

1 HELANE L. MORRISON (State Bar No. 127752)  
MARC J. FAGEL (State Bar No. 154425)  
2 CARY S. ROBNETT (State Bar No. 160585)  
JENNIFER L. SCAFE (State Bar No. 194649)

3 Attorneys for Plaintiff  
4 SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street, Suite 2600  
5 San Francisco, California 94104  
Telephone: (415) 705-2500  
6 Facsimile: (415) 705-2501

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

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12 SECURITIES AND EXCHANGE COMMISSION,  
13 Plaintiff,  
14 v.  
15 DAVID J. SHLANSKY,  
16 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT**

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

20 **SUMMARY OF THE ACTION**

21 1. Defendant David J. Shlansky, an attorney, engaged in insider trading by purchasing  
22 stock in Applied Molecular Evolution, Inc. ("Applied Molecular" or the "Company") after being told  
23 by the Company's Chief Financial Officer that the Company was going to be acquired.

24 2. Applied Molecular's CFO retained Shlansky to represent his interests in the  
25 acquisition and cautioned Shlansky that the deal was confidential. The next day, Shlansky purchased  
26 6,000 shares of Applied Molecular stock. When it was publicly announced later that week that  
27 Applied Molecular was being acquired by Eli Lilly & Co., Applied Molecular's stock price soared by  
28

1 50%. Shlansky obtained illegal profits of more than \$38,000 by buying stock ahead of the merger  
2 announcement.

3 3. Shlansky had been a long-time investor in Applied Molecular, and had purchased a  
4 considerable amount of stock in the days before he learned about the Company's pending acquisition.  
5 However, once Shlansky's client provided him with significant inside information, Shlansky had a  
6 duty to refrain from further trading until the news became public.

7 4. By trading while he was aware of confidential information he learned through his  
8 legal representation of an officer of Applied Molecular, Shlansky violated Section 10(b) of the  
9 Securities Exchange Act ("Exchange Act") of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R.  
10 240.10b-5] thereunder. The Commission seeks a court order requiring that Defendant disgorge his  
11 ill-gotten gains plus prejudgment interest; imposing civil money penalties; and enjoining Defendant  
12 from future violations of these provisions of the securities laws.

### 13 **JURISDICTION AND VENUE**

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

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

18 7. Defendant, directly or indirectly, made use of the means or instrumentalities of  
19 interstate commerce, or of the mails, or of the facilities of a national securities exchange in  
20 connection with the transactions, acts, practices and courses of business alleged herein.

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

### 24 **DEFENDANT**

25 9. Defendant David J. Shlansky, age 36, is an attorney who resides in Ferrisburg,  
26 Vermont.

## RELEVANT ENTITY

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2 10. Applied Molecular Evolution, Inc. is a biotechnology company based in San Diego,  
3 California. Until its merger with Eli Lilly & Co. on February 12, 2004, Applied Molecular's  
4 common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act  
5 [15 U.S.C. § 78l(g)] and was publicly quoted on the Nasdaq National Market under the symbol  
6 "AMEV." Applied Molecular is now a wholly-owned subsidiary of Eli Lilly.

## DEFENDANT'S INSIDER TRADING

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8 11. Shlansky was a friend and former law school classmate of Applied Molecular's CFO.  
9 Shlansky owned stock in the Company when it was still private, and when Applied Molecular  
10 completed its initial public stock offering in July 2000, Shlansky also received shares of the  
11 Company's stock under a "friends and family" program that allowed the Company to direct a portion  
12 of the initial shares to designated persons. Shlansky purchased additional stock in the Company over  
13 the next few years, including numerous purchases throughout 2003.

14 12. Between November 17 and November 19, 2003, Shlansky purchased 18,000 shares of  
15 Applied Molecular stock – 6,000 shares each day. In the midst of those purchases, Shlansky learned  
16 that Applied Molecular was on the verge of being acquired – significant information not yet known  
17 to the public.

18 13. On November 18, 2003, the CFO of Applied Molecular contacted Shlansky and asked  
19 if Shlansky would represent him as his personal attorney in connection with the proposed acquisition  
20 of Applied Molecular. The CFO sought Shlansky's legal advice and prompt review of certain  
21 contracts related to the deal that concerned the Company's officers and directors. Shlansky agreed to  
22 represent the CFO. The CFO informed Shlansky that the pending merger was confidential and  
23 should not be discussed with others.

24 14. As the CFO's attorney, Shlansky owed a fiduciary or other duty of trust and  
25 confidence to the CFO to keep confidential any and all nonpublic information Shlansky obtained in  
26 the course of his legal representation.

27 15. On November 18, 2003, the same day that the CFO retained him, Shlansky reviewed  
28 documents and provided legal advice to the CFO relating to the merger.

1 16. Shlansky knew or was reckless in not knowing that the information about the merger  
2 was material and nonpublic. Shlansky had a duty not to trade in the securities of Applied Molecular  
3 while in possession of this material, nonpublic information.

4 17. The next day – November 19 – Shlansky placed an order with his broker to purchase  
5 6,000 shares of Applied Molecular stock. The order was executed that day at an average price of  
6 \$11.55 per share, for a total cost of \$69,318.58.

7 18. Two days later, on November 21, 2003, Applied Molecular publicly announced that it  
8 had entered into a merger agreement under which Eli Lilly would acquire the Company at a price of  
9 \$18 per Applied Molecular share. That day, Applied Molecular's stock price rose 50% over the  
10 previous day's closing price to finish at \$17.75 per share. Trading volume on November 21st was 16  
11 times higher than the day before.

12 19. On February 20, 2004, Shlansky exchanged his Applied Molecular stock for Eli Lilly  
13 stock at an exchange rate of \$18 per Applied Molecular share pursuant to the terms of the merger  
14 agreement. Included in the exchange were the 6,000 Applied Molecular shares he had purchased on  
15 November 19, 2003.

16 20. By purchasing Applied Molecular stock while he was aware of material, nonpublic  
17 information concerning the Company's pending merger, Shlansky obtained illegal profits of  
18 \$38,681.42.

### 19 CLAIM FOR RELIEF

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

22 21. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.

23 22. Defendant, in connection with the purchase or sale of securities, by the use of means  
24 or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities  
25 exchange, knowingly or recklessly, directly or indirectly:

26 (a) employed devices, schemes, or artifices to defraud;

27 (b) made untrue statements of material facts or omitted to state material facts  
28 necessary in order to make the statements made, in the light of the

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circumstances under which they were made, not misleading; or

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

23. By reason of the foregoing, Defendant violated, and unless restrained and enjoined will continue to violate, 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].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

**I.**

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

**II.**

Order Defendant to disgorge an amount equal to his illegal trading profits from the securities transactions alleged in this Complaint, plus prejudgment interest;

**III.**

Order Defendant 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: \_\_\_\_\_, 2005

\_\_\_\_\_  
Helane L. Morrison  
Marc J. Fagel  
Cary S. Robnett  
Jennifer L. Scafe  
  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION