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NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

MHP

14 **LC 04 5295**

15 SECURITIES AND EXCHANGE COMMISSION,

Case No. _____

16 Plaintiff,

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF

17 v.

DEMAND FOR JURY TRIAL

18 MIN T. MA and JOYCE MANNI NG,

19 Defendants.

20 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

21 **SUMMARY OF THE ACTION**

22 1. Defendants Min T. Ma and Joyce Manni Ng reaped approximately \$438,000 in illegal
23 profits by trading on confidential information they learned while working as desktop publishers onsite
24 at a prominent investment bank. While assigned to the Palo Alto, California office of Merrill Lynch,
25 Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Defendants, who were boyfriend and girlfriend,
26 helped prepare documents relating to upcoming, but as yet unannounced, mergers and acquisitions
27 involving Merrill Lynch clients.

28 2. From May through November 2003, Defendants used confidential information they
obtained through their jobs to repeatedly purchase stock in three companies that were acquisition
targets – Oak Technology, Inc., SangStat Medical Corporation, and Applied Molecular Evolution,

1 Inc. Defendants, who earned approximately \$29 an hour, spent several times their combined annual
2 income on the stock purchases. When the mergers were later announced, the companies' share prices
3 rose by as much as 50%, and Defendants realized windfall profits by selling all of their shares.

4 3. By trading on the basis of confidential information they learned through their
5 employment, Defendants violated Section 10(b) of the Securities Exchange Act ("Exchange Act") of
6 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder. The Commission seeks
7 a court order requiring that Defendants disgorge their ill-gotten gains plus prejudgment interest;
8 imposing civil money penalties; and enjoining Defendants from future violations of these provisions
9 of the securities laws.

10 JURISDICTION AND VENUE

11 4. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the
12 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1(c)].

13 5. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A and 27 of
14 the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1 and 78aa].

15 6. Defendants, directly or indirectly, made use of the means or instrumentalities of
16 interstate commerce, or of the mails, or of the facilities of a national securities exchange in
17 connection with the transactions, acts, practices and courses of business alleged herein.

18 7. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.
19 § 78aa] because Defendants reside within the Northern District of California and a substantial portion
20 of the conduct alleged in this Complaint occurred within the Northern District of California.

21 8. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil L.R.
22 3-2(c) because a substantial part of the events or omissions which give rise to this claim occurred in
23 the County of San Francisco.

24 DEFENDANTS

25 9. Defendant Min T. Ma, age 28, resides in San Francisco, California. At all relevant
26 times, Ma shared a residence with his girlfriend, defendant Joyce Manni Ng.

27 10. Defendant Joyce Manni Ng, age 27, resides in San Francisco, California.
28

DEFENDANTS' ILLEGAL TRADING

A. Ma and Ng Had a Duty to Refrain from Trading Securities Based on Confidential Information They Learned Through Their Employment

11. In late 2000, Ma and Ng began working for Bowne Business Solutions ("Bowne"), a company that provides document preparation and other services for businesses. At that time, Bowne was under contract with Merrill Lynch to provide onsite document preparation services at many Merrill Lynch offices nationwide. Ma and Ng were assigned to work as desktop publishing presentation specialists onsite at Merrill Lynch's Palo Alto, California office. Ma and Ng assisted Merrill Lynch's investment bankers by preparing presentation materials, deal proposal books, and other documents related to Merrill Lynch's client transactions.

12. In the course of their work at Merrill Lynch, Ma and Ng routinely learned material, nonpublic information about business transactions, including information about publicly traded companies that were the targets of contemplated, but as yet unannounced, mergers or acquisitions. Ma and Ng prepared numerous documents relating to such transactions and had full access to additional documents that were maintained on a shared Merrill Lynch computer system.

13. When they were hired by Bowne in 2000, Ma and Ng each signed a confidentiality agreement. The agreement prohibited employees from using any confidential information other than as necessary for performing their duties at Bowne. It included an acknowledgement that the employee's "position with [Bowne] creates a relationship of high trust and confidence with respect to Confidential Information owned by [Bowne], its clients or suppliers." The agreement defined confidential information to include information that Bowne "is obligated to third parties to keep confidential." The agreement further identified "information concerning planned or pending acquisitions" as an example of confidential information.

14. In May 2001, Ma and Ng each signed an additional confidentiality agreement specific to their work onsite at Merrill Lynch. The agreement acknowledged Bowne's obligations to keep confidential all information relating to Merrill Lynch and its clients, and the employee's duty to safeguard that information, subject to civil and criminal liability. It also included "Confidentiality Rules and Restrictions," which reiterated the employee's duty to safeguard confidential information

1 and further stated, "Particularly, in the case of merger and acquisition transactions that have not been
2 publicly disclosed, it is important to take special precautions" That section also provided:

3 [The employee] is prohibited from acting upon material confidential information by
4 purchasing or selling securities of any corporation or other entity (whether or not a client of
5 [Merrill Lynch]) directly or through any account or entity over which individual has
6 investment control, or through which individual has a direct or indirect interest, or by
7 recommending or suggesting such a purchase or sale by another person. The securities laws
8 specifically prohibit the foregoing activities

9 15. Ma and Ng thus owed a fiduciary or other duty of trust and confidence to Bowne,
10 Merrill Lynch, and Merrill Lynch's clients to keep confidential any and all nonpublic information
11 they obtained in the course of their employment, and to refrain from trading in securities based on
12 such information.

13 **B. Ma and Ng Breached Their Duty by Trading on Material, Nonpublic**
14 **Information Concerning Three Mergers**

15 16. Beginning in at least May 2003, Ma and Ng each had an individual brokerage account
16 with E*Trade Securities LLC. Defendants were able to execute stock trades through these accounts
17 by a variety of methods, including by computer through the use of an Internet website that required a
18 user identification and a password.

19 17. Defendants shared information concerning their E*Trade user identifications and
20 passwords for these accounts. In executing the trades alleged in this Complaint, each Defendant acted
21 for his or her own personal gain and as an agent of the other.

22 **i. Oak Technology**

23 18. In early 2003, Merrill Lynch began evaluating Oak Technology, Inc. as a possible
24 acquisition target for its client Zoran Corporation. At the time, Oak Technology's common stock was
25 registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)]
26 and was publicly quoted on the Nasdaq National Market.

27 19. In late April 2003, Ma and Ng completed at least eight document preparation projects
28 for Merrill Lynch in connection with the Oak Technology-Zoran transaction. Ma and Ng also had
access to additional documents related to the transaction that were maintained on Merrill Lynch's
shared computer system.

1 20. From these documents, Ma and Ng learned material, nonpublic information regarding
2 Oak Technology's proposed acquisition by Zoran. Ma and Ng knew, or were reckless in not
3 knowing, that this information was material and nonpublic.

4 21. On May 1, 2003, based on material, nonpublic information, Ma purchased 2,000
5 shares of Oak Technology stock through his E*Trade account at an average price of \$4.75 per share.

6 22. On May 5, 2003, Zoran publicly announced that it had agreed to acquire Oak
7 Technology. That day, based on news of the acquisition, Oak Technology's common stock rose 14%
8 from the previous day's closing price to finish at \$5.40 per share. Trading volume on May 5 was 23
9 times higher than the day before.

10 23. Over the next week, Oak Technology's stock price continued to rise to nearly \$6.00.
11 Ma sold all of his 2,000 shares of Oak Technology stock through his E*Trade account on May 12,
12 2003 at a price of \$5.80 per share, for a total of \$11,576.45.

13 24. By purchasing Oak Technology stock based on material, nonpublic information
14 concerning its potential acquisition, Ma realized illegal profits of approximately \$2,053.

15 ii. SangStat

16 25. In or about November 2002, SangStat Medical Corporation retained Merrill Lynch to
17 advise it on a sale of the company. At the time, SangStat's common stock was registered with the
18 Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and was publicly
19 quoted on the Nasdaq National Market.

20 26. As is alleged in further detail below, from April 30 through July 31, 2003, Defendants
21 worked on numerous document preparation projects relating to the SangStat matter. During this time,
22 Ma and Ng purchased a total of approximately \$145,000 of SangStat stock – more than their
23 combined annual incomes.

24 27. From April 30 to June 4, 2003, Ma and Ng each completed two document preparation
25 projects for Merrill Lynch on the SangStat matter. Ma and Ng also had access to additional
26 documents related to the potential sale of SangStat that were maintained on Merrill Lynch's shared
27 computer system.

1 28. From these documents, Ma and Ng learned material, nonpublic information regarding
2 the proposed sale of SangStat. Ma and Ng knew, or were reckless in not knowing, that the
3 information was material and nonpublic.

4 29. Between June 6 and June 9, 2003, based on material, nonpublic information, Ma
5 purchased 630 shares of SangStat stock through his E*Trade account and Ng purchased 1,800 shares
6 through her E*Trade account.

7 30. On June 11, 2003, Ma completed another SangStat document preparation project, and
8 the next day, based on material, nonpublic information, purchased 650 shares of SangStat stock
9 through his E*Trade account.

10 31. From June 13 to July 31, 2003, Ma and Ng each completed several additional
11 document projects relating to SangStat. During this period, Ma purchased another 7,520 shares of
12 SangStat stock in his account through his E*Trade account. Ma made these purchases on margin,
13 meaning that he obtained a loan from his brokerage firm to provide a portion of the funds he needed
14 to buy the shares. Ma made these purchases based on material, nonpublic information regarding the
15 possible sale of SangStat's business.

16 32. In total, Ma and Ng purchased 10,600 shares of SangStat stock at an average price of
17 approximately \$13.63 per share.

18 33. On the morning of August 4, 2003, Genzyme Corporation announced that it had
19 agreed to acquire SangStat. That day, SangStat's common stock rose 40% over the previous day's
20 closing price to finish at \$22.23 per share. Trading volume on August 4 was 40 times higher than the
21 day before.

22 34. On August 4, 2003, following the acquisition announcement, Ng sold all of the 1,800
23 SangStat shares in her E*Trade account, and Ma sold 5,110 of the shares in his E*Trade account.
24 The following day, Ma sold the 3,690 SangStat shares remaining in his account.

25 35. By purchasing SangStat stock based on material, nonpublic information concerning its
26 potential acquisition, Defendants realized illegal profits of \$77,968 in Ma's account and \$13,693 in
27 Ng's account.

1 iii. Applied Molecular

2 36. By approximately July 17, 2003, Eli Lilly & Company had engaged Merrill Lynch as
3 its financial advisor with regard to certain proposed acquisitions, and identified Applied Molecular
4 Evolution, Inc. as a potential acquisition target. At the time, Applied Molecular's common stock was
5 registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)]
6 and was publicly quoted on the Nasdaq National Market.

7 37. From July 17 to November 19, 2003, Ma and Ng each completed at least 22 document
8 preparation projects relating to the Lilly-Applied Molecular transaction. Ma and Ng also had access
9 to additional Lilly-Applied Molecular transaction documents that were maintained on Merrill Lynch's
10 shared computer system.

11 38. From these documents, Ma and Ng learned material, nonpublic information regarding
12 Applied Molecular's proposed acquisition by Lilly. Ma and Ng knew, or were reckless in not
13 knowing, that the information was material and nonpublic.

14 39. From August 25 to November 19, 2003, based on material, nonpublic information, Ma
15 purchased 23,230 shares of Applied Molecular stock through his E*Trade account and Ng purchased
16 11,500 shares through her E*Trade account. The total cost of Defendants' purchases was
17 approximately \$275,000 – more than double their combined annual incomes. Defendants acquired
18 their shares at an average price of \$7.98 per share.

19 40. On November 21, 2003, Lilly publicly announced that it had agreed to acquire Applied
20 Molecular. That day, Applied Molecular's stock price rose 50% over the previous day's closing price
21 to finish at \$17.75 per share. Trading volume on November 21 was 16 times higher than the day
22 before.

23 41. Ma sold 10,730 shares of Applied Molecular stock from his E*Trade account on
24 December 9, 2003. Ma and Ng tendered the remaining 24,000 Applied Molecular shares in their
25 E*Trade accounts for Lilly stock in January 2004, at an exchange rate of \$18 per Applied Molecular
26 share.

1 42. By purchasing Applied Molecular stock based on material, nonpublic information
2 concerning its potential acquisition, Defendants realized illegal profits of approximately \$225,052 in
3 Ma's account and \$119,755 in Ng's account.

4 **CLAIM FOR RELIEF**

5 Violations of Section 10(b) of the Exchange Act
6 [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5]
Promulgated Thereunder

7 43. Paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

8 44. Defendants, with scienter, directly or indirectly:

- 9 a) employed devices, schemes, or artifices to defraud;
10 b) made untrue statements of material facts or omitted to state material facts
11 necessary in order to make the statements made, in the light of the
12 circumstances under which they were made, not misleading; and
13 c) engaged in acts, practices, or courses of business which operated or would
14 operate as a fraud or deceit upon other persons, including purchasers and
15 sellers of securities;

16 in connection with the purchase or sale of securities, by the use of means or instrumentalities of
17 interstate commerce, of the mails, or the facilities of a national securities exchange.

18 45. By reason of the foregoing, Defendants violated, and unless restrained and enjoined
19 will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
20 thereunder [17 C.F.R. § 240.10b-5].

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Commission respectfully requests that this Court:

23 **I.**

24 Permanently enjoin Defendants from directly or indirectly violating Section 10(b) of the
25 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

26 **II.**

27 Order Defendants to disgorge an amount equal to their illegal trading profits from the
28 securities transactions alleged in this Complaint, plus prejudgment interest;

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III.

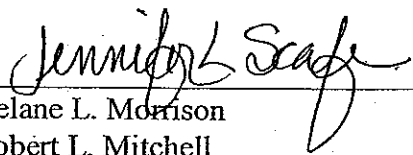
Order Defendants to pay civil penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Grant such other relief as this Court may deem just and appropriate.

Respectfully submitted,

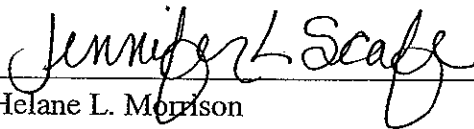
Dated: December 14, 2004



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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.



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