KEVIN V. RYAN (CSBN 118321)
United States Attorney

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KEVIN P. CLARK, Defendant.	No. VIOLATION: Insider Trading – 15 U.S.C. § 78j(b), 15 U.S.C. § 78ff(a), 17 CFR 240.10b-5 SAN FRANCISCO VENUE

I N F O R M A T I O N

The United States Attorney charges:

I. BACKGROUND

At all times relevant to this Information:

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

nationwide automated quotation system ("NASDAQ") operated by the National Association of Securities Dealers.

2. The defendant KEVIN P. CLARK was Vice President of Sales at Critical Path.

II. RELEVANT LEGAL AND ECONOMIC PRINCIPLES

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

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

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

III. CRITICAL PATH'S INSIDER-TRADING POLICY

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

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

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

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

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

11. On January 16 and 18, 2001, the defendant's trading window at Critical Path was closed, and the defendant was prohibited by Critical Path's insider-trading policy from buying or selling Critical Path stock.

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

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

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

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

15. On or about December 28, 2000, the defendant was approached by his supervisors at Critical Path and instructed to find a "CEO level deal" to help the Company meet its revenue goals. The defendant approached the CEO of Bestseats, Inc., and

persuaded him to execute a $2 million software-licensing agreement with Critical Path. Bestseats did not need and could not pay for $2 million of Critical Path software. The defendant assured Bestseats that it would never have to pay for the software that it was purporting to buy from Critical Path. The defendant knew that executing a software-licensing agreement with Bestseats would allow Critical Path to report fourth-quarter revenues that had not, in fact, been earned.

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

V. THE DEFENDANT'S INSIDER TRADING

17. On or about January 16 and 18, 2001, the defendant sold 16,325 shares of Critical Path stock, at an average sales price of approximately $23.93 per share, obtaining gross proceeds of $390,656.05.

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

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

19. Paragraphs 1 through 18 are realleged as if fully set forth here.

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

KEVIN P. CLARK

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

21. Specifically, on or about January 16 and 18, 2001, on the basis of material nonpublic information regarding the financial performance and fraud at Critical Path, the defendant sold 16,325 shares of Critical Path stock, at an average sales price of approximately $23.93 per share, obtaining gross proceeds of $390,656.05, in breach of his fiduciary duty not to trade in Critical Path stock while in possession of material nonpublic information regarding Critical Path.

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

DATED: ____________

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KEVIN V. RYAN
United States Attorney

(Approved as to form: _____________________)
AUSA Anderson