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18 UNITED STATES DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA

20 SECURITIES AND EXCHANGE COMMISSION,) Case No.:
21 Plaintiff,)
22 vs.) COMPLAINT FOR PERMANENT
23 ROBERT J. GALLIVAN,) INJUNCTION AND OTHER RELIEF
24 Defendant)

25 Plaintiff Securities and Exchange Commission ("SEC" or "Commission") alleges:

26 **NATURE OF THE ACTION**

27 1. This case concerns unlawful insider trading and tipping by securities law
28 recidivist and bank-owned life insurance ("BOLI") sales representative, Robert J. Gallivan ("Gallivan"), in connection with five separate mergers that occurred over approximately a one-and-a-half year period. From July 2002 through December 2003, Gallivan serially traded, and/or tipped friends and relatives to trade, on the basis of material, nonpublic information regarding the securities of five California community banks involved in merger transactions: Valencia Bank & Trust ("Valencia"), Monterey Bay Bank ("Monterey"), Sun Country Bank ("Sun Country"), Mid

1 Valley Bank ("Mid Valley"), and Harbor National Bank ("Harbor"). In total, Gallivan and his
2 tippees collectively profited by approximately \$106,711 as a result of illegal trading in the five
3 bank stocks.

4 2. In certain transactions, Gallivan obtained material, nonpublic information by
5 virtue of his position as a BOLI sales representative with a compensation and benefits consulting
6 firm (the "C&B Consulting Firm"). In other transactions, Gallivan obtained material, nonpublic
7 information as a longtime friend and confidential adviser on California community banks to a
8 prominent private investor, based in Minnesota (the "Minnesota Investor"), who has acquired
9 and/or sold banks and/or controlling interests in banks.

10 3. By engaging in the conduct described above, and described more fully below,
11 Gallivan violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15
12 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. The SEC seeks injunctive
13 relief, disgorgement, prejudgment interest thereon, civil penalties and other appropriate relief.

14 JURISDICTION AND VENUE

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

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

19 6. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15
20 U.S.C. § 78aa] because Gallivan resides within the Southern District of California and a
21 substantial portion of the conduct alleged in this Complaint occurred within the Southern District
22 of California.

23 7. In connection with the conduct alleged in this Complaint, Gallivan directly or
24 indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or
25 of the facilities of a national securities exchange.

26 DEFENDANT

27 8. Gallivan, age 70, resides in Cardiff-by-the-Sea, California. Beginning on or
28 before January 1999 and continuing through July 2004, Gallivan worked as a sales representative
for the C&B Consulting Firm's Banking Practice. In this capacity, Gallivan consulted with

1 banks and their executives regarding benefit plans, such as supplemental executive retirement
2 plans ("SERPs"), and BOLI, which is often used by banks as an accounting mechanism for
3 funding SERPs. During the time period relevant to this complaint, Gallivan maintained an office
4 in his house in Cardiff-by-the-Sea and a staffed office in St. Paul, Minnesota.

5 9. On July 23, 2004, after learning of the SEC's investigation into Gallivan's
6 possible insider trading activity, the C&B Consulting Firm publicly announced Gallivan's
7 retirement. Prior to his retirement, Gallivan had been one of several leading producers for the
8 C&B Consulting Firm's Banking Practice. His client base consisted substantially of California
9 community banks.

10 RELEVANT ENTITIES

11 10. The C&B Consulting Firm is a Delaware corporation, with headquarters in
12 Barrington, Illinois. The C&B Consulting Firm designs, markets, and administers compensation
13 and benefit programs for companies supplementing and securing employee benefits. The C&B
14 Consulting Firm's Banking Practice offers compensation consulting, executive and director
15 benefit programs, and BOLI to the bank market.

16 11. UnionBanCal Corporation ("Union") is a bank holding company incorporated in
17 California. On August 6, 2002, Union announced its proposed acquisition of Valencia, a bank
18 incorporated in California, whose stock traded on the Nasdaq Small Capitalization Market. On
19 April 8, 2003, Union announced its proposed acquisition of Monterey and Monterey's
20 California-incorporated holding company, Monterey Bay Bancorp, whose stock traded on the
21 Nasdaq National Market.

22 12. The California Holding Company ("California Holding Company") is a privately-
23 held bank holding company, incorporated in California, whose shares are majority-owned by the
24 Minnesota Investor. On April 30, 2003, the California Holding Company announced its
25 proposed acquisition of Sun Country, a bank incorporated in California whose stock traded on
26 the Over-the-Counter ("OTC") Bulletin Board. The California Holding Company later made an
27 offer to acquire Harbor, another bank incorporated in California whose stock traded on the OTC
28 Bulletin Board. Harbor ultimately was acquired by First Community Bancorp ("First

1 Community”), a bank holding company incorporated in California, in a merger announced on
2 December 1, 2003.

3 13. PremierWest Bancorp (“PremierWest”) is a bank holding company incorporated
4 in Oregon. On September 16, 2003, PremierWest announced its proposed acquisition of Mid
5 Valley, a bank incorporated in California whose stock traded on the OTC Bulletin Board.

6 FACTS

7 Prior SEC Order

8 14. In 1975, without admitting or denying the Commission’s findings, Gallivan
9 consented to the entry of a Commission order against him in the proceeding In The Matter Of
10 Denis McCauley and Co., Inc., et al., Administrative Proceeding File No. 3-4425, Release No.
11 11365 (April 22, 1975). That proceeding involved a scheme to manipulate the stock of Bio-
12 Medicus, Inc., a Minnesota medical-device company.

13 15. The Commission found that Gallivan, who was affiliated with a broker-dealer at
14 the time of the scheme, willfully violated Section 17(a) of the Securities Act of 1933 [15 U.S.C.
15 § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17
16 C.F.R. § 240.10b-5], as well as willfully aided and abetted violations of Section 10(b) of the
17 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-6 thereunder [17 C.F.R. § 240.10b-6]. The
18 Commission’s order suspended Gallivan from association with any broker, dealer, investment
19 adviser, or investment company for 12 months, except to the extent that he sold and/or offered
20 insurance that did not constitute a security or was an exempt security.

21 The C&B Consulting Firm’s Confidentiality Policy and Code of Ethical Conduct

22 16. From January 1999 through his departure in July 2004, Gallivan’s relationship
23 with the C&B Consulting Firm was governed by a Sales Representative Agreement that he
24 entered into with the C&B Consulting Firm on January 1, 1999. Pursuant to the agreement,
25 Gallivan agreed to “[c]omply with the [the C&B Consulting Firm] Code of Ethical Conduct, as
26 the same may be revised from time to time by [the C&B Consulting Firm],” and “[a]bide by all
27 Insider Trading and Confidentiality policies of [the C&B Consulting Firm].”
28

1 17. The C&B Consulting Firm's confidentiality policy was contained in the Sales
2 Representative Agreement itself. By signing the agreement, Gallivan acknowledged that the
3 C&B Consulting Firm's confidential information, including "information concerning or received
4 from Financial Institution clients and prospective clients," is a "valuable asset owned by [the
5 C&B Consulting Firm]." Gallivan further agreed that he would "not use or disclose, directly or
6 indirectly, any [the C&B Consulting Firm] Confidential Information for the benefit of any person
7 or organization other than [the C&B Consulting Firm]."

8 18. The C&B Consulting Firm's Code of Ethical Conduct, as referenced in the Sales
9 Representative Agreement, required, among other things, that sales representatives "must not
10 disclose or use" confidential information obtained through their work for the C&B Consulting
11 Firm, including both confidential information about the C&B Consulting Firm and confidential
12 information about other companies, in any activity unrelated to their role with the C&B
13 Consulting Firm. The code further required that sales representatives "must take reasonable
14 steps to safeguard the customer information and data entrusted to [the C&B Consulting Firm and
15 them]."

16 19. The C&B Consulting Firm's Code of Ethical Conduct, a copy of which Gallivan
17 received in March 1999, remained in full force and effect until September 22, 2003, inclusive of
18 the time period during which Gallivan obtained and traded on the basis of information from the
19 C&B Consulting Firm and its clients and/or made trade recommendation to friends and relatives
20 based on information obtained from the C&B Consulting firm and its clients.

21 **Unlawful Trading in Valencia Securities by Gallivan, His Friends, and Relatives**

22 20. Valencia's board of directors established a SERP for the bank's CEO in March
23 1998, and contemporaneously funded it through the purchase of BOLI policies brokered by
24 Gallivan and the C&B Consulting Firm. In June 2001, the board agreed to amend the CEO's
25 SERP and, at the same time, established a SERP for one of its vice presidents. Valencia bought
26 additional BOLI policies at that time through Gallivan and the C&B Consulting Firm to fund the
27 SERP plans.
28

1 21. On June 14, 2002, after receiving written indications of interest from Union and
2 one other interested bank, Valencia's board formally engaged an investment bank to assist it with
3 the prospective sale of the bank. Union submitted a second written indication of interest on June
4 24, 2002, with increased consideration, and Valencia's board then authorized the bank's CEO to
5 negotiate a definitive merger agreement with Union. Valencia's board ultimately approved a
6 proposed agreement on August 5, 2002, and the bank's merger with Union was publicly
7 announced on August 6, 2002.

8 22. Prior to the merger announcement, Union conducted extensive due diligence
9 during the first two weeks of July 2002. This included conducting due diligence on Valencia's
10 BOLI policies and SERPs. On July 9, 2002, a Union employee e-mailed Gallivan's Minnesota
11 office manager asking her to set up a due-diligence conference call with Gallivan for July 10,
12 2002. Gallivan's office manager set up the call with Gallivan for the morning of July 10th, and
13 then contacted the C&B Consulting Firm to request certain benefit information concerning
14 Valencia's SERPs.

15 23. On the morning of July 10, 2002, Gallivan placed a call from his home office
16 telephone to Union's offices. Pursuant to Union's practices for dealing with third parties during
17 due diligence, a Union employee admonished Gallivan at the start of the call that the proposed
18 merger between Valencia and Union had not yet been announced and was highly confidential.
19 Gallivan acknowledged that he understood the need to keep the information confidential. Two
20 Union employees then proceeded to ask Gallivan due-diligence questions regarding Valencia's
21 BOLI policies. The proposed merger and Union's due diligence activities were material and
22 nonpublic.

23 24. Thus, through his position as a sales representative associated with the C&B
24 Consulting Firm, Gallivan acquired material, nonpublic information from Union, on or before
25 July 10, 2002, that Union was conducting due diligence in connection with a planned, but not yet
26 publicly announced, merger between Valencia and Union.

27 25. On the basis of this material, nonpublic information, Gallivan bought 3,228 shares
28 of Valencia stock at a total purchase price of approximately \$97,387, between July 10 and July

1 25, 2002. Gallivan's stock purchases made up more than 25% of the total trading volume in
2 Valencia shares during this time period. Based on a closing price of \$33.10 per share the day
3 that the merger was announced on August 6th, Gallivan reaped an unlawful profit of
4 approximately \$9,455 on the shares that he purchased during this time period.

5 26. Through his purchases of Valencia stock between July 10 and July 25, 2002,
6 Gallivan breached a duty of trust and confidence to his employer the C&B Consulting Firm by
7 trading on the basis of confidential information that he had obtained in the course of performing
8 his duties as the C&B Consulting Firm representative on Valencia's executive compensation
9 plans.

10 27. Through his purchases of Valencia stock between July 16 and July 25, 2002,
11 Gallivan also breached a duty of trust and confidence to Union. Gallivan made an explicit
12 agreement with Union, during his July 10, 2002 conference call with two Union employees, to
13 keep information relating to Union's proposed merger with Valencia confidential.

14 28. Gallivan knew, or was reckless in not knowing, that his purchase of Valencia
15 stock on the basis of the material, nonpublic information received from Union's employees was
16 improper, in contravention of his sales agreement and the C&B Consulting Firm Code of Ethical
17 Conduct, and in breach of the duties of trust and confidence that he owed to the C&B Consulting
18 Firm and Union.

19 29. Between July 10 and August 4, 2002, on the basis of the material, nonpublic
20 information received from Union's employees, Gallivan recommended the purchase of Valencia
21 stock to a friend of his who resides in Ohio ("Ohio Friend"), a cousin who resides in Minnesota
22 ("Minnesota Cousin"), a son who resides in Minnesota ("Minnesota Son"), and a friend who
23 works for the C&B Consulting Firm ("C&B Consulting Firm Friend"). The Ohio Friend's wife,
24 the Minnesota Cousin, the Minnesota Son, and the C&B Consulting Firm Friend collectively
25 purchased 3,850 shares of Valencia stock on the basis of Gallivan's recommendation, between
26 July 11 and August 5, 2002. Based on Valencia stock's closing price on August 6th, the day of
27 the merger announcement, these friends and relatives of Gallivan's had combined profits of
28 approximately \$8,636.

1 30. Gallivan knew, or was reckless in not knowing, that his stock purchase
2 recommendations to the foregoing individuals revealed material, nonpublic information in
3 breach of duties of trust and confidence that he owed to the C&B Consulting Firm and Union.

4 31. It was reasonably foreseeable to Gallivan that the foregoing individuals would (1)
5 effect transactions in the securities of Valencia, and/or (2) disclose the information to others who
6 were likely to effect such transactions.

7 **Trading in Monterey Securities by Gallivan's Friends**

8 32. In December 2002, Monterey's board of directors purchased BOLI policies
9 brokered by Gallivan and the C&B Consulting Firm. The board then established SERPs for
10 Monterey's CEO and CFO on January 1, 2003, funded by the BOLI policies.

11 33. On January 28, 2003, Union provided Monterey, via Monterey's investment bank,
12 with a written indication of interest in pursuing a business combination, subject to due diligence.
13 Union then conducted on-site due diligence between February 17 and February 21, 2003. On
14 March 6, 2003, Union submitted a second indication of interest letter to Monterey, not subject to
15 due diligence. On March 11th, Monterey's board of directors authorized management to
16 negotiate a definitive merger agreement with Union, and the banks' proposed merger was
17 publicly announced on April 8, 2003.

18 34. By late March 2003, payments due Monterey's CEO under his recently
19 implemented SERP had begun to present certain difficulties in connection with the merger
20 negotiations. Employees of Monterey's investment bank decided that Monterey needed an
21 expert to help resolve the issue, preferably one familiar with the history of Monterey's BOLI
22 policies and SERPs. Knowing that Gallivan had brokered Monterey's BOLI purchase, one of the
23 investment bank's employees called him, within one or two days prior to April 1, 2003. After
24 first obtaining a commitment from Gallivan to keep the matter confidential, the employee
25 informed him of Monterey's merger negotiations and the difficulties being posed by the CEO's
26 SERP.

27 35. Through his position as a sales representative with the C&B Consulting Firm,
28 Gallivan acquired material, nonpublic information from Monterey, via Monterey's agent, its

1 investment bank, within one or two days prior to April 1, 2003, when the investment bank
2 employee told Gallivan that Monterey would be acquired by Union, that final negotiations were
3 underway, and that issues related to CEO's SERP had arisen in the context of negotiations.

4 36. Gallivan responded to the investment bank's request for assistance -- made on
5 behalf of Monterey -- by asking a C&B Consulting Firm employee, on or before April 1, 2003,
6 to help Monterey's CEO and the bank with the compensation issue. This C&B Consulting Firm
7 employee subsequently participated in two conference calls with an attorney from Monterey's
8 law firm and other participants, on April 2 and 4, 2003, to discuss the issue.

9 37. Between April 1 and April 7, 2003, on the basis of the material, nonpublic
10 information received from Monterey's investment bank, Gallivan recommended the purchase of
11 Monterey stock to the Ohio Friend and the C&B Consulting Firm Friend. The Ohio Friend, the
12 Ohio Friend's wife, and the C&B Consulting Firm Friend collectively purchased 3,000 shares of
13 Monterey stock on the basis of Gallivan's recommendation, between April 4 and April 7, 2003.
14 Based on Monterey stock's closing price on April 8th, the day of the merger announcement, these
15 friends of Gallivan's had combined profits of approximately \$17,014.

16 38. Gallivan knew, or was reckless in not knowing, that his stock purchase
17 recommendations to the foregoing individuals revealed material, nonpublic information in
18 breach of duties of trust and confidence that he owed to Monterey's investment bank, Monterey
19 itself, and the C&B Consulting Firm. When the investment bank employee contacted Gallivan,
20 on or before April 1, 2003, the employee was acting both as a representative (investment banker)
21 of Monterey and in the course of his employment with the investment bank. The employee
22 specifically told Gallivan that he would be given nonpublic information and that he must
23 maintain the confidentiality of the information, and Gallivan agreed.

24 39. Gallivan also owed, and breached, a duty of trust and confidence to Monterey to
25 keep the merger-related information confidential because he had an established history of
26 receiving confidences from Monterey as its insurance broker during the previous year. He
27 breached a duty of trust and confidence to the C&B Consulting Firm by recommending, on the
28 basis of confidential information obtained in the course of performing his duties as the C&B

1 Consulting Firm representative on Monterey's executive compensation plans, that the Ohio
2 Friend and the C&B Consulting Firm purchase Monterey stock.

3 40. It was reasonably foreseeable to Gallivan that the Ohio Friend and the C&B
4 Consulting Firm Friend would (1) effect transactions in the securities of Monterey, and/or (2)
5 disclose the information to others who were likely to effect such transactions.

6 **Gallivan's Unlawful Trading in Sun Country Securities**

7 41. Gallivan has a long history of providing advice on California community banks to
8 his friend, the Minnesota Investor, who has acquired and/or sold numerous banks and/or
9 controlling interests in banks during at least the past 20 years. During most of this time, the
10 Minnesota Investor routinely sought confidential advice from Gallivan regarding potential
11 acquisitions of, or investments in, California community banks and has confided in Gallivan and
12 entrusted him with confidential information. The Minnesota Investor expected Gallivan to
13 maintain the confidentiality of material, nonpublic information that he communicated to
14 Gallivan.

15 42. On February 18, 2003, the Minnesota Investor had a dinner meeting scheduled
16 with Sun Country's chairman, in Las Vegas, Nevada, to make an oral offer to purchase the
17 chairman's controlling interest in the bank's stock at \$12.50 per share. At the dinner, Sun
18 Country's chairman was receptive to the offer, and the Minnesota Investor entered into a
19 confidentiality agreement with Sun Country on March 18, 2003. On March 24, 2003, the
20 Minnesota Investor agreed to acquire all of Sun Country's stock at the same \$12.50 per share
21 price. Sun Country and the California Holding Company (whose shares are majority-owned by
22 the Minnesota Investor) announced a definitive merger agreement on April 30, 2003.

23 43. Prior to the meeting with Sun Country's chairman on February 18th, the
24 Minnesota Investor met with Gallivan for lunch that same day in Phoenix, Arizona, where
25 Gallivan was attending a the C&B Consulting Firm insurance function.

26 44. Gallivan acquired material, nonpublic information from the Minnesota Investor,
27 on or before February 18, 2003, when the Minnesota Investor told Gallivan that he would be
28

1 meeting with Sun Country's chairman and making an offer to buy the chairman's controlling
2 position in Sun Country.

3 45. On February 19, 2003, the day after his lunch with the Minnesota Investor,
4 Gallivan purchased 3,070 shares of Sun Country at a price of \$11.10 per share, for a total cost of
5 \$34,082. Gallivan's purchase represented over 38% of the 8,000 share total volume in Sun
6 Country common stock on February 19th. Gallivan sold these shares on April 30, 2003, the day
7 of the merger announcement, at the closing price of \$12.00 per share, reaping illegal profits of
8 approximately \$2,758.

9 46. Through his purchase of Sun Country stock on February 19, 2003, Gallivan
10 breached a duty of trust and confidence to the Minnesota Investor, who had a history, pattern,
11 and practice of sharing confidential information with him.

12 47. Gallivan knew, or was reckless in not knowing, that his purchase of Sun Country
13 stock on the basis of material, nonpublic information concerning the Minnesota Investor's
14 meeting with Sun Country's chairman and intended offer to purchase a controlling stake in the
15 bank was improper and in breach of the duty of trust and confidence that Gallivan owed to the
16 Minnesota Investor.

17 **Unlawful Trading in Mid Valley Securities by Gallivan and the Minnesota Cousin**

18 48. Mid Valley maintained a number of SERPs and directors' fee continuation
19 agreements funded by BOLI and serviced by the C&B Consulting Firm. By 2003, Gallivan was
20 the C&B Consulting Firm's agent of record for the Mid Valley account.

21 49. In early August 2003, PremierWest offered to purchase Mid Valley, subject to
22 negotiation of definitive documents, for two times Mid Valley's shareholder equity in cash and
23 stock. Later that month, Mid Valley's board authorized the bank's executives to engage in due
24 diligence activities and negotiate a merger agreement with PremierWest. The board ultimately
25 approved, and authorized the execution of, the merger agreement on September 15, 2003. The
26 parties publicly announced their proposed merger the next day, on September 16, 2003.

27 50. On or before September 8, 2003, Mid Valley's CEO asked the bank's CFO to
28 gather certain SERP and BOLI-related documentation for PremierWest's due diligence review.

1 A Mid Valley employee subsequently called the C&B Consulting Firm's Minnesota servicing
2 center, on or before September 8, 2003, and requested, among other documents, a liability report
3 with "change of control" calculations, setting forth the total liability owed each executive
4 pursuant to his or her SERP in the event of a change in bank ownership or control, such as a
5 merger.

6 51. The "team" of employees at the C&B Consulting Firm's servicing center assigned
7 to service Gallivan's accounts informed Gallivan's Minnesota office within one day, orally
8 and/or by e-mail, of Mid Valley's direct request for change in control calculations and other
9 documents. Additionally, the team sent Gallivan's Minnesota office a copy of the C&B
10 Consulting Firm's September 9, 2003 written response to Mid Valley's request, for Gallivan's
11 records.

12 52. A sudden request by a bank for change of control calculations on an existing
13 SERP is a strong indication that the bank is in merger negotiations or actively pursuing a sale of
14 the bank. Mid Valley had an expectation of confidentiality in its dealings with the C&B
15 Consulting Firm and the C&B Consulting Firm's agents, such as Gallivan, and Mid Valley's
16 employees had a practice when dealing with third parties during due diligence to caution them
17 expressly to keep the matter confidential.

18 53. Through his position as a sales representative with the C&B Consulting Firm,
19 Gallivan acquired material, nonpublic information from personnel at his Minnesota office, on or
20 before September 8, 2003, that Mid Valley had made a sudden request for change of control
21 calculations on an existing SERP policy. From this information, Gallivan concluded that Mid
22 Valley was in merger negotiations and/or actively pursuing a sale of the bank.

23 54. On September 8, 2003, Gallivan purchased 5,000 shares of Mid Valley stock at
24 \$15.50 per share. On September 9, 2003, Gallivan bought an additional 5,000 shares of Mid
25 Valley at a price of \$15.75 per share. The total price for Gallivan's September 8 and September
26 9, 2003 purchases of Mid Valley stock was \$156,760. Based on Mid Valley stock's closing
27 price of \$19.50 on September 16, 2003, the day of the merger announcement, Gallivan reaped a
28

1 total illegal profit of approximately \$39,750 on his purchases. Gallivan sold all of his Mid
2 Valley shares on September 24, 2003.

3 55. Gallivan's September 8, 2003 purchase made up more than 33% of that day's
4 trading volume in Mid Valley shares, and his September 9, 2003 purchase made up almost 50%
5 of that day's volume.

6 56. Through his purchases of Mid Valley stock on September 8 and September 9,
7 2003, Gallivan breached a duty of trust and confidence to his employer the C&B Consulting
8 Firm by trading on the basis of confidential information obtained in the course of performing his
9 duties as the C&B Consulting Firm representative on Mid Valley's executive and director
10 compensation plans.

11 57. Through his Mid Valley stock purchases, Gallivan also breached a duty of trust
12 and confidence to Mid Valley. Mid Valley had a history of sharing confidences with the C&B
13 Consulting Firm because of the bank's insurance policies. The C&B Consulting Firm regularly
14 informed sales representatives, such as Gallivan, of direct requests from banks for whom the
15 sales representative was the agent of record, and Mid Valley knew that the C&B Consulting Firm
16 routinely shared Mid Valley's confidential information with Gallivan.

17 58. Gallivan knew, or was reckless in not knowing, that his purchase of Mid Valley
18 stock on the basis of the material, nonpublic information received from the C&B Consulting
19 Firm was improper, in contravention of his sales agreement and the C&B Consulting Firm Code
20 of Ethical Conduct, and in breach of the duties of trust and confidence that he owed to the C&B
21 Consulting Firm and Mid Valley.

22 59. On September 9 and/or September 10, 2003, on the basis of the material,
23 nonpublic information received from the C&B Consulting Firm, Gallivan recommended the
24 purchase of Mid Valley stock to the Minnesota Cousin. The Minnesota Cousin purchased 2,000
25 total shares of Mid Valley stock on September 10 and September 12, 2003. Based on Mid
26 Valley stock's closing price on September 16th, the day of the merger announcement, she had
27 profits of approximately \$5,750.
28

1 60. Gallivan knew, or was reckless in not knowing, that his stock purchase
2 recommendation to the Minnesota Cousin revealed material, nonpublic information in breach of
3 duties of trust and confidence that he owed to the C&B Consulting Firm and Mid Valley.

4 61. It was reasonably foreseeable to Gallivan that the Minnesota Cousin would (1)
5 effect transactions in the securities of Mid Valley, and/or (2) disclose the information to others
6 who were likely to effect such transactions.

7 **Trading in Harbor Securities by Gallivan's Relatives**

8 62. In early September 2003, Harbor received an acquisition offer from another bank
9 at approximately \$11 per share of Harbor stock. At a September 19, 2003 board of directors
10 meeting, Harbor's board directed its investment bank to seek proposals from other banks willing
11 to pay at least \$12 per share for Harbor.

12 63. Harbor's investment bank contacted several banks to seek proposals, including
13 the California Holding Company. The California Holding Company signed a confidentiality
14 agreement, on September 22, 2003, with respect to information concerning Harbor and a possible
15 transaction between the California Holding Company and Harbor. The agreement provided,
16 among other things, that the California Holding Company could disclose confidential
17 information to its directors, officers, employees, agents or advisers who had the need to know
18 such information in connection with the proposed transaction, that such persons would use the
19 information solely in connection with evaluating Harbor in connection with the proposed
20 transaction, and that such persons would not disclose to any third party the fact that discussions
21 were taking place concerning a possible transaction.

22 64. On September 25, 2003, Harbor received an indication of interest from the
23 California Holding Company to acquire Harbor at \$12.05 per share. Harbor's investment bank
24 arranged a meeting between Harbor's CEO, the California Holding Company's CEO, and the
25 Minnesota Investor, to discuss the California Holding Company's interest in acquiring Harbor.

26 65. The meeting took place on October 6, 2003. The Minnesota Investor brought
27 Gallivan with him to the meeting. At the meeting, the CEO of the California Holding Company
28 admonished Gallivan and the other attendees that the meeting was confidential and that a

1 confidentiality agreement was already in place. Gallivan agreed to keep the matter confidential.
2 The Minnesota Investor further expected Gallivan to maintain confidentiality based on his own
3 history of confiding in Gallivan.

4 66. After the confidentiality admonishment, the participants proceeded to discuss the
5 possibility of a merger between Harbor and the California Holding Company.

6 67. The California Holding Company conducted offsite due diligence of Harbor from
7 October 11 through October 14, 2003. On October 31, 2003, the California Holding Company
8 submitted an offer to purchase Harbor at \$13.00 per share.

9 68. Gallivan called Harbor's CEO on the telephone several times in the weeks
10 following the October 6th meeting to encourage Harbor to pursue a transaction with the
11 California Holding Company and to request information from the CEO concerning other banks
12 involved in the bidding for Harbor. Gallivan made some or all of these calls with the knowledge
13 and acquiescence of the CEO of the California Holding Company. Both bank executives
14 perceived Gallivan as still bound by his prior agreement to maintain confidentiality.

15 69. On November 7, 2003, Harbor notified the California Holding Company that it
16 had accepted a merger offer at \$13.28 per share from another bank, First Community. The next
17 day, Gallivan -- who had been kept apprised of the bids and outcome -- called Harbor's CEO and
18 stated that the California Holding Company might be able to exceed the other bid. Harbor's
19 CEO consulted with Harbor's investment bank and then advised Gallivan that the decision to
20 negotiate a deal with First Community was final. Harbor and First Community signed and
21 finalized their merger agreement on November 28, 2003, after which the merger was announced
22 on December 1, 2003.

23 70. By virtue of his confidential relationship with the Minnesota Investor, Gallivan
24 received material, nonpublic information, on or before October 6, 2003, that the California
25 Holding Company was attempting to acquire Harbor and that Harbor was actively soliciting
26 offers for a sale of the bank. This information was the very subject of the October 6th meeting
27 that Gallivan had attended.
28

1 71. Between October 7 and October 31, 2003, on the basis of this material, nonpublic
2 information, Gallivan recommended the purchase of Harbor stock to the Minnesota Cousin, the
3 Minnesota Son, and another of his sons, who resides in North Carolina ("North Carolina Son").
4 The Minnesota Cousin, the Minnesota Son, and the North Carolina Son collectively purchased
5 9,470 shares of Harbor stock on the basis of Gallivan's recommendation, between October 9 and
6 November 7, 2003. Based on Harbor stock's closing price on December 1st, the day of the
7 merger announcement, these relatives of Gallivan's had combined profits of approximately
8 \$23,348.

9 72. Gallivan knew, or was reckless in not knowing, that his stock purchase
10 recommendations to the foregoing individuals revealed material, nonpublic information in
11 breach of duties of trust and confidence that he owed to the California Holding Company,
12 Harbor, and the Minnesota Investor. The CEO of the California Holding Company specifically
13 admonished Gallivan before proceeding with the October 6th meeting -- in front of Harbor's
14 CEO -- that the information Gallivan and the other attendees was to receive was confidential and
15 that a written confidentiality agreement between the California Holding Company and Harbor
16 was already in place (which covered the California Holding Company and its advisers). The
17 Minnesota Investor, who brought Gallivan to the meeting, had a history, pattern, and practice of
18 sharing confidential information with him.

19 73. It was reasonably foreseeable to Gallivan that the Minnesota Cousin, Minnesota
20 Son, and North Carolina Son would (1) effect transactions in the securities of Harbor, and/or (2)
21 disclose the information to others who were likely to effect such transactions.

22 **CLAIM FOR RELIEF**

23 **Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]**

24 **And Rule 10b-5 Thereunder [17 C.F.R. § 240.10b-5]**

25 74. Paragraphs 1 through 73 are realleged and incorporated herein by reference.

26 75. At all relevant times, Gallivan knew, or was reckless in not knowing, that the
27 information concerning the possible acquisitions of Valencia, Monterey, Sun Country, Mid
28 Valley, and Harbor was material, confidential, and nonpublic. In breach of duties of trust and

1 confidence, and on the basis of this material nonpublic information, Gallivan purchased shares of
2 Valencia, Sun Country, and Mid Valley common stock and recommended that friends and
3 relatives purchase Valencia, Monterey, Mid Valley, and Harbor common stock, when it was
4 reasonably foreseeable that they would purchase shares on the basis of this information or
5 disclose the information to others who were likely to purchase shares.

6 76. By reason of the foregoing, Gallivan knowingly and recklessly violated, and
7 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15
8 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Commission respectfully requests that this Court:

11 **I.**

12 Permanently restrain and enjoin Gallivan from violating Section 10(b) of the Exchange
13 Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

14 **II.**

15 Order Gallivan to disgorge an amount equal to his illegal trading profits from the
16 securities transactions alleged in this Complaint, plus prejudgment interest.

17 **III.**

18 Order Gallivan to disgorge all trading profits, including prejudgment interest thereon,
19 realized by: (i) the persons to whom he unlawfully communicated recommendations to purchase
20 securities based on material, nonpublic information, (ii) the persons in whose accounts trades
21 were made by persons to whom Gallivan unlawfully communicated recommendations to
22 purchase securities based on material, nonpublic information, and (iii) other persons to whom
23 Gallivan's recommendations to purchase securities based on material, nonpublic information
24 were disclosed.

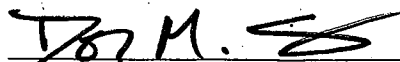
25 **IV.**

26 Order Gallivan to pay a civil penalty pursuant to Section 21A of the Exchange Act [15
27 U.S.C. § 78u-1].
28

V.

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

Dated: November 28, 2006


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