

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14)
15 v.)
16)
17 JONATHAN A. BECK,)
18 Defendant.)
19 _____)

No.

VIOLATION: Insider Trading – 15
U.S.C. § 78j(b), 15 U.S.C. § 78ff(a), 17
CFR 240.10b-5

SAN FRANCISCO VENUE

20 I N F O R M A T I O N

21 The United States Attorney charges:

22 I. BACKGROUND

23 At all times relevant to this Information:

24 1. Critical Path, Inc. (“Critical Path” or the “Company”) was a high-tech
25 software and services company, incorporated in California and headquartered in San
26 Francisco, California. Critical Path was founded in 1997 with a business plan that called
27 for it to “handle the world’s email” on an outsourced basis. Critical Path went public in
28 1999, and its common stock was publicly traded under the symbol “CPTH” on the

INFORMATION

1 nationwide automated quotation system (“NASDAQ”) operated by the National
2 Association of Securities Dealers.

3 2. The defendant JONATHAN A. BECK was Vice President of Sales at
4 Critical Path.

5 II. RELEVANT LEGAL AND ECONOMIC PRINCIPLES

6 3. The federal securities laws are intended to ensure honest markets and to
7 promote investor confidence. Investors have a legitimate expectation that the prices of
8 actively traded securities reflect publicly available information about the companies that
9 issue those securities.

10 4. Insider trading undermines investor confidence in the integrity of the
11 securities markets. Insider trading occurs when corporate insiders, such as directors,
12 officers, or employees, trade company securities on the basis of material nonpublic
13 information.

14 5. Securities Exchange Act Rule 10b-5 prohibits insider trading.

15 III. CRITICAL PATH’S INSIDER-TRADING POLICY

16 6. As a publicly traded company, Critical Path adopted an insider-trading
17 policy that prohibited trading in company securities by corporate insiders while in
18 possession of material nonpublic information.

19 7. Critical Path’s insider-trading policy defined material information as any
20 information that a reasonable investor would consider important in a decision to buy, hold
21 or sell stock, and any information that could reasonably affect the price of the stock.

22 8. In addition to the general prohibition against trading while in possession of
23 material nonpublic information, Critical Path’s insider-trading policy included further
24 trading restrictions directed specifically toward particularly high-level insiders. The
25 policy required high-level insiders to obtain approval before executing any Critical Path
26 stock trades. The policy also required high-level insiders generally to restrict their trading
27 to a defined period of time known as a trading window.

1 9. When the trading window was open, high-level insiders could trade Critical
2 Path stock if they were not in possession of material nonpublic information and if they
3 obtained preapproval for their trade. When the trading window was closed, high-level
4 insiders were generally prohibited from trading Critical Path stock.

5 10. As Vice President of Sales at Critical Path, the defendant was subject to
6 Critical Path's insider-trading policy, and he was a high-level insider subject to the
7 trading window and the requirement of trading preapproval.

8 11. On January 17 and 18, 2001, the defendant's trading window at Critical
9 Path was closed, and the defendant was prohibited by Critical Path's insider-trading
10 policy from buying or selling Critical Path stock.

11 IV. THE DEFENDANT'S POSSESSION AND USE
12 OF MATERIAL NONPUBLIC INFORMATION

13 12. On or about October 19, 2000, Critical Path publicly announced its third-
14 quarter financial results and made predictions about its future financial performance.
15 Specifically, Critical Path's Chief Executive Officer predicted that Critical Path would
16 earn revenues of \$54 to \$56 million during the fourth quarter of 2000, and that Critical
17 Path would become profitable for the first time ever during that quarter.

18 13. On or about November 2, 2000, Critical Path reaffirmed these predictions
19 of fourth-quarter revenues and profitability. In a Company press release, Critical Path's
20 CEO was quoted as follows: "The fourth quarter of 2000 is a pivotal one for Critical Path,
21 one in which we join an elite group of profitable new economy companies." The press
22 release predicted fourth-quarter revenues of \$54 to \$56 million, and fourth-quarter
23 earnings of \$0.01 per share.

24 14. As the fourth quarter drew to a close, the Company was far short of its
25 publicly announced goals for revenues and profitability.

26 15. On or about December 28, 2000, the defendant became aware of a plan at
27 Critical Path to execute bogus deals to help the Company meet its revenue goals.

1 16. By January 17 and 18, 2001, the defendant believed that Critical Path could
2 not meet its publicly stated financial goals. He believed that the price of Critical Path
3 stock would fall when it was disclosed that the Company had failed to meet its goals and
4 had engaged in fraud.

5 V. THE DEFENDANT'S INSIDER TRADING

6 17. On or about January 17 and 18, 2001, the defendant sold 27,348 shares of
7 Critical Path stock, at an average sales price of approximately \$24.54 per share, obtaining
8 gross proceeds of \$671,213.20.

9 18. The defendant made this sale on the basis of the material nonpublic
10 information that Critical Path could not meet its predicted financial results and had
11 engaged in fraud.

12 COUNT ONE: 15 U.S.C. § 78j(b), 15 U.S.C. § 78ff(a), 17 CFR 240.10b-5 (Insider
13 Trading)

14 19. Paragraphs 1 through 18 are realleged as if fully set forth in this Count.

15 20. On or about January 17 and 18, 2001, in the Northern District of California,
16 the defendant

17 JONATHAN A. BECK

18 did willfully, directly and indirectly, by the use of means and instrumentalities of
19 interstate commerce and of the facilities of a national securities exchange, use and employ
20 manipulative devices and contrivances in connection with the purchase and sale of
21 securities, namely, the common stock of Critical Path, in contravention of the rules and
22 regulations prescribed by the Securities and Exchange Commission, namely, Securities
23 Exchange Act Rule 10b-5, by (a) employing a device, scheme, and artifice to defraud, (b)
24 omitting to state material facts necessary to make statements made, in light of the
25 circumstances under which they were made, not misleading, and (c) engaging in acts,
26 practices, and courses of dealing which would and did operate as a fraud and deceit.

27 21. Specifically, on or about January 17 and 18, 2001, on the basis of material
28 nonpublic information regarding the financial performance and fraud at Critical Path, the

1 defendant sold 27,348 shares of Critical Path stock, at an average sales price of
2 approximately \$24.54 per share, obtaining gross proceeds of \$671,213.20, in breach of
3 his fiduciary duty not to trade in Critical Path stock while in possession of material
4 nonpublic information regarding Critical Path.

5 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and
6 Title 17, Code of Federal Regulations, Section 240.10b-5.

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DATED: _____

KEVIN V. RYAN
United States Attorney

(Approved as to form: _____)
AUSA Anderson