. Chen's trading in Candela was inconsistent with his prior trading history.

20 **The Cash Deposits and Withdrawals**

21 112. The bank records reflect a pattern of large cash withdrawals by Lee, followed
22 by large cash deposits by Chen. Lee withdrew large sums of cash from his bank in late
23 August and early September, 2009. Within 24 hours, Chen took comparable amounts of cash
24 to his bank, and deposited the cash or purchased cashier's checks. He then spent the money
25 on shares of Candela.

26 113. Lee withdrew \$2,000 in cash from his checking account on August 31, 2009.

27 114. The very next day, Chen deposited \$1,800 in cash in his checking account.

28 115. Chen sent the funds, plus additional funds in his account, to his brokerage

1 account. He then spent the money on shares of Candela.

2 116. Lee withdrew \$7,000 in cash from his checking account on September 2,
3 2009.

4 117. The very next day, Chen deposited \$6,800 in cash in his checking account.

5 118. Chen used the funds, plus additional funds in his account, to purchase two
6 cashier's checks for \$5,000 (each). He deposited the funds in two brokerage accounts, and
7 then spent the money on shares of Candela.

8 119. Lee withdrew \$10,000 in cash from his checking account on September 8,
9 2009.

10 120. That same day, Chen used cash to purchase a cashier's check for \$9,900.

11 121. Chen deposited the funds in his brokerage account, and then spent the money
12 on shares of Candela.

13 122. Collectively, Lee withdrew \$19,000 in cash from his checking account in a
14 nine-day period, and did so shortly before the public announcement of the Candela
15 acquisition. The \$19,000 in cash withdrawals represented almost a quarter of his annual
16 salary (before taxes).

17 **The Use of Cashier's Checks**

18 123. On September 3 & 8, 2009, Chen deposited funds in his brokerage account
19 through cashier's checks. He used cashier's checks because he wanted immediate access to
20 the funds. He wanted to invest in Candela as soon as possible.

21 124. Chen called his brokerage firm four times on September 3, 2009. He asked
22 how soon he could access funds in his account.

23 **Leerink's Work for Somanetics on the Somanetics-Covidien Transaction**

24 125. In 2010, Somanetics engaged Leerink to assist with a potential acquisition of
25 the company. Somanetics and Leerink entered into a confidentiality agreement.

26 126. The Somanetics-Covidien transaction was a significant deal for Leerink. At
27 the time, the transaction was one of the largest, if not the largest, of the mergers and
28 acquisitions in which Leerink was the lead financial advisor. The transaction required

1 | considerable work by Leerink before the public announcement on June 16, 2010.

2 | 127. Lee gained knowledge of the Somanetics-Covidien transaction through his
3 | employment at Leerink.

4 | 128. Lee knew that Somanetics was a client of the firm. On May 24, 2010, Lee
5 | sent an email to a colleague while working on another deal. Lee asked his colleague if he
6 | should follow any particular format for a document that he was preparing. The colleague
7 | responded, in part, by pointing him to Somanetics: "Somanetics has a decent template."

8 | 129. Lee also knew that Somanetics was for sale. On May 28, 2010, Lee and other
9 | members of the investment banking department received a Coverage List. The Coverage List
10 | was a spreadsheet that contained information about Leerink's engagements and pending
11 | transactions.

12 | 130. The Coverage List dated May 28, 2010 included information about Leerink's
13 | work for Somanetics. The Coverage List expressly identified Somanetics as a client of the
14 | firm. The Coverage List described the deal as "Sell-Side," adding: "Negotiating EL
15 | [engagement letter]; buyer has presented offer to company."

16 | 131. On June 7, 2010, Leerink participated in a telephonic meeting with the Board
17 | of Directors of Somanetics about its proposed acquisition by Covidien. The call included
18 | two colleagues who sat in adjacent cubicles, a short distance from Lee's cubicle.

19 | 132. Lee was in the office at the time of the call with the Board of Directors of
20 | Somanetics on June 7, 2010. He worked late that evening.

21 | 133. On June 8, 2010, at approximately 1:29 a.m., Lee sent an email to a colleague
22 | about pitching-in the following morning. "[Colleague] just told me that you will be in the
23 | office early for [another deal]. Is this something I can help you with?" In response, the
24 | colleague revealed that he was working on Somanetics: "I'm actually coming in to work on
25 | somanetics."

26 | 134. Later that day, Lee and others received an email asking where to find a
27 | "profile on Somanetics." Lee responded to the email, pointing his colleague to three other
28 | employees.

1 After the merger announcement, Chen sold those shares for approximately \$22,348, reaping
2 profits of approximately \$6,168.

3 143. Chen began investing in Somanetics less than one week before the company
4 announced its acquisition on June 16, 2010.

5 144. Before June, 2010, Chen had never invested in Somanetics.

6 145. There were multiple opportunities for Lee to tip Chen with material, non-
7 public information in the first half of June, 2010.

8 146. Lee and Chen had a number of communications in the second week of June,
9 2010. Between June 7 and 13, 2010, Lee and Chen placed at least 16 calls to each other, and
10 exchanged approximately 22 text messages.

11 147. The communications between Lee and Chen in the second week of June, 2010
12 were unusual in frequency.

13 148. On the evening of June 7, 2010 – after two of his colleagues participated in
14 the telephonic meeting with the Board of Directors of Somanetics – Lee placed a telephone
15 call to Chen. The call lasted approximately 6-7 minutes.

16 149. On June 8, 2010, Lee and Chen had dinner together, according to Relief
17 Defendant Jennifer Chen. They also placed a number of short calls to each other. They also
18 exchanged approximately 17 text messages.

19 150. On June 9, 2010, Lee and Chen placed at least two short calls to each other,
20 and exchanged five text messages.

21 151. On June 10, 2010, Chen began investing in Somanetics. The investments
22 began only three days after the telephonic meeting with the Board of Directors of
23 Somanetics. The investments began only two days after Lee received an email from a
24 colleague about coming in early to “work on Somanetics.”

25 152. On June 10, 2010, Chen purchased 72 call options in Somanetics stock with a
26 strike price of \$17.50 and an expiration date of June 2010. He paid approximately \$9,611.

27 153. Specifically, Chen purchased 72 call options in Somanetics stock with a strike
28 price of \$17.50 on June 10, 2010 in two separate brokerage accounts at two different

1 brokerage firms.

2 154. On June 10, 2010, Chen also purchased 200 call options in Somanetics stock
3 with a strike price of \$20 and an expiration date of June 2010. He paid approximately
4 \$8,898.

5 155. Specifically, on June 10, 2010, Chen purchased 200 call options in
6 Somanetics stock with a strike price of \$20 in three separate brokerage accounts at two
7 different brokerage firms. He purchased 30 call options in account no. xx7297. He
8 purchased 110 call options in account no. xx2927. He purchased 60 call options in account
9 no. xx6995.

10 156. The call options with a \$20 strike price were out of the money when Chen
11 bought them on June 10, 2010. The stock of Somanetics closed at \$17.47 per share on June
12 9, 2010, and closed at \$17.75 per share on June 10, 2010. The high trading price did not
13 reach \$20 on June 10, 2010.

14 157. Chen purchased call options in Somanetics stock with a June, 2010 expiration
15 date. That is, the options were set to expire at the close of the market on Friday, June 18,
16 2010.

17 158. By purchasing out-of-the-money call options with short-term expiration dates,
18 Chen displayed confidence that the stock would increase in price in a matter of days.

19 159. On June 10-11, 2010, Chen also purchased 900 shares of Somanetics stock in
20 the IRA account of his sister, Relief Defendant Jennifer Chen. Chen was responsible for
21 making stock trades in his sister's IRA account. On June 9, 2010, Chen liquidated all of the
22 stock positions in his sister's account, and in the next two days, he used those funds to invest
23 in Somanetics.

24 160. Chen increased his investment in Somanetics on June 11, 2010.

25 161. On June 11, 2010, Chen purchased 110 call options in Somanetics stock with
26 a strike price of \$17.50 and an expiration date of June 2010. He paid approximately \$14,856.

27 162. Specifically, on June 11, 2010, Chen purchased 110 call option contacts for
28 Somanetics stock with a strike price of \$17.50 in three separate brokerage accounts at two

1 different brokerage firms. He purchased 20 call options in account no. xx1160. He
2 purchased 50 call options in account no. xx2927. He purchased 40 call options in account
3 no. xx6995.

4 163. On June 11, 2010, Chen also purchased 473 call options in Somanetics stock
5 with a strike price of \$20 and an expiration date of June 2010. He paid approximately
6 \$23,156.

7 164. Specifically, on June 11, 2010, Chen purchased 473 call options in
8 Somanetics stock with a strike price of \$20 in four separate brokerage accounts at two
9 different brokerage firms. He purchased 200 call options in account no. xx3804. He
10 purchased 3 call options in account no. xx7297. He purchased 200 call options in account
11 no. xx2927. He purchased 70 call options in account no. xx6995.

12 165. The call options with a \$20 strike price were out of the money when Chen
13 bought them on June 11, 2010. The stock of Somanetics closed at \$17.75 per share on June
14 10, 2010, and closed at \$18.67 per share on June 11, 2010. The high trading price did not
15 reach \$20 on June 11, 2010.

16 166. On June 11, 2010, Chen also purchased 2,548 shares of Somanetics stock. He
17 paid approximately \$46,614.

18 167. Specifically, Chen purchased 2,548 shares of Somanetics stock on June 11,
19 2010 in two separate brokerage accounts at one brokerage firm. He purchased 600 shares of
20 Somanetics stock in account no. xx1160. He purchased 1,948 shares of Somanetics stock in
21 account no. xx7297.

22 168. On June 13, 2010, Lee and Chen called each other at least four times. The
23 calls took place after the Board of Directors of Somanetics held a meeting, reviewed the
24 fairness opinion provided by Leerink, and approved the proposed merger with Covidien.

25 169. Chen increased his investment in Somanetics on June 14, 2010.

26 170. On June 14, 2010, Chen purchased 288 call options in Somanetics stock with
27 a strike price of \$20 and an expiration date of June 2010. He paid approximately \$16,253.

28 171. Specifically, on June 14, 2010, Chen purchased 288 call options in

1 Somanetics stock with a strike price of \$20 in five separate brokerage accounts at two
2 different brokerage firms. He purchased 173 call options in account no. xx1160. He
3 purchased 62 call options in account no. xx3804. He purchased 10 call options in account
4 no. xx7297. He purchased 7 call options in account no. xx2927. He purchased 36 call
5 options in account no. xx6995.

6 172. The call options with a \$20 strike price were out of the money when Chen
7 bought them on June 14, 2010. The stock of Somanetics closed at \$18.67 per share on
8 Friday, June 11, 2010, and closed at \$18.72 per share on June 14, 2010. The high trading
9 price did not reach \$20 on June 14, 2010.

10 173. Chen increased his investment in Somanetics on June 15, 2010.

11 174. On June 15, 2010, Chen purchased 19 call options in Somanetics stock with a
12 strike price of \$20 and expiration date of June 2010. He paid approximately \$1,254.

13 175. The call options with a \$20 strike price were out of the money when Chen
14 bought them on June 15, 2010. The stock of Somanetics closed at \$18.72 per share on June
15 14, 2010, and closed at \$18.90 per share on June 15, 2010. The high trading price did not
16 reach \$20 on June 15, 2010.

17 176. On June 15, 2010, Chen also purchased 188 shares of Somanetics stock. He
18 paid approximately \$3,609.

19 177. Specifically, Chen purchased 188 shares of Somanetics stock on June 15,
20 2010 in two separate brokerage accounts at two different brokerage firms. He purchased 98
21 shares of Somanetics stock in account no. xx1160. He purchased 90 shares of Somanetics
22 stock in account no. xx6305.

23 178. Chen used almost all of his readily available cash to buy securities of
24 Somanetics in June, 2010.

25 179. On June 11, 2010, Chen withdrew \$13,000 from his checking account to
26 invest in Somanetics. As of June 16, 2010 – the day of the public announcement – Chen had
27 less than \$400 in his checking account. The remaining funds in his checking account were
28 insufficient – even after his next paycheck on June 18, 2010 – to make his next mortgage

1 payment.

2 180. On June 16, 2010, Somanetics publicly announced that it had signed a merger
3 agreement with a wholly-owned subsidiary of Covidien. Under the agreement, all of the
4 outstanding shares of Somanetics would be acquired through a cash tender offer of \$25.00
5 per share, a 32% premium over the prior day's closing price. Before June 16, 2010, the
6 proposed merger between Somanetics and Covidien was material, non-public information.

7 181. The price of Somanetics stock increased substantially after the public
8 announcement. The price of Somanetics stock closed at \$24.81 per share on June 16, 2010,
9 an increase of over 30% from the closing price of \$18.90 per share on June 15, 2010.

10 182. Chen sold his investment in Somanetics shortly after the public announcement
11 of the merger.

12 183. On June 16, 2010, Chen sold 118 call options in Somanetics stock with a
13 strike price of \$17.50. He received approximately \$86,161.

14 184. On June 16, 2010, Chen sold 980 call options in Somanetics stock with a
15 strike price of \$20. He received approximately \$470,394.

16 185. On June 18, 2010, Chen sold 2,646 shares of Somanetics stock. He received
17 approximately \$65,881.

18 186. On June 18, 2010, Chen sold 64 call options in Somanetics stock with a strike
19 price of \$17.50. He received approximately \$47,312.

20 187. On June 21, 2010, Chen sold 90 shares of Somanetics stock. He received
21 approximately \$2,233.

22 188. By trading in securities of Somanetics, Chen profited by more than \$547,000.
23 Relief Defendant Jennifer Chen profited by more than \$6,000.

24 189. Chen's trading in Somanetics was inconsistent with his prior trading history,
25 excluding his trading in Candela.

26 **The Cash Deposits and Withdrawals**

27 190. In June, 2010, Lee withdrew a significant amount of cash, and in the next few
28 days, Chen used a comparable amount of cash to purchase two cashier's checks. Chen then

1 spent the money on securities of Somanetics.

2 191. On June 10, 2010, Lee withdrew \$11,537 in cash from his bank account. He
3 completed the withdrawal in three transactions, at two different ATMs.

4 192. The very next day, Chen used cash to purchase a cashier's check for \$9,000.

5 193. Chen deposited the funds in his brokerage account, and then spent the money
6 on securities of Somanetics.

7 194. On June 14, 2010, Chen used \$2,860 in cash – and \$140 from his checking
8 account – to purchase a cashier's check for \$3,000. He deposited the funds in his brokerage
9 account on June 15, 2010, and then spent the money on securities of Somanetics.

10 **The Use of Cashier's Checks**

11 195. Chen deposited funds in his brokerage account through cashier's checks dated
12 June 10, 2010, June 11, 2010, and June 14, 2010, respectively. He used cashier's checks
13 because he wanted immediate access to the funds. He wanted to invest in Somanetics as
14 soon as possible.

15 196. Chen called his brokerage firm three times on June 10 & 14, 2010. He asked
16 how soon he could access funds in his account.

17 **Deceptive Conduct by Lee**

18 197. Lee concealed his relationship with Chen in response to an investigation by
19 the Financial Industry Regulatory Authority ("FINRA"). He deceived FINRA and Leerink
20 by denying that he knew Chen, his longtime friend from college.

21 198. As an analyst at Leerink in 2009, Lee was a member of the investment-
22 banking team working for Poniard Pharmaceuticals, Inc. ("Poniard"), a biopharmaceutical
23 company. At the time, Poniard was developing a platinum-based chemotherapy drug, and
24 was awaiting the results of clinical testing.

25 199. On November 11, 2009, Lee received a draft of a Poniard Commitment
26 Committee Memo about a follow-on offering. The Memo stated that data from the drug
27 testing would be locked on November 12, 2009, and that the company would receive and
28 analyze the data on November 14, 2009. The Memo further stated that the company would

1 conduct an investor conference call to discuss the data on November 16, 2009.

2 200. On November 11 & 13, 2009, Chen purchased and sold put-option contracts
3 in Poniard stock with an expiration date of November 2009.

4 201. On November 14, 2009, Lee received an email confirming that Poniard's
5 drug-testing results were not positive. On November 16, 2009, Poniard publicly announced
6 that its phase III trial did not meet its objectives.

7 202. In January, 2010, FINRA requested information about trading in the stock of
8 Poniard surrounding the public announcement of the phase III trial. FINRA expressly
9 requested information from the investment banking team at Leerink, including Lee.

10 203. On January 27, 2010, Lee and others received an email from an in-house
11 attorney at Leerink about FINRA's investigation. The attorney asked the recipients to review
12 a list of names provided by FINRA. He asked them to disclose if they knew anyone on the
13 attached list, and to explain the nature of their relationship.

14 204. The list included "Chen, Victor S." from "San Jose, CA." Chen's name
15 appeared on the very first page of the list provided by FINRA.

16 205. At that time, Defendant Chen lived and worked in San Jose, California.

17 206. Two days later, Lee had not responded, prompting the attorney for Leerink to
18 reach out to Lee once again.

19 207. Lee responded on January 29, 2010, and provided false information. Lee
20 denied that he knew anyone on the list provided by FINRA. "I do not know any of the
21 individuals listed on the PDF that you sent over."

22 208. Leerink relied upon the false information provided by Lee. An attorney for
23 Leerink formally responded to FINRA on February 4, 2010, claiming that the employees
24 from Leerink had "nothing to report."

25 **The Fifth Amendment**

26 209. Lee refused to testify during the SEC's investigation. He refused to testify
27 about, among other things, his "awareness . . . of material non-public information regarding
28 Somanetics Corporation, Candela Laser Corporation, Poniard Pharmaceuticals, Inc., and

1 other entities,” and his “communications with any individuals regarding Somanetics
2 Corporation, Candela Laser Corporation, [and] Poniard Pharmaceuticals, Inc.” Lee asserted
3 his right against self-incrimination under the Fifth Amendment of the Constitution.

4 210. Chen refused to testify during the SEC’s investigation. Chen asserted his
5 right against self-incrimination under the Fifth Amendment of the Constitution.

6 **COUNT I**
7 **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
8 **Against Defendants Lee and Chen**
9 **Trading in Candela**

10 211. The Commission realleges and incorporates by reference the allegations in
11 paragraphs 1 – 210.

12 212. Defendant Lee knew, or was reckless in not knowing, that information
13 relating to Leerink’s work on the Candela-Syneron transaction was material, non-public
14 information. Lee breached the fiduciary duty of trust and confidence by disclosing material,
15 non-public information to Chen. Lee knew, or was reckless in not knowing, that Chen would
16 purchase Candela securities on the basis of the material, non-public information that Lee
17 provided. Lee received a personal benefit from his disclosure of material, non-public
18 information to Chen.

19 213. Defendant Chen knew, or was reckless in not knowing, that information
20 relating to Leerink’s work on the Candela-Syneron transaction was material, non-public
21 information. Chen knew, or was reckless in not knowing, that Lee conveyed material, non-
22 public information to him in violation of a relationship of trust. Chen purchased Candela
23 securities on the basis of the material, non-public information that Lee provided in breach of
24 a duty.

25 214. By engaging in the conduct described above, Defendants Lee and Chen, in
26 connection with the purchase or sale of securities, and by the use of means or
27 instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed
28 devices, schemes or artifices to defraud; (b) made untrue statements of material fact, or
omitted to state material facts necessary in order to make statements made, in the light of the

1 circumstances under which they were made, not misleading; or (c) engaged in acts, practices
2 or courses of business which operated as a fraud or deceit upon other persons.

3 215. Defendants Lee and Chen acted with *scienter*. Defendant Lee acted with
4 *scienter* by knowingly or recklessly disclosing material, non-public information to Chen
5 relating to Leerink's work on the Syneron-Candela transaction. Lee knew, or was reckless in
6 not knowing, that he was conveying material, non-public information in breach of a duty.
7 Defendant Chen acted with *scienter* by trading on the basis of material, non-public
8 information provided by Lee relating to Leerink's work on the Syneron-Candela transaction.
9 Chen knew, or was reckless in not knowing, that Lee had provided that information in breach
10 of a duty, and Chen intentionally or recklessly traded while in knowing possession of that
11 information.

12 216. By engaging in the conduct described above, Defendants Lee and Chen have
13 violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act, 15
14 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

15 **COUNT II**
16 **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
17 **Against Defendants Lee and Chen**
18 **Trading in Somanetics**

19 217. The Commission realleges and incorporates by reference the allegations in
20 paragraphs 1 – 210.

21 218. Defendant Lee knew, or was reckless in not knowing, that information
22 relating to Leerink's work on the Somanetics-Covidien transaction was material, non-public
23 information. Lee breached the fiduciary duty of trust and confidence by disclosing material,
24 non-public information to Chen. Lee knew, or was reckless in not knowing, that Chen would
25 purchase Somanetics securities on the basis of the material, non-public information that Lee
26 provided. Lee received a personal benefit from his disclosure of material, non-public
27 information to Chen.

28 219. Defendant Chen knew, or was reckless in not knowing, that information
relating to Leerink's work on the Somanetics-Covidien transaction was material, non-public

1 information. Chen knew, or was reckless in not knowing, that Lee conveyed material, non-
2 public information to him in violation of a relationship of trust. Chen purchased Somanetics
3 securities on the basis of the material, non-public information that Lee provided in breach of
4 a duty.

5 220. Defendants Lee and Chen acted with *scienter*. Defendant Lee acted with
6 *scienter* by knowingly or recklessly disclosing material, non-public information to Chen
7 relating to Leerink's work on the Somanetics-Covidien transaction. Lee knew, or was
8 reckless in not knowing, that he was conveying material, non-public information in breach of
9 a duty. Defendant Chen acted with *scienter* by trading on the basis of material, non-public
10 information provided by Lee relating to Leerink's work on the Somanetics-Covidien
11 transaction. Chen knew, or was reckless in not knowing, that Lee had provided that
12 information in breach of a duty, and Chen intentionally or recklessly traded while in knowing
13 possession of that information

14 221. By engaging in the conduct described above, Defendants Lee and Chen, in
15 connection with the purchase or sale of securities, and by the use of means or
16 instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed
17 devices, schemes or artifices to defraud; (b) made untrue statements of material fact, or
18 omitted to state material facts necessary in order to make statements made, in the light of the
19 circumstances under which they were made, not misleading; or (c) engaged in acts, practices
20 or courses of business which operated as a fraud or deceit upon other persons.

21 222. By engaging in the conduct described above, Defendants Lee and Chen have
22 violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act, 15
23 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

24 **COUNT III**
25 **Violation of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder**
26 **Against Defendants Lee and Chen**
27 **Trading in Somanetics**

28 223. The Commission realleges and incorporates by reference the allegations in
paragraphs 1 – 210.

1 | **PRAYER FOR RELIEF**

2 | WHEREFORE, the Commission respectfully requests that the Court:

3 | **I.**

4 | Permanently enjoin Defendants Lee and Chen from violating Sections 10(b) and
5 | 14(e) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78n(e), and Rules 10b-5 and 14e-3
6 | thereunder, 17 C.F.R. §§ 240.10b-5, 240.14e-3;

7 | **II.**

8 | Order Defendants Lee and Chen, jointly and severally, to disgorge the ill-gotten gains
9 | from the trades in the securities of Candela and Somanetics, including prejudgment interest
10 | thereon;

11 | **III.**

12 | Order Defendants Lee and Chen to pay civil penalties pursuant to Section 21A of the
13 | Exchange Act, 15 U.S.C. § 78u-1;

14 | **IV.**

15 | Order Relief Defendant Jennifer Chen, jointly and severally with Defendants Lee and
16 | Chen, to disgorge an amount equal to the funds she obtained, directly or indirectly, from the
17 | insider trading by Defendants, including prejudgment interest thereon; and

18 | **V.**

19 | Grant such other relief as the Court deems just and proper.

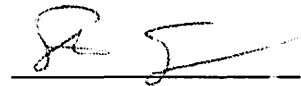
20 | **JURY DEMAND**

21 | Pursuant to Rule 39 of the Federal Rules of Civil Procedure, Plaintiff demands that
22 | this case be tried to a jury.

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28 |

Dated: September 27, 2012

Respectfully submitted,



Steven C. Seeger
Steven L. Klawans
Kara M. Washington
U.S. Securities and Exchange
Commission
175 W. Jackson Boulevard, Suite 900
Chicago, Illinois 60604-2615
Phone: (312) 353-7390
Fax: (312) 353-7398

Attorneys for Plaintiff
U.S. Securities and Exchange
Commission

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