

1 Carleasa A. Coates, Lead Trial Attorney
2 Paul R. Berger
3 Russell G. Ryan
4 J. Lee Buck II
5 Samuel J. Draddy
6 Attorneys for Plaintiff
7 Securities and Exchange Commission
8 450 Fifth Street, N.W.
9 Washington, D.C. 20549-0806
10 (202) 942-4514 (Coates)
11 (202) 942-9569 (FAX)

12 LOCAL COUNSEL:
13 James A. Howell (CA Bar No. 92721)
14 Securities and Exchange Commission
15 44 Montgomery Street
16 San Francisco, CA 94104
17 (415) 705-2356

ORIGINAL
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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE



11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA
14
15 SAN JOSE DIVISION

16 -----
17 SECURITIES AND EXCHANGE COMMISSION, : Civ. Action No.
18 Plaintiff, : C 00-20655(JW)
19 :
20 :
21 - v. - :
22 :
23 MICHAEL R. HENDRIX, DOUGLAS S. SAWAMURA, : FIRST AMENDED
24 JEFFREY S. SUMMERLIN, JAMES A.S. LEWIS, : COMPLAINT
25 CRAIG A. LARREW, SAN H. MAI, BICH THI :
26 HOANG, LINH NGOC VU, NICK S. PARK, :
27 JOHN H. OH, TIMOTHY J. HELMS and :
28 RAYMOND L. HELMS, :
29 Defendants. :
30 -----

31 Plaintiff Securities and Exchange Commission ("Commission"
32 or "SEC") alleges as follows:
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SUMMARY

1
2 1. This case involves insider trading and tipping by twelve
3 individuals in the common stock of Xylogics, Inc. All of the
4 trading took place during the two days before the public
5 announcement, on September 6, 1995, that Bay Networks, Inc. would
6 acquire Xylogics.

7 2. On Friday afternoon, September 1, 1995, Michael R.
8 Hendrix, the "manager of strategic alliances" at Bay Networks,
9 Inc. at the time, telephoned his friend James A.S. Lewis and told
10 him, "We're going to buy Xylogics." Hendrix explained to Lewis
11 that he had recently returned from a Bay Networks off-site
12 meeting at the Chaminade conference facility in Santa Cruz,
13 California; that his immediate supervisor, James Hourihan, had
14 had to return to the East Coast to work all weekend; and that he
15 (Hendrix) had "overheard" or "overseen [sic]" something that made
16 him aware both that Bay Networks was going to acquire Xylogics
17 and that the acquisition would be announced soon. Hendrix added
18 that the acquisition would be lucrative for Xylogics investors;
19 and that he (Hendrix) had already begun buying Xylogics stock.

21 3. During the 36 hours preceding this call, Hendrix had
22 indeed been in a position, through his employment at Bay
23 Networks, to "overhear" or "oversee" [sic] the very material,
24 non-public information that he admitted to Lewis that he had
25 learned. A \$330 million deal through which Bay Networks stood to
26 gain a 21% stake in the remote access market, the Xylogics
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1 acquisition was a major corporate event for Bay Networks,
2 generating a flurry of activity. The off-site gathering in
3 Santa Cruz, which Hendrix told Lewis he attended, had taken place
4 on the day before Hendrix's call; among its attendees had been
5 Bay Networks officers and managers who were then aware of, and
6 working on, the acquisition. On the day of Hendrix's call to
7 Lewis, he had been scheduled to meet with Hourihan; but Hourihan
8 had cancelled that meeting and returned to the East Coast a day
9 ahead of schedule *because of the acquisition*. Moreover,
10 Hendrix's office was located on the same floor as that of Bay
11 Networks' CEO, as well as other persons who knew about and were
12 actively working on the acquisition; this floor included common
13 areas. And throughout this period, Hendrix's job
14 responsibilities afforded him significant interaction and
15 opportunity to circulate within the company.
16

17 4. After learning of the acquisition, first Hendrix, and
18 then all his direct and indirect tippees after him, engaged in
19 aberrational trading in Xylogics stock. Each began buying
20 Xylogics at their very next trading opportunity after learning of
21 the acquisition. None had ever bought Xylogics before. Each
22 individual's Xylogics purchase represented their largest single
23 securities investment ever. Several opened new securities
24 accounts to make their Xylogics purchases. Many traded through
25 more than one firm. In order to fund their Xylogics purchases,
26 many sold all, or substantial portions of, their existing
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1 securities holdings; two took out sizable loans, one of which
2 exceeded the borrower's net worth by more than five times.

3 5. In particular, Hendrix, who had already begun buying
4 Xylogics stock for his own account before his call to Lewis (just
5 as he'd told Lewis he had), continued his buying on the next
6 trading day, purchasing 6,215 shares in all, and funding these
7 purchases by liquidating over 98% of his entire family's
8 securities holdings. Hendrix then tipped several friends, each
9 of whom, in turn, also quickly bought Xylogics. Lewis, Hendrix's
10 first tippee, bought Xylogics at his very next trading
11 opportunity following Hendrix's tip, investing all his available
12 funds, and even opening a new securities account to make his
13 Xylogics purchases, which totaled 3,800 shares. Lewis also
14 tipped a friend, who, in turn, quickly bought 1,300 shares of
15 Xylogics. Jeffrey Summerlin, Hendrix's next tippee, likewise
16 bought Xylogics at his very next opportunity following Hendrix's
17 tip, taking out a substantial margin loan in order to buy 3,200
18 shares of Xylogics. Summerlin also tipped a friend who, in turn,
19 also quickly bought Xylogics. Douglas Sawamura, Hendrix's next
20 tippee, also began buying Xylogics at his next opportunity after
21 Hendrix's tip, purchasing 10,217 shares in two accounts with two
22 different brokerage firms, including an account he opened the day
23 of his Xylogics purchase. San Mai, Hendrix's next tippee,
24 likewise began buying Xylogics very early on the next trading day
25 following Hendrix's tip, ultimately purchasing 2,785 shares.
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1 Craig Larrew, Hendrix's next tippee, immediately sold off all his
2 other stock after Hendrix tipped him, and used all the proceeds—
3 \$108,000—to buy 2,980 shares of Xylogics. Larrew then
4 recommended Xylogics to a third party, who also promptly bought
5 Xylogics. Finally, Hendrix recommended the purchase of Xylogics
6 to his broker, William Gerdts, who bought 1,500 shares of
7 Xylogics for his own account and recommended that his clients
8 purchase 3,800 shares of Xylogics, which they did.

9 6. Mai's tippees—his mother, uncle, friend, and friend's
10 boss—likewise engaged in aberrational trading in Xylogics after
11 Mai tipped them. Each bought Xylogics within minutes of the next
12 available trading opportunity following Mai's tip. Bich Thi
13 Hoang, Mai's mother, bought 600 shares in two accounts she shared
14 with Linh Ngoc Vu, Mai's uncle, at two different brokerage firms,
15 including an account she opened on the day of her purchase. Vu
16 also purchased 2,000 more shares of Xylogics, using yet a third
17 firm for half of those purchases. Mai's friend John Oh, whose
18 annual salary was \$41,000 and whose net worth approximated
19 \$9,000, bought \$100,000 worth of Xylogics—2,750 shares—in two
20 accounts with two different brokerage firms, including an account
21 he opened with his Xylogics purchase. Oh bought all of this
22 stock on margin and, to fund his margined purchase, borrowed
23 \$51,000 from his employer, Nick Park. Park himself bought 9,000
24 shares of Xylogics in two accounts with two different brokerage
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1 firms, for a total investment of \$330,000—his largest securities
2 investment ever.

3 7. At the time of all this trading and tipping, Hendrix and
4 each of his direct and indirect tippees knew, or recklessly
5 disregarded the fact that, Hendrix's tipping breached Hendrix's
6 fiduciary duty to Bay Networks as an employee of Bay Networks.
7 Hendrix also knew, or recklessly disregarded the fact that, his
8 own Xylogics trading and his recommendation of Xylogics to his
9 broker likewise breached that same duty. In all, Lewis,
10 Summerlin, Sawamura, Mai, Larrew, Hoang, Vu, Oh and Park, and
11 others whose trading stemmed directly or indirectly from Hendrix,
12 bought at least 43,932 shares of Xylogics stock on the day before
13 the public announcement of the acquisition. Together with
14 Hendrix, these persons made at least \$644,000 in illegal profits
15 from their trading in Xylogics.
16

17 8. Separate and apart from Hendrix, while working in Bay
18 Networks' public relations department, and in the course of
19 preparing for an "Analyst Summit" to be hosted by Bay Networks,
20 Timothy Helms also learned of Bay Networks' imminent acquisition
21 of Xylogics when his boss, public relations director Chris
22 Carleton, informed him of it. After learning this information,
23 and after specifically promising Carleton to keep this
24 information confidential, Helms tipped his father, Raymond, who
25 bought 3,000 shares of Xylogics the day before the announcement,
26 making illegal profits totaling \$36,000.
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1 9. During the Commission's investigation that preceded the
2 filing of this action, each and every one of the defendants
3 asserted the Fifth Amendment privilege against self-incrimination
4 with respect to the circumstances surrounding their Xylogics
5 trading and/or communications concerning Xylogics. Hendrix did,
6 however, participate in a May 1996 telephone interview with the
7 Commission staff prior to invoking the Fifth Amendment. During
8 that interview, Hendrix falsely claimed that he had no knowledge
9 of the Xylogics acquisition before its public announcement, that
10 he never recommended Xylogics to anyone, and that his trading in
11 Xylogics was based entirely on his own research into the company.

12 10. By engaging in this conduct, Hendrix and the other
13 defendants violated the antifraud provisions of the Securities
14 Exchange Act of 1934 (the "Exchange Act"), and they will continue
15 to do so unless restrained and enjoined by this Court.
16 Accordingly, the SEC seeks injunctions against future violations,
17 disgorgement of unlawful trading profits, prejudgment interest
18 and statutory money penalties.

20 JURISDICTION

21 11. This Court has jurisdiction over this action pursuant to
22 Sections 21(d) and (e) and Section 27 of the Exchange Act [15
23 U.S.C. §§ 78u(d) and (e) and 78aa].

24 INTRA-DISTRICT ASSIGNMENT

25 12. Assignment to the San Jose Division is appropriate
26 pursuant to Civil Local Rule 3-2(e) because a substantial part of
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1 the conduct alleged herein occurred in the County of Santa Clara,
2 in the Northern District of California.

3 THE DEFENDANTS

4 13. Michael R. Hendrix, age 42, resides in San Carlos,
5 California. During the relevant period, Hendrix worked at Bay
6 Networks as a manager of strategic alliances.

7 14. Douglas S. Sawamura, age 40, resides in Los Altos,
8 California. A friend of Hendrix's during the relevant period,
9 Sawamura had worked with Hendrix at Bay Networks until ten weeks
10 before his and Hendrix's trading in Xylogics.

11 15. San H. Mai, age 32, resides in Cupertino, California.
12 During the relevant period, Mai worked together with Sawamura and
13 was a friend of Hendrix's, having just months before worked with
14 Hendrix at Bay Networks. Sawamura, Mai and Hendrix were close
15 friends and did many things together both before and after their
16 Xylogics trading, including attendance at San Jose Sharks hockey
17 games.

18 16. Bich Thi Hoang, age 62, resides in Portland, Oregon, and
19 is Mai's mother.

20 17. Linh Ngoc Vu, age 46, resides in Beaverton, Oregon, and
21 is Mai's uncle and Hoang's brother-in-law.

22 18. John H. Oh, age 33, resides in Portland, Oregon. During
23 the relevant period, Oh worked as a sales associate for a
24 computer retail store and was a friend of Mai's.
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1 19. Nick S. Park, age 38, resides in West Linn, Oregon.

2 During the relevant period, Park was Oh's employer.

3 20. Craig A. Larrew, age 41, resides in San Jose,

4 California. During the relevant period, Larrew was a friend of
5 Hendrix's. Just months before his Xylogics trading, Larrew had
6 worked with Hendrix at Bay Networks.

7 21. Timothy J. Helms, age 42, resides in Livermore,

8 California. During the relevant period, he worked as a manager
9 in Bay Networks' public relations department.

10 22. Raymond L. Helms, age 73, resides in San Rafael,

11 California, and is Timothy Helms' father. During the relevant
12 period, he was a retired real estate agent.

13 **SETTLED DEFENDANTS**

14 23. James A. S. Lewis, age 45, resides in Woodinville,

15 Washington. During the relevant period, he was a friend and
16 former co-worker of Hendrix. Lewis reached a settlement with the
17 Commission at an earlier stage in this litigation, pursuant to
18 which he was enjoined by this Court and ordered to disgorge his
19 trading profits plus prejudgment interest thereon, and to pay
20 civil money penalties.

21 24. Jeffrey S. Summerlin, age 49, resides in Thousand Oaks,

22 California. During the relevant period, he was a friend of
23 Hendrix who worked with Hendrix in the early 1990s at Bay
24 Networks' predecessor. Summerlin reached a settlement with the
25 Commission at an earlier stage in this litigation, pursuant to
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1 which he was enjoined by this Court and ordered to disgorge his
2 trading profits plus prejudgment interest thereon, and to pay
3 civil money penalties.

4 MERGER PARTICIPANTS

5 25. Xylogics, Inc., was a Delaware corporation with its
6 executive offices in Burlington, Massachusetts, which
7 manufactured and marketed remote access network products. At all
8 relevant times, Xylogics' stock was registered with the
9 Commission pursuant to Section 12(g) of the Exchange Act, and
10 quoted on the Nasdaq National Market System. As of November 9,
11 1995, the record date of the merger, approximately 5.5 million
12 shares of Xylogics stock were outstanding. After the
13 acquisition, Xylogics became a wholly-owned subsidiary of Bay
14 Networks.
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16 26. Bay Networks, Inc., was a Delaware corporation with its
17 executive offices located in Santa Clara, California, which
18 manufactured and marketed data networking products and services.
19 At all relevant times, Bay Networks' common stock was registered
20 with the Commission pursuant to Section 12(b) of the Exchange Act
21 and traded on the New York Stock Exchange. In 1998, Bay Networks
22 merged with, and became a wholly-owned subsidiary of, Northern
23 Telecom Limited, which was renamed Nortel Networks.
24

25 BACKGROUND

26 27. By the end of August 1995, officers of Bay Networks and
27 Xylogics had agreed to recommend that their respective boards
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1 approve Bay Networks' acquisition of Xylogics through a stock-
2 for-stock merger. The officers had also agreed on the price and
3 share exchange ratios that they would recommend to their boards.

4 28. By Friday, September 1, 1995, the companies had begun to
5 prepare for the joint public announcement of their anticipated
6 merger agreement. During the ensuing weekend—which included the
7 Labor Day holiday—representatives of Xylogics and Bay Networks
8 completed their due diligence and finalized the terms of the
9 merger. On the day after Labor Day, Tuesday, September 5th, the
10 boards of each company met and approved the merger.
11

12 29. Before trading opened on the following day, Wednesday,
13 September 6th, Bay Networks announced that it had signed a
14 binding agreement to acquire Xylogics in a stock exchange. Until
15 this announcement, the facts and terms of the merger were both
16 material and non-public.

17 30. After the announcement, Xylogics' stock opened at
18 \$50.50—up more than 36% from its previous trading day's closing
19 price of \$37. Xylogics' stock reached a high of \$50.75 that day,
20 before closing at \$48.875 on extremely heavy volume.
21

22 DUTY

23 31. By August 1995, Hendrix had received extensive notice of
24 the legal and corporate policies prohibiting insider trading.
25 First, for four years during the mid-1980s, Hendrix was a
26 licensed stockbroker, first with Dean Witter, then with Bateman
27 Eichler. Second, in 1990, Hendrix began working for the
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1 predecessor of Bay Networks—SynOptics Communications, Inc.—
2 where he signed a confidentiality agreement forbidding the
3 "disclos[ure] or use ...[of] any proprietary or confidential
4 information...belonging to the Company," including information
5 concerning "future business plans."

6
7 32. In 1995, when he became an employee of Bay Networks
8 through SynOptics' merger with WellFleet Communications, Inc.,
9 Hendrix knew of the insider trading policy, which prohibited
10 individuals who were privy to inside information from using that
11 information to trade securities, and he received a copy of the
12 written policy. Bay Networks' written policy, dated February 10,
13 1995, also expressly prohibited passing "inside information"
14 under any circumstances. Thus, at the time he traded in
15 Xylogics, tipped others concerning the Xylogics acquisition, and
16 recommended the purchase of Xylogics to his broker, Hendrix knew,
17 or was reckless in not knowing, that his doing so breached his
18 fiduciary duty to Bay Networks as an employee of Bay Networks.

19 33. At the time of their Xylogics trading, Sawamura, Mai,
20 Summerlin, Lewis and Larrew were all former co-workers of
21 Hendrix, either at Bay Networks, at its predecessor, SynOptics
22 Communications, or both. Thus, each had received the insider
23 trading policies of Bay Networks, its predecessor, or both.
24 Moreover, each had for many years been employed by public
25 companies with insider trading policies. Thus, each of these
26 defendants knew, or were reckless in not knowing, that Hendrix's
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1 tip to them breached his fiduciary duty to Bay Networks as an
2 employee of Bay Networks.

3 34. At the time of their Xylogics trading, Hoang, Vu, Oh and
4 Park knew, or were reckless in not knowing, that Mai had worked
5 at Bay Networks until just four months earlier.

6 35. At the time he tipped his father, Timothy Helms had
7 worked for Bay Networks and its predecessor, SynOptics
8 Communications, for several years, and knew, or was reckless in
9 not knowing, the company's insider trading policy. Moreover, at
10 the time he tipped his father, Timothy Helms had been
11 specifically instructed by his immediate supervisor, and had
12 specifically undertaken, to maintain the confidentiality of
13 information concerning the Xylogics acquisition.
14

15 36. At the time he received his son's tip, Raymond Helms
16 knew, or was reckless in not knowing, that his son worked in Bay
17 Networks' public relations department; that this department was
18 responsible for public announcements; and that no public
19 announcement of the Xylogics acquisition had yet been made.

20 **HENDRIX LEARNS OF BAY NETWORKS ACQUISITION OF XYLOGICS**

21 37. On Wednesday, August 30, 1995, Hendrix's immediate
22 supervisor, James J. Hourihan, learned of Bay Networks' imminent
23 acquisition of Xylogics at a confidential meeting held in a hotel
24 room in Bedford, Massachusetts. During that meeting, which
25 included representatives from both Bay Networks and Xylogics,
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1 Hourihan was asked to assist with preparations for the public
2 announcement of the acquisition.

3 38. Later that same afternoon, Hourihan took a flight from
4 Boston, Massachusetts to San Jose, California for two days of
5 previously scheduled meetings with persons who worked in Bay
6 Networks' Santa Clara office, including Hendrix. Hourihan, who
7 was based in Bay Networks' Billerica, Massachusetts office at the
8 time, had planned this California trip before learning of the
9 Xylogics acquisition.

10 39. Before he learned of the acquisition, Hourihan had been
11 scheduled to stay in Santa Clara for two full days—Thursday,
12 August 31 and Friday, September 1—and not to depart from
13 California until 10 o'clock that Friday night, on a "red eye"
14 flight that would not arrive in Boston until early Saturday
15 morning, September 2, 1995. Moreover, Hourihan had been
16 scheduled to meet with Hendrix during that trip, at 10:30 a.m.
17 (PDT) on Friday morning, September 1st.

18 40. On Thursday, August 31, 1995, according to schedule, Bay
19 Networks held an all-day "off-site" gathering of persons from Bay
20 Networks' public relations and marketing groups, at the Chaminade
21 conference center in Santa Cruz, California. Approximately 50
22 Bay Networks officers and management-level employees attended
23 this gathering, including numerous individuals who, by that date,
24 already knew of, and were working on, the impending acquisition
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1 of Xylogics. Among the attendees were Hourihan, Bay Networks'
2 Chief Executive Officer, Andrew Ludwick, and Hendrix.

3 41. Persons working on the acquisition who were present at
4 the "off-site" discussed the acquisition among themselves. In
5 addition, any Bay Networks employee overhearing any such
6 discussion or seeing any acquisition-related documents at the
7 "off-site" would have known that any trading or tipping based on
8 any information so gleaned would have violated Bay Networks'
9 policies.

10 42. Hendrix's access to non-public information concerning
11 the acquisition was, however, by no means limited to his
12 attendance at the "off-site" gathering. At all relevant times,
13 Hendrix's office was located on the same floor or in close
14 proximity to the office of Bay Networks CEO Ludwick, as well as
15 of other persons who were aware of the Xylogics acquisition
16 before its public announcement. At all relevant times, the floor
17 on which Hendrix's and Ludwick's office was located included a
18 coffee room and other common areas.

19 43. Also at all relevant times, Hendrix's position, "manager
20 of strategic alliances," afforded him a significant amount of
21 interaction and access to material, non-public information within
22 the company.

23 44. At 10 o'clock on Thursday evening, August 31—a full day
24 earlier than scheduled—Hourihan departed California for Boston.
25 Hourihan's early departure was driven by work he had to do
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1 concerning the impending acquisition of Xylogics. Because of his
2 early departure, Hourihan cancelled his scheduled meeting with
3 Hendrix for Friday morning, September 1, 1995.

4 45. By the early afternoon of Friday, September 1, 1995,
5 Hendrix, as he admitted to Lewis, had already learned the
6 material, non-public information concerning Bay Networks'
7 acquisition of Xylogics. Hendrix learned this information in the
8 course of his employment as "manager of strategic alliances" at
9 Bay Networks.

10 46. Hendrix learned of the acquisition either during Bay
11 Networks' "off-site" gathering in Santa Cruz, at Bay Networks'
12 Santa Clara office, or in another setting involving or relating
13 to the confidential conduct of Bay Networks business. Hendrix
14 learned, either on Thursday, August 31, 1995, Friday, September
15 1, 1995, or at some time within or over the course of those two
16 specific days, that Bay Networks would acquire Xylogics, and that
17 the acquisition would be announced soon.

18 47. At approximately 1:00 p.m. (PDT)¹ on Friday, September
19 1, 1995, in breach of his fiduciary duty to Bay Networks as an
20 employee of Bay Networks, including his duties under Bay
21 Networks' insider trading policy, Hendrix began purchasing
22 Xylogics stock. First, Hendrix placed an order to buy 3,800
23 shares of Xylogics stock in his Individual Retirement Account
24 ("IRA") at Everen Securities. After the market closed that day,
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27 ¹ All times given herein are in Pacific Daylight Time.

1 Hendrix placed a limit order to buy another 2,000 shares of
2 Xylogics in his joint account with his wife at the same brokerage
3 firm.

4 48. Then, on the next trading day, September 5th—just
5 minutes after the market opened—Hendrix changed that limit order
6 to a market order. Over the next hour, Hendrix placed additional
7 orders to buy Xylogics stock in accounts at Everen Securities for
8 his three minor children.

9
10 49. All told, through five accounts, Hendrix purchased 6,215
11 shares of Xylogics stock on September 1st and September 5th,
12 investing approximately \$221,000. In order to finance these
13 purchases, Hendrix sold all of the holdings in four of the five
14 accounts, and 96% of the holdings in the fifth account. In
15 total, the Hendrix family made a profit trading in Xylogics of at
16 least \$104,885.63. Hendrix had never purchased Xylogics stock
17 before his trading on September 1st and 5th, and his Xylogics
18 investment was his largest single securities investment up to
19 that time.

20 50. Hendrix asserted his Fifth Amendment privilege against
21 self-incrimination during the Commission's investigation that
22 preceded the filing of this action in response to all questions
23 concerning, among other things, the reasons for his Xylogics
24 trading and his communications with others concerning Xylogics.
25

1 Hendrix Tips Lewis, Who Buys Xylogics Stock
2 and Recommends Xylogics to a Trading Friend

3 54. On the afternoon of Friday, September 1, 1995, after the
4 market closed and after he had already begun buying Xylogics
5 stock for himself, Hendrix tipped Lewis concerning the imminent
6 acquisition of Xylogics, in breach of his fiduciary duties to Bay
7 Networks as an employee of Bay Networks. This tip occurred by
8 phone, during two telephone calls that Hendrix placed from his
9 direct office line at Bay Networks to Lewis's office: a 48-
10 second call beginning at 2:42 p.m., and a 13.8-minute call
11 beginning at 3:35 p.m.

12 55. Specifically, Hendrix told Lewis on September 1, 1995,
13 when he tipped him:

- 14 a. that he (Hendrix) had recently returned from an
15 offsite meeting of the company's business
16 development and marketing groups at the Chaminade
17 conference center in Santa Cruz;
- 18 b. that his boss, Hourihan, had had to return to the
19 East Coast to work all weekend;
- 20 c. that he (Hendrix) had either "overheard something"
21 or "overseen [sic] something" that made him aware
22 both that Bay Networks was going to acquire
23 Xylogics, and that the acquisition would be
24 announced shortly;
- 25 d. that the acquisition would be lucrative for
26 Xylogics investors; and
27

1 e. that he (Hendrix) had already begun buying

2 Xylogics stock.

3 56. In tipping Lewis, Hendrix said nothing to Lewis about
4 having done any research or analysis into Xylogics; rather,
5 Hendrix described the Xylogics acquisition as a fact, not a
6 prediction.

7 57. At the time Hendrix tipped Lewis, Lewis knew or
8 recklessly disregarded the fact that Hendrix had tipped him in
9 breach of Hendrix's duties to Bay Networks. Despite this, Lewis
10 began buying Xylogics stock at virtually his first available
11 opportunity following Hendrix's tip. Thus, beginning at 6:55
12 a.m. on Tuesday, September 5, 1995—just 25 minutes after the
13 market opened on the very next trading day after Hendrix's
14 September 1, 1995 tip—Lewis purchased 3,800 shares of Xylogics
15 in three separate accounts: his IRA account, his wife's IRA
16 account, and a joint margin account that he opened with his
17 purchases of Xylogics stock. Also on September 5th, Lewis
18 recommended Xylogics to a friend and colleague, who purchased
19 1,300 shares of Xylogics. Lewis made a \$45,700 profit from his
20 trading, and his friend realized profits of \$16,575. At the time
21 he placed his orders to buy Xylogics stock, Lewis told his broker
22 that he wanted to buy 4,000 shares, but ultimately bought 3,800
23 shares because he lacked sufficient funds in his accounts to buy
24 more. Like Hendrix, Lewis had never purchased Xylogics stock
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1 before September 5th, and his Xylogics investment was his single
2 largest securities investment up to that time.

3 58. In recommending Xylogics to his friend and colleague,
4 Lewis passed on four specific pieces of material, non-public
5 information that Hendrix had tipped Lewis in breach of Hendrix's
6 fiduciary duties to Bay Networks: That a transaction was
7 imminent; that the transaction was an acquisition; that the
8 acquiring company was Bay Networks; and that the company to be
9 acquired was Xylogics. Indeed, in her contemporaneous note of
10 what Lewis told her on the morning of September 5, 1995, Lewis'
11 friend and colleague wrote:

12
13 Zylogics [sic]
14 XLGX
15 By Bay Nets

16 At the time, "XLGX" was the ticker symbol for Xylogics.

17 59. Lewis asserted his Fifth Amendment privilege against
18 self-incrimination during the Commission's investigation that
19 preceded the filing of this action in response to all questions
20 concerning, among other things, the reasons for his Xylogics
21 trading and his communications with Hendrix and others concerning
22 Xylogics.

23 Hendrix Tips Summerlin, Who Buys Xylogics Stock

24 60. Also after he began buying Xylogics stock for himself on
25 September 1, 1995, Hendrix tipped Summerlin about Bay Networks'
26 acquisition of Xylogics. This tip occurred sometime between 1:00
27 p.m. on the afternoon of September 1, 1995 and 6:45 a.m. on

1 September 5, 1995, during one or more of the contacts between
2 Summerlin and Hendrix during that period, including a 42-second
3 call placed from Hendrix's direct office line to Summerlin's home
4 at 2:53 p.m. on September 1, 1995. Summerlin knew or was
5 reckless in not knowing that Hendrix's tip breached Hendrix's
6 duties to Bay Networks.

7 61. On September 5, 1995, at approximately 6:45 a.m.—just
8 15 minutes after the market opened on the very next trading day
9 after Hendrix's tip—Summerlin showed up in person at his
10 stockbroker's office and made the following statement to his
11 broker: "I think Xylogics may be bought by Bay." Summerlin also
12 stated that he understood from a friend that Xylogics was "in
13 play."

14 62. Summerlin took out a margin loan and bought 3,200 shares
15 of Xylogics. Summerlin invested \$117,600 in Xylogics and
16 realized profits totaling \$39,200 from his purchases of Xylogics
17 stock. Summerlin, like Lewis and Hendrix, had never purchased
18 Xylogics stock before he came to his broker's office at 6:45 a.m.
19 on September 5th. As with Lewis's and Hendrix's, Summerlin's
20 investment in Xylogics was his single largest securities
21 investment up to that time.

22 63. Summerlin also recommended Xylogics to a friend,
23 telling the friend that he (Summerlin) had learned from a friend
24 connected to either Xylogics or Bay Networks that Bay Networks
25 would acquire Xylogics and that the acquisition would happen
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1 soon. In a subsequent conversation with the same friend,
2 Summerlin identified Hendrix as his source.

3 64. Summerlin asserted his Fifth Amendment privilege against
4 self-incrimination during the Commission's investigation that
5 preceded the filing of this action in response to all questions
6 concerning, among other things, the reasons for his Xylogics
7 trading and his communications with Hendrix concerning Xylogics.
8 Summerlin also asserted his Fifth Amendment privilege in refusing
9 to produce documents subpoenaed by the Commission's enforcement
10 staff.

11 Hendrix Tips Sawamura, Who Buys Xylogics Stock

12 65. Less than three minutes after Hendrix's call to
13 Summerlin, and less than 15 minutes after Hendrix's initial call
14 to Lewis, Hendrix, in an effort to contact his friends Mai and
15 Sawamura, placed two calls from his Bay Networks direct office
16 line: the first to a pager number at Netscape, where Sawamura
17 and Mai both worked, and the second to Sawamura's direct office
18 line at Netscape.

19 66. A minute later, from his direct office line, Sawamura
20 placed a 5-minute and 29-second return call to Hendrix's direct
21 office line at Bay Networks. During that call, and in breach of
22 his fiduciary duties to Bay Networks as an employee of Bay
23 Networks, Hendrix tipped Sawamura and Mai to the following: That
24 a transaction was imminent; that the transaction was an
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1 acquisition; that the acquiring company was Bay Networks; and
2 that the company to be acquired was Xylogics.

3 67. Until three months earlier, Sawamura had worked with
4 Hendrix, not only at Bay Networks, but also at its predecessor,
5 SynOptics Communications. Sawamura had therefore received the
6 very same insider trading policies that Hendrix had. Moreover,
7 at the time of Hendrix's tip, Sawamura continued to work for a
8 public company with an insider trading policy. Thus, when he
9 received Hendrix's tip, Sawamura knew or was reckless in not
10 knowing that Hendrix's tip breached Hendrix's duties to Bay
11 Networks.

12 68. On September 5, 1995, beginning at 6:46 a.m.—just 16
13 minutes after the market opened on the very next trading day
14 following Hendrix's tip—Sawamura used Hendrix's tip to trade in
15 Xylogics stock. Sawamura purchased 10,217 shares of Xylogics in
16 two separate accounts with two different brokerage firms.
17 Sawamura opened one of those accounts on the day of his Xylogics
18 trading by transferring 1,903 shares of Bay Networks stock into
19 the account, which he then sold, using all the proceeds,
20 approximately \$94,000, to buy Xylogics. In all, Sawamura
21 invested approximately \$375,000 in Xylogics, and made \$124,615.38
22 in profits from his purchases of Xylogics stock. Like all the
23 other defendants, Sawamura had never traded in Xylogics stock and
24 his purchase of Xylogics was his largest single securities
25 investment up to that time.
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1 69. Sawamura's trading on September 5, 1995, included a
2 sizable sale of Bay Networks stock, the acquiring company of
3 Xylogics. After the announcement of the acquisition the
4 following day, Bay Networks' stock price declined slightly, with
5 Sawamura thereby realizing loss-avoided profits from having sold
6 Bay Networks stock in the wake of Hendrix's tip.

7 70. In a May 1996 telephone interview with the Commission's
8 enforcement staff, Hendrix admitted discussing Xylogics with
9 Sawamura prior to the public announcement of the acquisition.

10 71. During the Commission's investigation that preceded the
11 filing of this action, Sawamura invoked his Fifth Amendment
12 privilege against self-incrimination, not only in refusing to
13 produce documents subpoenaed by the Commission's enforcement
14 staff, but also in response to all questions concerning, among
15 other things, the reasons for his Xylogics trading and his
16 communications with Hendrix concerning Xylogics.

18 **Hendrix Tips Mai,**
19 **Who Buys Xylogics Stock**

20 72. Between 1 p.m. on Friday, September 1, 1995, and 6:30
21 a.m. on Tuesday, September 5, 1995, in addition to tipping
22 Sawamura, Hendrix also tipped defendant San Mai concerning Bay
23 Networks' acquisition of Xylogics.

24 73. Until four months earlier, Mai had worked with Hendrix,
25 not only at Bay Networks, but also at its predecessor, SynOptics
26 Communications. Mai had therefore received the very same insider
27 trading policies that Hendrix had. Moreover, at the time of

1 Hendrix's tip, Mai continued to work for a public company with an
2 insider trading policy. Thus, when he received Hendrix's tip,
3 Mai knew or was reckless in not knowing that Hendrix's tip
4 breached Hendrix's duties to Bay Networks.

5 74. Beginning at 7:09 a.m. on Tuesday, September 5, 1995—
6 just 39 minutes after the market opened on the very next trading
7 day after the 5-minute and 29-second call between Sawamura's
8 direct office line and Hendrix—Mai used Hendrix's tip in
9 purchasing 2,785 shares of Xylogics stock. He made profits of
10 \$34,720.63 from these purchases.

11 75. Mai, like Sawamura, sold a sizable number of Bay
12 Networks shares (1,200 shares in Mai's case) to help finance his
13 purchase of Xylogics stock, thereby realizing loss-avoided
14 profits from having sold Bay Networks stock in the wake of
15 Hendrix's tip. Like Hendrix, Lewis, Summerlin and Sawamura before
16 him, Mai had never traded in Xylogics stock and his Xylogics
17 investment was his largest single securities investment up to
18 that time.

19
20 76. As described more fully below, Mai also tipped others
21 concerning the Xylogics acquisition, and those others also bought
22 Xylogics at their next available opportunity following Mai's tip.
23 Mai's trading in Xylogics stock, including the size of his
24 investment and its early-morning timing, mimicked that of Lewis,
25 Summerlin and Sawamura.

1 77. During a May 21, 1996, telephone interview with the
2 Commission's enforcement staff, Hendrix acknowledged being aware
3 that Mai held Xylogics stock at the time the acquisition was
4 announced, but refused to answer questions concerning
5 communications with Mai about Xylogics, saying instead, "I'd
6 rather not say," and "I'd rather not comment".

7 78. During the Commission's investigation that preceded the
8 filing of this action, Mai invoked his Fifth Amendment privilege
9 against self-incrimination, not only in refusing to produce
10 documents subpoenaed by the Commission's enforcement staff, but
11 also in response to all questions concerning, among other things,
12 the reasons for his Xylogics trading and his communications with
13 Hendrix and Sawamura concerning Xylogics.

14 Hendrix Tips Larrew, Who Buys Xylogics Stock

15
16 79. Also after he began buying Xylogics stock for himself,
17 Hendrix, in breach of his fiduciary duties to Bay Networks as an
18 employee of Bay Networks, tipped his friend Craig Larrew about
19 Bay Networks' acquisition of Xylogics, by telling him the
20 following: that a transaction was imminent; that the transaction
21 was an acquisition; that the acquiring company was Bay Networks;
22 and that the company to be acquired was Xylogics.

23 80. This tip occurred during a telephone call from
24 Hendrix's direct office line to Larrew's direct office line at
25 Cisco Systems beginning at 11:39 a.m. on September 5, 1995.
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1 81. Until several months earlier, Larrew had worked with
2 Hendrix, not only at Bay Networks, but also at its predecessor,
3 SynOptics Communications. Larrew had therefore received the very
4 same insider trading policies that Hendrix had. Moreover, at the
5 time he received Hendrix's tip, Larrew continued to work for a
6 public company with an insider trading policy. Thus, at the time
7 he received Hendrix's tip, Larrew knew or was reckless in not
8 knowing that Hendrix's tip breached Hendrix's duties to Bay
9 Networks.

10 82. At 11:45 a.m. on Tuesday, September 5th—just seconds
11 after the conclusion of the incoming call from Hendrix—Larrew
12 telephoned his brokerage firm. Over the next hour, Larrew sold
13 all of the holdings in all of his accounts at the brokerage firm
14 and used all of the proceeds, over \$108,000, to buy Xylogics
15 stock. In this way, Larrew purchased 2,980 shares of Xylogics
16 and, in so doing, used Hendrix's illegal tip. Larrew made
17 profits of \$36,838.78 from his purchases of Xylogics stock.
18

19 83. Like Lewis, Summerlin, Sawamura and Mai before him,
20 Larrew began investing in Xylogics at the very next available
21 trading opportunity following Hendrix's tip.

22 84. Like Hendrix, Lewis, Summerlin, Sawamura and Mai before
23 him, Larrew invested a substantial portion, if not all, of his
24 available resources in Xylogics and his purchase of Xylogics was
25 his single largest securities investment up to that time.
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1 85. Like Hendrix, Lewis, Summerlin, Sawamura, and Mai,
2 Larrew had never before purchased Xylogics.

3 86. Like Lewis, Summerlin, and Mai, Larrew recommended the
4 purchase of Xylogics to at least one other person after being
5 tipped by Hendrix and trading for his own account, and that other
6 person also traded in Xylogics.

7 87. Like Hendrix, Lewis, Summerlin, Sawamura, Mai and all
8 the other defendants, Larrew asserted his Fifth Amendment
9 privilege against self-incrimination during the Commission's
10 investigation that preceded the filing of this action in response
11 to all questions concerning, among other things, the reasons for
12 his Xylogics trading and his communications with Hendrix
13 concerning Xylogics. Larrew also, like Sawamura and Mai,
14 asserted his Fifth Amendment privilege in refusing to produce
15 documents subpoenaed by the Commission's enforcement staff.
16

17 **Hendrix Recommends the Purchase of**
18 **Xylogics to His Broker, William Gerdts,**
Who Buys and Recommends that His Clients Buy

19 88. Between September 1, 1995 and September 5, 1995, in
20 breach of his fiduciary duties to Bay Networks as an employee of
21 Bay Networks, Hendrix recommended the purchase of Xylogics to his
22 stockbroker, William Gerdts. At the time, Hendrix knew or was
23 reckless in not knowing that it was foreseeable that Gerdts would
24 purchase Xylogics and that Gerdts would recommend the purchase of
25 Xylogics stock to his clients.
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1 89. On September 5, 1995, after Hendrix's recommendation,
2 Gerdts bought 1,500 shares of Xylogics for his own account and
3 recommended that his clients purchase 3,800 shares of Xylogics,
4 which they did. Gerdts and his clients made profits totaling
5 \$66,437.59 from their purchases of Xylogics stock.

6 Mai Tips Others, Who Also Buy Xylogics Stock

7 90. Between the conclusion of the return call to Hendrix on
8 Friday, September 1, 1995, and the respective times of their
9 Xylogics purchases on the morning of Tuesday, September 5, 1995,
10 Mai tipped his mother (Bich Thi Hoang), his uncle (Linh Ngoc Vu),
11 his friend (John Oh) and his friend's employer (Nick Park) to
12 purchase Xylogics. While all of these tippees have asserted the
13 Fifth Amendment and refused to provide information concerning the
14 exact content of these communications, their immediate and
15 substantial purchases of Xylogics and other conduct, described
16 below, make it probable that Mai at least advised them that Bay
17 Networks was about to acquire Xylogics and that Mai's source of
18 information was an insider at Bay Networks, where the tippees
19 knew Mai used to work.
20

21 91. These tips occurred during the numerous contacts among
22 these persons during that period, including:

- 23 a. Mai's in-person visit to Portland, Oregon during
24 Labor Day Weekend, 1995, and in particular, his
25 visit to his mother's home during that time;
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1 b. calls from Mai's parents' home to Mai's home on
2 September 1, 3, and 5, 1995;

3 c. five calls from Oh's and Park's office to Mai's
4 direct office line on September 5, 1995; and

5 d. three calls from Mai's direct office line to Oh's
6 and Park's office on September 5, 1995.

7 At virtually their earliest trading opportunity after receiving
8 Mai's tip, and using the information tipped to them by Mai,
9 defendants Hoang, Vu, Oh, and Park each purchased Xylogics stock.

10 92. In making these tips, Mai acted for the purpose of
11 obtaining personal benefits, including, without limitation,
12 reputational enhancement as a source of stock tips, gratitude for
13 being the cause of trading profits, and the conferral of "gifts"
14 of trading profits on his tippees.
15

16 93. At the time Mai tipped them, Hoang, Vu, Oh and Park each
17 knew that Mai had, until quite recently, been employed by Bay
18 Networks, the acquiring company, and still had contacts there.

19 94. On September 5, 1995, beginning at 6:41 a.m., just
20 eleven minutes after the market opened on the very next trading
21 day after her son tipped her, Hoang bought 500 shares of Xylogics
22 in one joint account with her brother-in-law Vu (an account which
23 was opened that very day), and 100 shares in another joint
24 account, also with Vu, at another brokerage firm. On an
25 investment of \$22,000, Hoang made a profit of \$7,375.
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1 95. Thus, like all the other defendants in this action,
2 Hoang purchased Xylogics at virtually the first available
3 opportunity after receiving the tip that Bay Networks would
4 acquire Xylogics. Also like all the other defendants, Hoang had
5 never before traded in the securities of Xylogics and her
6 purchase of Xylogics was her largest single securities investment
7 up to that time.

8 96. Hoang asserted her Fifth Amendment privilege against
9 self-incrimination during the Commission's investigation that
10 preceded the filing of this action in response to all questions
11 concerning, among other things, the reasons for her Xylogics
12 trading and her communications with Mai concerning Xylogics.

13 Hoang also asserted her Fifth Amendment privilege in refusing to
14 produce documents subpoenaed by the Commission's enforcement
15 staff.
16

17 97. Also on September 5th, beginning at 6:35 a.m., just five
18 minutes after the market opened, Vu used four different accounts
19 (including his two joint accounts with Hoang) at three different
20 brokerage firms to buy 2,600 shares of Xylogics. Vu's Xylogics
21 profits—not including profits from his joint trading with
22 Hoang—totaled \$24,625. Again, Vu, like the other defendants,
23 thus purchased Xylogics at virtually the first available
24 opportunity after receiving the tip that Bay Networks would
25 acquire Xylogics.
26

1 98. Like all of the other defendants, Vu had never before
2 traded in the securities of Xylogics and Vu's purchase of
3 Xylogics was the largest single securities investment he had made
4 up to that time.

5 99. Vu asserted his Fifth Amendment privilege against self-
6 incrimination during the Commission's investigation that preceded
7 the filing of this action in response to all questions
8 concerning, among other things, the reasons for his Xylogics
9 trading and his communications with Mai concerning Xylogics. Vu
10 also asserted his Fifth Amendment privilege in refusing to
11 produce documents subpoenaed by the Commission's enforcement
12 staff.

13 100. On September 5th, at 8:41 a.m., a call was placed to
14 Mai's direct office line from the computer retail business where
15 Mai's friend John Oh worked, and where Oh's boss and friend, Nick
16 Park, also worked. Immediately after this call, at 8:43 a.m., Oh
17 purchased 2,500 shares of Xylogics on margin in an account that
18 he opened with this buy. Eight minutes later, Oh opened another
19 account, with a different brokerage firm, and purchased an
20 additional 250 shares of Xylogics on margin. To pay for his
21 margined purchase of approximately \$100,000 worth of Xylogics
22 stock, Oh borrowed \$51,000 from Park. At the time, Oh's annual
23 salary was \$41,000 and his net worth was \$9,000. Oh made profits
24 of \$34,437.50 from his purchases of Xylogics stock.
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1 101. Thus, like all the other defendants, Oh bought Xylogics
2 stock at his next available opportunity after being tipped to the
3 Xylogics acquisition.

4 102. Like all of the other defendants, Oh had never before
5 traded in the securities of Xylogics and Oh's purchase of
6 Xylogics was the largest single securities investment he had made
7 up to that time.

8 103. Oh asserted his Fifth Amendment privilege against self-
9 incrimination during the Commission's investigation that preceded
10 the filing of this action, in response to all questions
11 concerning, among other things, the reasons for his Xylogics
12 trading, and his communications with Mai concerning Xylogics.

13 104. Finally, at 12:24 p.m. on September 5th, a second call
14 was placed to Mai's direct office line from the store where Oh
15 and Park worked. Beginning at 12:35 p.m.—just five minutes
16 after the conclusion of that call—Park bought, through two
17 accounts, a total of 9,000 shares of Xylogics for a total
18 investment of \$330,000—his largest securities investment ever.
19 From his purchases of Xylogics stock, Park made profits totaling
20 \$108,625. Thus, Park also bought Xylogics stock at his next
21 available opportunity after being tipped to the Xylogics
22 acquisition.
23

24 105. Like all of the other defendants, Park had never traded
25 in the securities of Xylogics and Park's purchase of Xylogics was
26

1 the largest single securities investment he had ever made up to
2 that time.

3 106. Park asserted his Fifth Amendment privilege against
4 self-incrimination during the Commission's investigation that
5 preceded the filing of this action in response to all questions
6 concerning, among other things, the reasons for his Xylogics
7 trading and his communications with Mai concerning Xylogics.

8 107. Like all of the other defendants, Hoang, Oh, Park, and
9 Vu had never purchased Xylogics stock before these trades.

10 **Hendrix Lies to the SEC Staff**

11 108. On May 21, 1996, members of the staff of the
12 Commission's enforcement division conducted a telephone interview
13 of Hendrix. After having been advised that his participation in
14 the interview was voluntary; that he could end the interview at
15 any time; that he had the right to be represented by a lawyer
16 during any interview; and that if he did choose to proceed with
17 the interview, he was legally obligated to be truthful, Hendrix
18 made numerous false statements to the staff. These false
19 statements included his claims that:
20

- 21 a. Before the public announcement of the Xylogics
22 acquisition, he did not know of any impending
23 major announcement by Bay Networks;
24 b. Before the public announcement of the Xylogics
25 acquisition, he had no information whatsoever
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1 about a possible acquisition of Xylogics by Bay
2 Networks; and

3 c. He never recommended the purchase of Xylogics
4 stock to anyone.

5 During the interview, Hendrix also falsely attributed his
6 Xylogics trading entirely to research he claimed to have
7 conducted into the company.

8 109. Also during the interview, Hendrix on twelve occasions
9 declined to answer questions posed by the Commission's
10 enforcement staff, responding instead with either "No comment,"
11 "I'd rather not say," or "I'd rather not comment." These
12 questions concerned, among other topics, whether Hendrix was
13 alone during the interview, his knowledge of Xylogics trading by
14 others, and his communications about Xylogics with other persons
15 since named as defendants in this action.
16

17 **TIMOTHY HELMS TIPS HIS FATHER, WHO BUYS XYLOGICS STOCK**

18 110. By September 1, 1995, Timothy Helms had learned of Bay
19 Networks' acquisition of Xylogics through his work in Bay
20 Networks' public relations department. In particular, it was
21 Helms's involvement, during the week before the public
22 announcement, in the preparations for an upcoming "Analyst
23 Summit" to be hosted by Bay Networks, which led to his learning
24 of the Xylogics acquisition. The purpose of the "Analyst
25 Summit," which was scheduled for Tuesday, September 5, 1995
26 through Thursday, September 7, 1995 at a resort on Cape Cod, was
27

1 to inform securities analysts covering the computer networking
2 industry about the company.

3 111. As Helms himself acknowledged during an April 1996
4 telephone interview with the Commission's enforcement staff,
5 Helms attended Bay Networks' August 31, 1995 "off-site" gathering
6 at the Chaminade facility in Santa Cruz and, on that day, learned
7 that the company would be making a major announcement the
8 following week which might affect the Analyst Summit. On either
9 that same day or the following day, Helms asked his boss, Chris
10 Carleton, what the announcement would be. (At the time, Carleton
11 was Bay Networks' director of public relations and was aware of
12 the impending acquisition of Xylogics.) In response, Carleton
13 told Helms that the company would announce it was going to
14 acquire Xylogics. Carleton told Helms to keep this information
15 confidential and Helms agreed that he would. Moreover, as a Bay
16 Networks employee, Helms had also received a copy of Bay Networks
17 insider trading policy. Thus, by his own admission, Helms was
18 aware of the Xylogics acquisition, the imminence of its
19 announcement, and of his duty to keep this information
20 confidential by the close of business on Friday, September 1,
21 1995.
22

23 112. Between the time that he learned of the acquisition and
24 the time of his father's first purchase of Xylogics stock on
25 Tuesday morning, September 5, 1995, Timothy Helms communicated
26 through telephone conversations material, non-public information
27

1 to his father concerning the Xylogics acquisition. In so doing,
2 Timothy Helms misappropriated information from Bay Networks in
3 breach of his fiduciary duties to Bay Networks as an employee of
4 Bay Networks, including his duties under the company's insider
5 trading policy as well as his specific undertaking to his
6 immediate supervisor, Chris Carleton to keep the impending
7 acquisition confidential.

8 113. In tipping his father, Helms acted for the purpose of
9 obtaining personal benefits, including, without limitation,
10 reputational enhancement as a source of stock tips, gratitude for
11 being the cause of trading profits, and the ability, through his
12 misappropriation of information concerning the acquisition and
13 attendant breach of duty to his employer, to confer a "gift" of
14 trading profits on his father.
15

16 114. When he received the tip from his son that Bay Networks
17 was going to acquire Xylogics and the acquisition would be
18 announced shortly, Raymond Helms knew or recklessly disregarded
19 the fact that his son's tip breached his son's duty to Bay
20 Networks. At the time of the tip, Raymond Helms knew that his
21 son worked in Bay Networks' public relations department, and that
22 no public announcement of the Xylogics acquisition had yet been
23 made. Moreover, during the Commission's investigation that led
24 to the filing of this action, both Timothy and Raymond Helms
25 asserted their Fifth Amendment privilege against self-
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1 incrimination in response to questions concerning Raymond's
2 Xylogics trading and their communications concerning Xylogics.

3 115. After being tipped by his son, Raymond Helms used that
4 tip in making his Xylogics purchases, which totaled 3,000 shares,
5 beginning early on the morning of Tuesday, September 5, 1995.
6 Raymond Helms made a profit of \$36,000 from these purchases.
7 Raymond Helms had never before traded in the securities of
8 Xylogics.

9
10 **CLAIM FOR RELIEF**

11 116. By reason of the foregoing, the defendants each
12 violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
13 and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Commission respectfully requests that this
16 Court:

17 I.

18 permanently enjoin the defendants from violating Section
19 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17
20 C.F.R. § 240.10b-5] promulgated thereunder;

21 II.

22 order Hendrix to disgorge his illegal trading profits and
23 the trading profits of Gerdts and Gerdts' clients as described
24 herein (plus prejudgment interest thereon) and to jointly and
25 severally disgorge the illegal trading profits of Sawamura, Mai
26 and Larrew (plus prejudgment interest thereon);
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III.

order Mai to disgorge his illegal trading profits as described herein (plus prejudgment interest thereon) jointly and severally with Hendrix, and to jointly and severally disgorge the illegal trading profits of Hoang, Vu, Oh, and Park (plus prejudgment interest thereon);

IV.

order Sawamura and Larrew to each disgorge his respective illegal trading profits as described herein (plus prejudgment interest thereon), jointly and severally with Hendrix;

V.

order Hoang, Vu, Oh, and Park to each disgorge his or her respective illegal trading profits as described herein (plus prejudgment interest thereon), jointly and severally with Mai;

VI.

order Vu to jointly and severally disgorge the illegal trading profits of Hoang as described herein (plus prejudgment interest thereon);

VII.

order Raymond Helms to disgorge his illegal trading profits as described herein (plus prejudgment interest thereon), jointly and severally with Timothy Helms;

VIII.

1
2 order Timothy Helms to jointly and severally disgorge the
3 illegal trading profits of Raymond Helms as described herein
4 (plus prejudgment interest thereon);

5 IX.

6 order the defendants to pay civil penalties of up to three
7 times their and their tippees' Xylogics trading profits pursuant
8 to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

9 X.

10 grant such other relief as this Court may deem just and
11 appropriate.

12
13
14
15 Respectfully submitted,

16 *Carleasa A. Coates*

17 Carleasa A. Coates,
18 Paul R. Berger
19 Russell G. Ryan
20 J. Lee Buck II
21 Samuel J. Draddy
22 Attorneys for Plaintiff
23 Securities and Exchange Commission
24 450 Fifth Street, N.W.
25 Washington, D.C. 20549-0806
26 (202) 942-4514 (Coates)
27 (202) 942-9569 (FAX)

28 LOCAL COUNSEL:

James A. Howell (CA Bar No. 92721)
Securities and Exchange Commission
44 Montgomery Street
San Francisco, CA 94104
(415) 705-2356

CERTIFICATE OF SERVICE

I hereby certify that I have, this 27th day of October, 2000, served a copy of the First Amended Complaint of the Securities and Exchange Commission, by first class United States mail, proper postage prepaid, addressed to counsel of record as follows:

Bruce A. Baird, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044

Richard C. Darwin, Esq.
Covington & Burling
601 California Street, Suite 1900
San Francisco, CA 94108

Reid Figel, Esq.
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1301 K Street, N.W., Suite 1000 West
Washington, DC 20005-3317

James E. Mitchell, Esq.
Mitchell & Davis, P.A.
86 Winthrop Street
Augusta, ME 04330

James M. Hillas, Esq.
Dunn, Carney, Allen, Higgins & Tongue
851 S.W. Sixth Avenue, Suite 1500
Portland, OR 97204

William M. Goodman, Esq.
Topel & Goodman
832 Sansome Street, 4th Floor
San Francisco, CA 94111

Richard H. Cooper, Esq.
Kirkpatrick & Lockhart
9100 Wilshire Boulevard
Beverly Hills, CA 90212

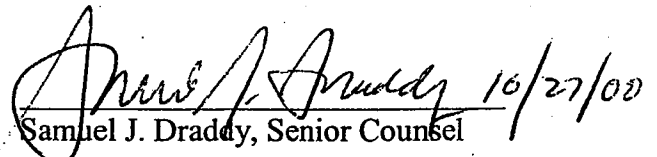
Richard J. Morvillo, Esq.
Jeffrey F. Robertson, Esq.
Kirkpatrick & Lockhart
1800 Massachusetts Avenue, N.W.
Second Floor
Washington, D.C. 20036

Daniel W. Levy
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104

Susan Brune, Esq.
Brune & Richard
26 Broadway, 20th Floor
New York, NY 10004

Marc Blackman, Esq.
Ransom & Blackman
1001 S.W. Fifth Avenue, Suite 1400
Portland, OR 97204

David B. Bayless, Esq.
Morrison & Foerster
425 Market Street
San Francisco, CA 94105


Samuel J. Draddy, Senior Counsel