

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED COPY  
IN CLERK'S OFFICE

2009 JUL -9 A 11:14

U.S. DISTRICT COURT  
DISTRICT OF MASS.

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

SYCAMORE NETWORKS, INC.,  
FRANCES M. JEWELS,  
CHERYL E. KALINEN, and  
ROBIN A. FRIEDMAN,

Defendants.

Civil Action No. \_\_\_\_\_

**08 CA 11166 DPW**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against Defendants Sycamore Networks, Inc. ("Sycamore" or "Company"), Frances M. Jewels ("Jewels"), Cheryl E. Kalinen ("Kalinen"), and Robin A. Friedman ("Friedman"):

**SUMMARY OF ACTION**

1. This matter involves improper accounting actions in connection with stock options backdating at Sycamore, a publicly-traded company headquartered in Chelmsford, Massachusetts. Between 1999 and 2002, Sycamore granted millions of stock options to its officers and employees without properly accounting for the options, resulting in the issuance of false or misleading financial statements in public filings with the Commission and the concealment of millions of dollars in stock compensation expenses.

2. Under Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB 25") and other accounting principles in effect during the relevant period,

Sycamore was required to record in its books and records, and disclose in its financial statements included in its public filings with the Commission, an expense for options granted at exercise prices below fair market value on the date of the grant, or “in the money” options. For options granted at fair market value on the date of grant, or “at the money,” no expense was required.

3. From just prior to the Company’s IPO in October 1999 through early October 2004, Jewels, as Sycamore’s Chief Financial Officer, had authority to approve option grants to all non-officers of the Company. Kalinen, Sycamore’s Director of Financial Operations, worked closely with Jewels and was responsible for overseeing the stock option program.

4. Between October 1999 and July 2002, Jewels, with Kalinen’s active assistance, engaged in a recurring practice of granting “in the money” options to Sycamore employees while failing to inform Sycamore’s investors and auditors of the nature of these options and, in fact, misleading them into believing that Sycamore granted these options “at the money.”

5. For several of these “in the money” grants, Jewels and Kalinen waited until the end of a month or a quarter before making the grants, but made it appear as though the grants were made at some earlier point – sometimes weeks earlier – when the stock price was lower and therefore more favorable to the option recipient. The option recipient stands to gain the difference between the exercise price and the market price upon exercise, so the lower the exercise price, the more the option holder can gain.

6. In carrying out their practice of granting “in the money” options with the benefit of hindsight, Jewels and Kalinen arranged for options to be granted on dates that coincided with days on which Sycamore’s stock price traded at a quarterly low or near-low point. By way of example, their actions rendered grants “in the money” by as much as \$23 per share for one set of approximately 1 million options (all figures herein are adjusted for stock splits). Similarly,

another set of approximately 1.6 million options was granted “in the money” by \$17 per share. These grants alone resulted in millions of dollars in unreported expenses. Sycamore’s total unreported options-related expenses were nearly \$250 million, which the Company eventually reported in restatements of its financial results in September 2005 and June 2007.

7. In order to create a paper trail to make their purported grant dates appear legitimate and keep the Company’s auditors from detecting their misconduct, Jewels and Kalinen falsified or caused others to falsify various Company documents, including grant approval lists, grant agreements, and other records reflecting option grant dates.

8. Jewels and Kalinen also both knowingly received “in the money” options on multiple occasions. Kalinen received “in the money” options as a direct result of the backdating activity described above. Jewels did not directly authorize option grants to herself, but she knew that the favorable grant dates that she was involved in selecting for certain option grants to non-officers applied to her own option grants as well, and Jewels failed to record any compensation expenses related to her own grants. Most of these “in the money” options to Jewels and Kalinen eventually fell “out of the money” due to a drop in Sycamore’s stock price below the exercise price, thereby preventing Jewels and Kalinen from profiting from the options.

9. Friedman’s involvement in stock options backdating at Sycamore centered on her participation, in or around January 2001, in a plan by Jewels and Kalinen to grant “in the money” options to five Company employees and conceal the nature of the grants from the Company’s auditors. Friedman altered or created (or caused others to alter or create) Company personnel and payroll records that reflected inaccurate start dates for the employees.

10. The collective actions of Jewels, Kalinen, and Friedman caused Sycamore, in numerous public filings with the Commission, to fail to report stock compensation expenses and consequently materially overstate net income or understate net losses.

11. By their conduct, Defendants violated or aided and abetted violations of various provisions of the Securities Act of 1933 (“Securities Act”) and/or Securities Exchange Act of 1934 (“Exchange Act”).

12. The Commission seeks relief including: permanent injunctions against all Defendants; disgorgement of ill-gotten gains, plus prejudgment interest thereon, against Jewels and Kalinen; civil monetary penalties against Jewels, Kalinen, and Friedman; forfeiture of cash bonuses pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 (“SOX Act”) against Jewels; an officer-and-director bar against Jewels; and any other appropriate relief.

#### **JURISDICTION AND VENUE**

13. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) & 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) & 78u(e)].

14. This Court has jurisdiction over this action pursuant to Sections 20(c) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(c) & 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

15. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Sycamore is headquartered and transacts business here, Jewels and Friedman resided here during the relevant period, and many of the acts or practices constituting the alleged violations occurred here.

16. In connection with the acts, transactions, practices and courses of business alleged in this Complaint, the Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, the means or instrumentalities of interstate commerce, the mails or the facilities of any national securities exchange.

### **DEFENDANTS**

17. **Sycamore** is a Delaware corporation formed in 1998 with its principal place of business in Chelmsford, Massachusetts. Sycamore develops and markets optical networking products for telecommunications service providers. At all relevant times, Sycamore's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and traded on the Nasdaq National Market System under the symbol "SCMR."

18. **Jewels**, age 43, was Sycamore's Chief Financial Officer ("CFO"), Vice President of Finance and Administration, Secretary, and Treasurer from approximately mid-1999 through October 2004, during which time she was responsible for overseeing Sycamore's financial, accounting, equity, legal, human resources and other functions. During some or all of the foregoing period, Jewels resided in Sudbury, Massachusetts. Jewels currently resides in East Hampton, New York. Jewels is an attorney licensed to practice in Massachusetts and formerly was licensed as a Certified Public Accountant ("CPA") in New York.

19. **Kalinen**, age 43, was employed at Sycamore from approximately mid-1999 through July 2003. Kalinen served as Director (and later Senior Director) of Financial Operations, overseeing, among other things, its stock option program. During her entire tenure at Sycamore, Kalinen reported directly to Jewels. Kalinen resides in Scottsdale, Arizona.

20. **Friedman**, age 44, was employed at Sycamore from approximately mid-2000 through December 2003. In or around January 2001, Friedman served as Senior Director of

Employment Affairs, overseeing Sycamore's human resources department. During her entire tenure at Sycamore, Friedman reported directly to Jewels. During that time, Friedman resided in Chestnut Hill, Massachusetts until approximately November 2002, and since then she has resided in Boca Raton, Florida. Friedman is an attorney licensed to practice in Massachusetts.

## **FACTUAL ALLEGATIONS**

### **General Procedures for Granting Stock Options at Sycamore**

21. Sycamore used stock options as a critical tool to recruit and retain employees. Stock options were a particularly important component of Sycamore's employee recruitment and compensation packages because the Company paid below-average salaries. At all relevant times, Sycamore granted stock options to nearly all newly-hired employees, as well as to existing employees in connection with performance reviews or on other occasions such as promotions.

22. From just prior to the Company's IPO in October 1999 through early October 2004 Jewels, as Sycamore's CFO, was authorized to approve grants of stock options to non-officer employees, which she did, serving as the primary, and often sole, executive at the Company performing that function.

23. At all relevant times, Kalinen worked closely with Jewels in administering and implementing Sycamore's stock option program.

### **Relevant Stock Options Accounting Principles and Preparation of Sycamore's Public Filings**

24. Under APB 25, a corporation must record an expense in its books and records for any intrinsic value of a fixed stock option on its measurement date. A fixed stock option has an intrinsic value if the exercise price of the option is less than the market price of the underlying stock on the measurement date (defined as the earliest date on which both the number of options

and exercise price are known). In that event, a corporation must record the difference between the exercise price and the market price over the life of the option (typically the vesting period).

25. Sycamore's fiscal year ends on July 31. In its annual reports filed on Form 10-K for the fiscal years ended July 31, 2000 through July 31, 2005, Sycamore represented that it accounted for stock-based employee compensation in accordance with provisions of APB 25.

26. At all relevant times, under generally accepted accounting principles ("GAAP"), Sycamore was required to report stock option expenses in its financial statements included in its public filings with the Commission.

27. Jewels, formerly a CPA, was well-versed in the relevant stock options accounting principles. Kalinen also was aware of the relevant accounting principles related to stock options. Jewels and Kalinen knew that Sycamore was required to record in its books and records, and report in its financial statements, compensation expenses related to "in the money" options.

28. During her entire tenure as Sycamore's CFO, Jewels was the primary person responsible for the preparation of the financial statements included in Sycamore's public filings and for ensuring that stock compensation expenses were properly reported therein.

29. During her entire tenure as Sycamore's CFO, Jewels was involved in drafting and reviewing Sycamore's annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, registration statements and proxy statements. As CFO, Jewels signed Sycamore's annual reports for the fiscal years ended July 31, 2000 through July 31, 2004, quarterly reports for the intervening quarters of those fiscal years, current reports during those fiscal years and various other public filings, such as registration statements. Jewels certified Sycamore's annual reports for fiscal years 2002, 2003 and 2004, and quarterly reports for the intervening quarters of those years. These certifications stated, among other things, that the

reports did not contain material misstatements or omissions and that they fairly presented, in all material respects, Sycamore's financial condition, results of operations and cash flows.

30. During her entire tenure at Sycamore, Kalinen was involved in the preparation of Sycamore's public filings and the financial statements included therein and reviewed a host of the Company's public filings, including periodic reports and proxy statements.

### **Refresh Grants**

31. One example of improper stock options backdating at Sycamore occurred in connection with the Company's "refresh" grants. Through its refresh program, the Company periodically granted options to large numbers of existing employees as an incentive for them to remain with the Company and, in some cases, to supplement options that were "underwater" because the market price of Sycamore's stock had fallen below the exercise price of the options.

32. At all relevant times, Jewels approved the allocation of the options awarded in any given refresh among Company employees and was responsible for ensuring that the Company used the correct grant date and exercise price. To document her approval of the refresh grants, Jewels signed a list setting forth the names of the individuals receiving refresh options, the number of options allotted to each individual and the grant date. The Company's auditors reviewed these lists in the course of their regular audits, relied on their accuracy and regarded them as documentation of Jewels' approval of the refresh grants.

33. At all relevant times, Kalinen worked closely with Jewels in administering and implementing the refresh program.

34. Jewels and Kalinen took actions to backdate four refresh grants that were made on the following dates: January 20, 2000 ("January 2000 Refresh"), April 14, 2000 ("April 2000 Refresh"), April 9, 2001 ("April 2001 Refresh"), and April 29, 2002 ("April 2002 Refresh").



35. In the case of each of these four refresh grants, the option recipients, number of options each individual would be receiving and other terms of the grants were not finalized as of the purported grant date, which Jewels and Kalinen knew.

36. In the case of each of these four refresh grants, Jewels and Kalinen, with the benefit of hindsight, selected grant dates on which the closing price of Sycamore's stock was relatively low, knowing that the closing price on the selected date would dictate the exercise price of the options. In each instance, Jewels and Kalinen selected grant dates on which Sycamore's closing stock price was at a low or near-low point for the respective month or quarter. Jewels' and Kalinen's actions resulted in the granting of "in the money" options.

37. For example, concerning the April 2001 Refresh, Kalinen corresponded with Jewels about their practice of selecting favorable dates for the refresh grants, stating in a March 20, 2001 memorandum:

As of this date the low of the quarter was on March 16, 2001. . . .  
Of course, we have another month to go and therefore the low could be at a later date.

Jewels and Kalinen thereafter waited until the end of April 2001, which was the end of that quarter, to select, retrospectively, the grant date. Jewels and Kalinen chose a date on which the closing price of Sycamore's stock was at its second-lowest point for the quarter, which caused the approximately 5 million total options awarded to non-officers in the April 2001 Refresh to be "in the money" by more than \$4 per share.

38. For the January 2000 Refresh, Jewels and Kalinen retrospectively selected a grant date on which the closing price of Sycamore's stock was at its lowest point for the month of January, which was the last month of that quarter. This caused the approximately 1 million total options awarded in the January 2000 Refresh to be "in the money" by more than \$23 per share.

39. For the April 2000 and April 2002 Refreshes, Jewels and Kalinen retrospectively selected grant dates on which the closing price of Sycamore's stock was at its lowest point for the quarter and month, respectively. This caused the approximately 1.6 million total options awarded in the April 2000 Refresh to be "in the money" by more than \$17 per share and the approximately 5 million total options awarded to non-officers in the April 2002 Refresh to be "in the money" by roughly \$0.14 per share.

40. Kalinen received 15,000, 50,000 and 200,000 options in the January 2000, April 2001 and April 2002 Refreshes, respectively. Kalinen's options were "in the money" by approximately \$345,300, \$200,000 and \$28,000, respectively, when granted. On various dates, Kalinen exercised the April 2002 Refresh options and sold all shares from the exercise, realizing "in the money" gains of \$28,000. By the time the remaining options had fully vested, the market price of Sycamore's stock had fallen below the exercise price of the options, rendering these options worthless. Kalinen never exercised the remaining options and did not realize any monetary gains from these options, which have since been canceled.

41. Sycamore did not report appropriate compensation expenses related to the January 2000, April 2000, April 2001 or April 2002 Refresh grants in its financial statements included in its public filings with the Commission, which Jewels and Kalinen knew. In all, Sycamore failed to record and disclose over \$60 million in compensation expenses related to these grants.

#### **April 2000 New Hire Grants**

42. Options backdating was not limited to refresh grants and also occurred in connection with options granted to some newly-hired employees. In certain cases, contrary to Company practice, Jewels approved the granting of options as of a date other – and on which the market price of Sycamore's stock was lower – than the recipient's first day of employment,

resulting in the granting of “in the money” options. However, as with the refresh grants, Jewels failed to cause the appropriate compensation expenses to be recorded and disclosed.

43. For example, Jewels authorized grants of options to two newly-hired employees (“April 2000 New Hire Grants”), purportedly on April 14, 2000, which was the same date as the April 2000 Refresh. This was not a coincidence, as Sycamore’s closing stock price on that date was at a low point for the quarter. Neither employee had begun working, or had even accepted an offer of employment, as of that date, which Jewels knew. Jewels hired both employees, and they both reported directly to Jewels. Jewels signed a document evidencing her approval of the grants (similar to the lists approving the refresh grants) that contained incorrect grant dates.

44. Sycamore did not report appropriate compensation expenses related to the April 2000 New Hire Grants in its financial statements included in its public filings with the Commission, which Jewels knew. In all, Sycamore failed to record and disclose over \$9 million in compensation expenses related to these grants.

#### **Special Employment Agreement/Modification of Options**

45. Jewels also disregarded stock compensation expenses in other contexts. For example, in October 2000, Sycamore entered into a “special employment” agreement with its former human resources (“HR”) director. Jewels and others negotiated the agreement on behalf of Sycamore. The agreement, among other things, modified the vesting terms of the former HR director’s stock options. The initial term of the agreement was one year, but Jewels subsequently extended it multiple times on an annual basis. During the entire period that the agreement was in force, the former HR director did not perform substantive services for Sycamore, which Jewels knew. Jewels did not inform the Company’s auditors of the agreement.

46. During the relevant time period, a compensation expense was required to be – but was not – recorded in connection with the modification of the former HR director’s stock options because the former HR director did not provide substantive services to Sycamore after his separation. Jewels knew of the applicable accounting principles and of Sycamore’s failure to report the appropriate expenses in its financial statements included in its public filings with the Commission. In all, Sycamore failed to record and disclose compensation expenses of nearly \$8 million related to the modification of these options.

#### January 2001 Grants

47. Another instance of options backdating at Sycamore occurred around January 2001, which was the last month in the second quarter of Sycamore’s fiscal year 2001. Jewels and Kalinen devised and carried out a plan for effectuating “in the money” option grants to five Company employees (the “January 2001 Grants”) without informing the Company’s auditors. These grants were made as of December 21, 2000, a date on which Sycamore’s closing stock price was at its lowest point of the quarter.

48. At Jewels’ request, Kalinen drafted a memorandum (the “January 2001 Memo”) describing each of the January 2001 Grants, the actions to be taken to backdate each grant, and a “risk assessment” for each grant that included an evaluation of the likelihood that the Company’s auditors would learn about the proposed actions. To effectuate the grants and keep the auditors from discovering the “in the money” nature of the options, the January 2001 Memo contemplated the falsification or alteration of certain Company records and documents.

49. Kalinen provided the January 2001 Memo to Jewels and Friedman, and Kalinen and Friedman had a telephone conversation in which they discussed it. Friedman’s handwritten notes, taken during that conversation, appear in the margin of a copy of the January 2001 Memo.

50. One situation discussed in the January 2001 Memo pertained to a newly-hired vice president who purportedly had been promised options at the lowest price of the quarter. In the January 2001 Memo, Kalinen suggested changing the vice president's employment start date in Sycamore's personnel records from January 2, 2001 to December 21, 2000, which ensured that there would be no discrepancy between the start date and the option grant date. The start date change was effectuated, and the options were granted on December 21, 2000. The risk assessment for this grant read: "Low risk. Senior level employee and the risk of exposure to this agreement is low. No audit risk."

51. As to another employee discussed in the January 2001 Memo, who reported to Friedman, Kalinen wrote:

[The employee's] actual date of hire was 12/18/00 and our [fair market value] on that date was \$50.1250. After [the employee] started our stock price dropped considerably [and the employee] requested her stock options to be granted on 12/21/00 when our [fair market] value was \$29.1250. . . . Action: Change [the employee's] start date to 12/21/00 and issue her stock options on 12/21/00.

Kalinen further stated in the January 2001 Memo that the described actions required a change to the start date in the employee's job offer letter. All of the described actions were effectuated. The risk assessment for this grant read: "Low audit risk[.] [There is] exposure on actual payroll registers and on the medical insurance effective dates, both of which will remain unchanged, however the auditors never reference these documents in their audits...."

52. Jewels and Kalinen took various steps to carry out their plan concerning the January 2001 Grants. Kalinen deleted or instructed others to delete certain grants from the Company's options database that had been entered as of the recipients' actual start dates and instructed others to shred backup documents associated with those grants. Kalinen also caused

new grant agreements to be issued and new grants to be input in the options database with false grant dates. Jewels signed grant approval lists with false grant dates.

53. Friedman, as a recipient of the January 2001 Memo, was aware of Jewels' and Kalinen's plan concerning the January 2001 Grants and substantially participated in the plan by carrying out some of the actions described in the January 2001 Memo. Specifically, in an effort to create the impression that certain employees had started working at Sycamore on dates that they had not, Friedman altered or created, or caused others to alter or create, Company payroll or personnel records, such as job offer letters and records in the human resources database, that reflected inaccurate start dates for certain employees. The contents of the January 2001 Memo made clear that the actions that Friedman undertook would prevent Sycamore's auditors from detecting the employees' actual start dates and the "in the money" nature of the option grants.

54. Sycamore did not report appropriate compensation expenses related to the January 2001 Grants in its financial statements included in its public filings with the Commission, which Jewels and Kalinen knew. Unrecorded and undisclosed expenses related to these grants totaled nearly \$375,000, although such expenses would have been considerably greater under GAAP if Sycamore's stock price had not continued to fall after the issuance of the January 2001 Grants.

#### **Pre-IPO Grants**

55. Certain options granted around the time of the Company's initial public offering ("IPO") also were improperly backdated such that the recipients benefited from a lower pre-IPO exercise price without the appropriate expenses being recorded and disclosed. The purported date of these grants ("Pre-IPO Grants") was October 20, 1999, two days before the IPO, but the Board of Directors did not approve the grants until at least several days after the IPO, by which time Sycamore's stock price had risen considerably.

56. Included in the Pre-IPO Grants were options granted to three newly-hired employees, including a senior officer who was hired away from a major competitor. Jewels and Kalinen knew that these three individuals were not employees of the Company as of the pre-IPO effective date of their grants and that their options could not be granted prior to their start dates unless an expense was recorded for any “in the money” benefit, which was not done.

57. The Pre-IPO Grants also included 90,000 options awarded to Kalinen. Kalinen’s options were “in the money” by more than \$4.7 million when granted. By the time these options had fully vested, the market price of Sycamore’s stock had fallen below the exercise price of the options, rendering them worthless. Kalinen never exercised these options and did not realize any monetary gains from these options, which have since been canceled.

58. Sycamore did not report appropriate compensation expenses related to the Pre-IPO Grants in its financial statements included in its public filings with the Commission, which Jewels and Kalinen knew. In all, Sycamore failed to record and disclose over \$80 million in compensation expenses related to these grants.

#### **Officer Grants and Other Executive Compensation**

59. In addition to authorizing grants of improperly backdated stock options to others, Jewels was the recipient of at least two grants of “in the money” options. Sycamore granted over 1 million total options to various Company officers, including Jewels, in each of fiscal years 2001 and 2002 (collectively, the “Officer Grants”).

60. The Officer Grants were issued as of the same dates as the April 2001 and April 2002 Refreshes. Jewels did not directly authorize these grants to herself and other officers, but she and Kalinen knew that the favorable grant dates that they selected for the April 2001 and

April 2002 Refreshes would be applied to Jewels' options as well, and Jewels failed to record any compensation expenses related to the Officer Grants.

61. The Officer Grants were "in the money" by approximately \$3.72 and \$0.06 per share, respectively, and each set of 500,000 options that Jewels received thus was "in the money" by approximately \$1,860,000 and \$30,000, respectively, when granted. By the time the 2001 options had fully vested, the market price of Sycamore's stock had fallen below the exercise price of the options, rendering them worthless. Jewels never exercised the 2001 options and did not realize any monetary gains from these options, which have since been canceled. On January 3, 2006, Jewels exercised the 2002 options and sold all shares from that exercise, realizing "in the money" gains of \$30,000.

62. Sycamore did not report appropriate compensation expenses related to the Officer Grants in its financial statements included in its public filings with the Commission, which Jewels and Kalinen knew. In all, Sycamore failed to record and disclose nearly \$4 million in compensation expenses related to these grants.

63. Commission rules require officers of publicly-traded companies, such as Jewels, to report changes in their beneficial ownership of the equity securities of those companies by filing Forms 4 and 5 with the Commission. Jewels reported the options she received from the Officer Grants by signing and filing with the Commission a Form 4 (filed on May 10, 2001) and two Forms 5 (filed on September 13, 2001 and August 28, 2002). These forms were false insofar as they reflected incorrect grant dates and exercise prices for the options Jewels received.

64. On November 6, 2001 and November 12, 2002, Sycamore filed proxy statements with the Commission announcing upcoming annual stockholders meetings. These proxy statements identified the Officer Grants, but the "in the money" nature of the Officer Grants was



not disclosed. These proxy statements also falsely represented that the Officer Grants were made at fair market value on the grant date. Both Jewels and Kalinen were involved in the preparation of these proxy statements and were familiar with the representations therein.

65. During her tenure as Sycamore's CFO, Jewels received periodic cash bonuses. Between the enactment of the SOX Act in 2002 and the end of Sycamore's fiscal year 2005, Jewels' cash bonuses totaled \$190,000.

#### **Falsification of Records and Misrepresentations to Auditors**

66. During her tenure as Sycamore's CFO, Jewels signed periodic management representation letters to the Company's auditors. Because of unrecorded and undisclosed expenses associated with "in the money" options, these letters falsely stated that, among other things, Sycamore's financial statements were fairly presented in conformity with GAAP, there were no material transactions, agreements or accounts that had not been properly recorded in the accounting records underlying the financial statements and there had been no fraud involving management or other employees who had significant roles in the Company's internal controls.

67. In or around January 2001, as described above, Jewels and Kalinen devised a plan to backdate the January 2001 Grants and alter or falsify various Company records to keep the Company's auditors from discovering the "in the money" nature of the grants. Jewels, Kalinen and Friedman each took actions to carry out the plan, as described above.

68. At various times during their tenures at Sycamore, Jewels and Kalinen provided, or knew that others provided, false documentation of option grants, such as grant approval lists with false grant dates, to Sycamore's auditors in the course of their audits.

69. On at least one occasion, in August 2001, Jewels and Kalinen collaborated to falsify or alter minutes of meetings of the Company's Board of Directors and Compensation

Committee (a subcommittee of the Board), knowing that such minutes would be reviewed and relied upon by the Company's auditors. After learning that the auditors had requested Board and Committee minutes in the course of their year-end audit, Kalinen sent an e-mail message to Jewels recommending the creation of minutes for three Committee meetings that purportedly had occurred over the course of the prior fiscal year and proposing the content of those minutes. In the e-mail, Kalinen also recommended the alteration of previously-approved Board minutes to conform to the content of proposed Committee minutes of the same date. Kalinen noted to Jewels that altering the Board minutes was feasible because the auditors had viewed only drafts of those minutes, but Kalinen advised against altering other Board minutes that the auditors had seen in final form. Kalinen carried out her proposal by creating or altering minutes reflecting certain meetings, events or discussions that did not occur as described in the minutes, if at all. Jewels later signed these minutes.

**Failure to Report Stock Compensation Expenses  
and Restatement of Financial Results**

70. The stock options backdating activity and granting of "in the money" stock options described herein resulted in the inclusion of materially false or misleading statements in various of Sycamore's public filings with the Commission.

71. The financial statements included in annual reports filed with the Commission on Form 10-K for the fiscal years ended July 31, 2000 through July 31, 2005 were materially false or misleading because of Sycamore's failure to report additional compensation expenses associated with "in the money" options. Jewels was involved in preparing and reviewing, and she signed, the annual reports for the fiscal years ended July 31, 2000 through July 31, 2004.

72. The financial statements included in quarterly reports filed with the Commission on Form 10-Q for all quarters of the fiscal years ended July 31, 2000 through July 31, 2005 were

materially false or misleading because of Sycamore's failure to report additional compensation expenses associated with "in the money" options. Jewels was involved in preparing and reviewing, and she signed, quarterly reports for all quarters of fiscal years 2000 through 2004.

73. Jewels signed certifications of Sycamore's annual reports for fiscal years 2002, 2003 and 2004, and quarterly reports for the intervening quarters of those fiscal years. The certifications all falsely stated that the reports did not contain any materially misleading statements or omissions of material fact.

74. With respect to all quarters in fiscal years 2000 through 2005, Sycamore filed current reports with the Commission on Form 8-K announcing its quarterly financial results. These reports contained materially false or misleading financial statements because of Sycamore's failure to report additional compensation expenses associated with "in the money" options. Jewels was involved in preparing and reviewing the current reports filed during fiscal years 2000 through 2004, which she also signed.

75. During her entire tenure at Sycamore, Kalinen was involved in the preparation of Sycamore's periodic reports and the financial statements therein. She reviewed various annual, quarterly and current reports, which were materially false or misleading because of Sycamore's failure to report additional compensation expenses associated with "in the money" options.

76. In addition to Sycamore's periodic reports that were affected by the underreporting of stock compensation expenses associated with "in the money" options, Sycamore also filed various registration statements with the Commission, including a prospectus for a follow-on public offering of securities filed on Form S-1 on February 17, 2000 (and amended statements filed on Form S-1/A on February 28, 2000 and March 9, 2000), which incorporated by reference previous filings that contained materially false or misleading financial

statements. Jewels was involved in preparing and reviewing these registration statements, which she also signed.

77. On November 6, 2001 and November 12, 2002, Sycamore filed proxy statements with the Commission announcing upcoming annual stockholders meetings, which included materially false or misleading information. These proxy statements were incorporated by reference in later Commission filings. Among other things, these proxy statements falsely represented that the exercise price of options granted to Company officers was the fair market value on the date of the grant. Also, tables listing options granted to officers, including Jewels, failed to disclose the “in the money” portion of the grants. Jewels and Kalinen were involved in preparing and reviewing these proxy statements.

78. Jewels signed and filed or caused to be filed with the Commission a false Form 4 (filed on May 10, 2001) and two false Forms 5 (filed on September 13, 2001 and August 28, 2002) purporting to report changes in her beneficial ownership of Sycamore securities. These forms were false insofar as they reflected incorrect grant dates and exercise prices for the options Jewels received from the Officer Grants.

79. On September 12, 2005, and again on June 21, 2007, Sycamore restated its financial results for fiscal years 2000 through 2005 to include additional stock compensation expenses related to various options, including backdated “in the money” options. In all, Sycamore disclosed that it had failed to record and report compensation expenses of nearly \$250 million. As a result, Sycamore materially overstated its pre-tax net income or understated pre-tax net losses in various Commission filings as follows: in fiscal year 2000, a reported net income became a net loss; and, in fiscal years 2001, 2002, 2003, 2004 and 2005, reported net losses were increased by approximately 30%, 9%, 36%, 34% and 21%, respectively.

## CLAIMS

### **FIRST CLAIM**

#### **(Violations of Section 17(a) of the Securities Act by Sycamore and Jewels)**

80. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

81. As set forth above, Sycamore and Jewels, directly or indirectly, acting knowingly, recklessly or negligently, by use of the means or instruments of transportation or communication in interstate commerce or of the mails, in the offer or sale of securities: (a) employed a device, scheme or artifice to defraud; (b) obtained money or property by means of an untrue statement of material fact or omitting to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not misleading; or (c) engaged in a transaction, practice or course of business which operated as a fraud or deceit upon the purchasers of such securities.

82. By reason of the foregoing, Sycamore and Jewels violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

### **SECOND CLAIM**

#### **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder by Sycamore and Jewels)**

83. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

84. As set forth above, Sycamore and Jewels, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or the mails or the facilities of a national securities exchange: (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make statements made, in light of the

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

85. By reason of the foregoing, Sycamore and Jewels violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**THIRD CLAIM**  
**(Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder by Jewels and Kalinen)**

86. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

87. As set forth above, Sycamore violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

88. As set forth above, Jewels knew, or was reckless in not knowing, that Sycamore's conduct was improper, and Jewels knowingly and substantially assisted Sycamore's violations.

89. By reason of the foregoing, Jewels aided and abetted Sycamore's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and, therefore, is liable for such violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

90. As set forth above, Sycamore and Jewels violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

91. As set forth above, Kalinen knew, or was reckless in not knowing, that Sycamore's and Jewels' conduct was improper, and Kalinen knowingly and substantially assisted Sycamore's and Jewels' violations.

92. By reason of the foregoing, Kalinen aided and abetted Sycamore's and Jewels' violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder

[17 C.F.R. § 240.10b-5] and, therefore, is liable for such violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

#### **FOURTH CLAIM**

##### **(Violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 Thereunder by Sycamore)**

93. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

94. As set forth above, Sycamore made materially false and misleading statements in Commission filings. As a result, Sycamore violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

95. As set forth above, Sycamore failed to make and keep accurate books, records and accounts and failed to devise and maintain an adequate system of internal controls. As a result, Sycamore violated Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) & 78m(b)(2)(B)].

#### **FIFTH CLAIM**

##### **(Aiding and Abetting Sycamore's Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 Thereunder by Jewels and Kalinen)**

96. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

97. As set forth above, Sycamore made materially false and misleading statements in Commission filings. As a result, Sycamore violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

98. As set forth above, Jewels and Kalinen knew, or were reckless in not knowing, that Sycamore's conduct was improper, and Jewels and Kalinen knowingly and substantially assisted Sycamore's violations.

99. By reason of the foregoing, Jewels and Kalinen aided and abetted Sycamore's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] and, therefore, are liable for such violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

#### **SIXTH CLAIM**

#### **(Aiding and Abetting Sycamore's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act by Jewels, Kalinen, and Friedman)**

100. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

101. As set forth above, Sycamore failed to make and keep accurate books, records and accounts and failed to devise and maintain an adequate system of internal controls. As a result, Sycamore violated Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) & 78m(b)(2)(B)].

102. As set forth above, Jewels, Kalinen, and Friedman knew, or were reckless in not knowing, that Sycamore's conduct was improper, and Jewels, Kalinen, and Friedman knowingly and substantially assisted Sycamore's violations.

103. By reason of the foregoing, Jewels, Kalinen, and Friedman aided and abetted Sycamore's violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) & 78m(b)(2)(B)] and, therefore, are liable for such violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].



**SEVENTH CLAIM**  
**(Violation of Exchange Act Rule 13a-14 by Jewels)**

104. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

105. At all relevant times, Jewels was Sycamore's principal financial officer or person performing a similar function.

106. As set forth above, Jewels falsely certified in each of Sycamore's annual reports for the fiscal years 2002, 2003 and 2004, filed with the Commission on Forms 10-K, and its quarterly reports for the fiscal quarters ended July 31, 2002 through July 31, 2004, filed with the Commission on Forms 10-Q, that, based on her knowledge, the reports (i) did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading, and (ii) included financial statements and other financial information which fairly presented, in all material respects, Sycamore's financial condition, results of operations and cash flows.

107. By reason of the foregoing, Jewels violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

**EIGHTH CLAIM**  
**(Violations of Section 13(b)(5) of the Exchange Act and**  
**Exchange Act Rule 13b2-1 by Jewels, Kalinen, and Friedman )**

108. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

109. As set forth above, Jewels, Kalinen, and Friedman violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

110. As set forth above, Jewels, Kalinen, and Friedman violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

**NINTH CLAIM**  
**(Violation of Exchange Act Rule 13b2-2 by Jewels)**

111. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

112. At all relevant times, Jewels was an officer of Sycamore within the meaning of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

113. By, among other things, directly or indirectly making or causing to be made materially false or misleading statements to an accountant in connection with an audit, review or examination of Sycamore's financial statements, Jewels violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

**TENTH CLAIM**  
**(Aiding and Abetting Jewels' Violation of**  
**Exchange Act Rule 13b2-2 by Kalinen and Friedman)**

114. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

115. As set forth above, Jewels violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

116. As set forth above, Kalinen and Friedman knew, or were reckless in not knowing, that Jewels' conduct was improper, and Kalinen and Friedman knowingly and substantially assisted Jewels' violation.

117. By reason of the foregoing, Kalinen and Friedman aided and abetted Jewels' violation of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] and, therefore, are liable for such violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

**ELEVENTH CLAIM**  
**(Violations of Section 14(a) of the Exchange Act and**  
**Rule 14a-9 Thereunder by Sycamore and Jewels)**

118. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

119. As set forth above, Sycamore and Jewels made or caused to be made materially false or misleading statements in proxy materials filed with the Commission.

120. By reason of the foregoing, Sycamore and Jewels violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

**TWELFTH CLAIM**  
**(Aiding and Abetting Violations of Section 14(a) of the Exchange Act**  
**and Rule 14a-9 Thereunder by Jewels and Kalinen)**

121. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

122. As set forth above, Sycamore violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9] by making or causing to be made materially false or misleading statements in proxy materials filed with the Commission.

123. As set forth above, Jewels knew, or was reckless in not knowing, that Sycamore's conduct was improper, and Jewels knowingly and substantially assisted Sycamore's violations.

124. By reason of the foregoing, Jewels aided and abetted Sycamore's violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. §

240.14a-9] and, therefore, is liable for such violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

125. As set forth above, Sycamore and Jewels violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9] by making or causing to be made materially false or misleading statements in proxy materials filed with the Commission.

126. As set forth above, Kalinen knew, or was reckless in not knowing, that Sycamore's and Jewels' conduct was improper, and Kalinen knowingly and substantially assisted Sycamore's and Jewels' violations.

127. By reason of the foregoing, Kalinen aided and abetted Sycamore's and Jewels' violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9] and, therefore, is liable for such violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

**THIRTEENTH CLAIM**  
**(Violations of Section 16(a) of the Exchange Act**  
**and Rule 16a-3 Thereunder by Jewels)**

128. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 79 above as if set forth fully herein.

129. At all relevant times, Jewels was an officer of Sycamore within the meaning of Section 16(a)(1) of the Exchange Act [15 U.S.C. § 78p(a)(1)].

130. As set forth above, Jewels filed or caused to be filed false Forms 4 and 5 with the Commission in connection with grants of Sycamore options that she received.

131. By reason of the foregoing, Jewels violated Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 thereunder [17 C.F.R. § 240.16a-3].

## PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court enter a final judgment:

### I.

Permanently enjoining Sycamore from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 thereunder;

### II.

Permanently enjoining Jewels from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-9, and 16a-3 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder;

### III.

Permanently enjoining Kalinen from violating, directly or indirectly, Sections 10(b), 13(b)(5), and 14(a) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, and 14a-9 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder;

### IV.

Permanently enjoining Friedman from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act;

### V.

Ordering Jewels and Kalinen to disgorge their ill-gotten gains, plus prejudgment interest;

**VI.**

Ordering Jewels, Kalinen, and Friedman to pay civil money penalties;

**VII.**

Ordering Jewels, pursuant to Section 304(a) of the SOX Act [15 U.S.C. § 7243(a)], to reimburse Sycamore for cash bonuses she received between 2002 and 2005;

**VIII.**

Barring Jewels from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act; and

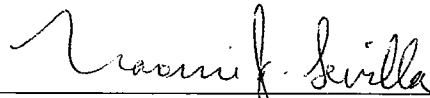
**IX.**

Ordering such other relief as the Court deems just and proper.

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

By its attorneys,



Martin F. Healey (BBO No. 227550)

Regional Trial Counsel

Dawn A. Edick (BBO No. 641659)

Senior Enforcement Counsel

Naomi J. Sevilla (BBO No. 645277)

Senior Enforcement Counsel

33 Arch Street, 23<sup>rd</sup> Floor

Boston, Massachusetts 02110

Telephone: (617) 573-8952 (Healey)

Facsimile: (617) 573-4590

E-mail: [healeym@sec.gov](mailto:healeym@sec.gov)

[edickd@sec.gov](mailto:edickd@sec.gov)

[sevillan@sec.gov](mailto:sevillan@sec.gov)

Dated: July 9, 2008