10 CV 8600

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **-against-** **THOMAS C. HARDIN,** **Defendant.**	**10 Civ. ______** **COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint against defendant Thomas Hardin ("Hardin"), alleges as follows:

SUMMARY

1. This case involves insider trading by Hardin, a former Managing Director at New York-based hedge fund investment adviser Lanexa Management, LLC ("Lanexa"), in the securities of Hilton Hotels Corp. ("Hilton"), Google, Inc. ("Google"), and Kronos Inc. ("Kronos"). Hardin traded based on material nonpublic information concerning takeovers of Hilton and Kronos and a Google quarterly earnings announcement that Hardin received from Roomy Khan ("Khan"), an individual investor who had, herself, received such information from various inside sources.

2. Khan tipped Hardin to material nonpublic information she received from Deep Shah ("Shah"), a Moody's rating agency analyst, about an impending takeover of Hilton by The Blackstone Group. Hardin traded on the information on behalf of Lanexa and also passed the information to his friend, Gautham Shankar ("Shankar"), a proprietary trader at Schottenfeld Group LLC ("Schottenfeld"), a New York-based broker-dealer, and Shankar also traded on the information. Shankar also passed the information on to others at Schottenfeld who traded on the information.

3. In addition, Khan tipped Hardin to material nonpublic information about Google's Q2 2007 earnings that she received from an employee at Market Street Partners, an investor relations consulting firm that did work for Google. Hardin traded on the information on behalf of Lanexa and also tipped Shankar, who similarly traded on the information.

4. Further, Khan also tipped Hardin to material nonpublic information about the impending acquisition of Kronos Inc. by Hellman & Friedman that she received from Shah, who had first received the information from Shah's friend. Hardin traded on the information on behalf of Lanexa and also tipped Shankar, who similarly traded on the information. Shankar also tipped others at Schottenfeld who traded based on the information.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

5. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. The Commission seeks a permanent injunction against defendant

Hardin enjoining him from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, disgorgement of all profits realized or losses avoided from the unlawful insider trading activity set forth herein together with prejudgment interest thereon, and civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Commission also brings this action pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for civil penalties against defendant Hardin under the Insider Trading and Securities Fraud Enforcement Act of 1988, and for such other relief as the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

7. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa]. Certain of the acts, practices, transactions and courses of business alleged herein occurred within the Southern District of New York. For example, defendant Hardin lived in New York, New York, and worked at Lanexa's New York, New York offices during the time of the insider trading alleged herein. In addition, many of the communications in furtherance of the insider trading alleged herein were made from, to, or within New York, New York.

DEFENDANT

8. **Hardin,** age 33, was a managing director at Lanexa until he was laid off in February 2009. Hardin graduated from the Wharton School of the University of Pennsylvania in 1999 with a bachelor's degree in Economics. He held Series 7 and 55 securities licenses.

RELEVANT INDIVIDUALS AND ENTITIES

9. **Google** is a Delaware corporation headquartered in Mountain View, California. Google hosts one of the leading internet search engines. Google's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "GOOG."

10. **Hilton** is a Delaware corporation that is headquartered in Beverly Hills, California. Hilton is a leading international hotel chain. Hilton's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and, prior to October 24, 2007, its stock traded on the New York Stock Exchange ("NYSE") under the symbol "HLT." On October 24, 2007, Hilton was taken private by The Blackstone Group and its stock ceased trading on the NYSE pursuant to a merger agreement that was announced after the close of the market on July 3, 2007.

11. **Khan,** age 52, resides in Fort Lauderdale, Florida. Khan is an individual investor.

12. **Kronos** is a Massachusetts corporation headquartered in Chelmsford, Massachusetts. Kronos makes workforce management software for businesses. Kronos's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and, until Kronos was acquired by private equity firm Hellman &

Friedman ("Hellman") on June 11, 2007, its stock traded on the Nasdaq under the symbol "KRON."

13. **Lanexa,** (f/k/a Camber Global Management), a Delaware limited liability company, is an unregistered New York-based hedge fund investment adviser. As of January 2009, Lanexa claimed to have $55 million in assets under management.

14. **Market Street Partners** is an investor relations consulting firm in San Francisco, CA, which provided services to Google.

15. **Shah,** age 27, resided in Jersey City, New Jersey during the relevant time period and, in 2007, was employed at Moody's as a lodging industry analyst. Shah left Moody's in late 2007 or early 2008, and he is believed to currently reside in India.

16. **Shankar**, age 36, resides in New Canaan, Connecticut. During the relevant time period, Shankar was a registered representative and a proprietary trader at Schottenfeld. Shankar held Series 3, 7, 55 and 63 securities licenses.

17. **Schottenfeld,** a New York limited liability company, is a registered broker-dealer based in New York, New York.

FACTS

A. Insider Trading in Hilton Securities

18. Khan obtained material nonpublic information in advance of a July 3, 2007 takeover announcement that a private equity group would be buying Hilton for $47.50 per share, a premium of $11.45 per share over the stock's July 3 closing price (the "Hilton Transaction"). Khan obtained the nonpublic information from Shah, a friend and roommate of Khan's cousin. At the time, Shah was working as an analyst at Moody's, a rating agency that was evaluating Hilton's debt in connection with the Hilton

Transaction. Because of his position at Moody's, Shah had access to material nonpublic information about Hilton.

19. On or about July 2, 2007, Shah provided Khan with specific information concerning the upcoming Hilton Transaction. Shah told Khan that Hilton was going to be taken private in a deal to be announced the following day, at a price around the mid-$40s per share. Shah indicated that he had learned this information through a communication that representatives of Moody's had received from Hilton management.

20. On the evening of July 3, the Hilton Transaction was announced at an $11.45 per share premium over that day's closing price of $36.05. On July 5, the first trading day after the July 4th holiday, the price of Hilton common stock shot up to $45.39 per share.

21. Khan traded profitably on the basis of the material nonpublic information she received from Shah.

22. Khan also passed the tip she received from Shah about the Hilton Transaction to her friend, Hardin, telling Hardin on or about July 2, 2007 that Khan had learned from a source with inside information that Hilton would be acquired the next day at a significant premium. Hardin caused Lanexa to purchase 25,000 shares of Hilton common stock based on that information, generating trading profits of approximately $260,000.

23. Hardin also tipped his friend Shankar, a proprietary trader at Schottenfeld, indicating to Shankar that the information was from an inside source. Shankar traded based on the Hilton tip, buying approximately 25,000 Hilton shares spread out over multiple accounts and making a profit of over $156,000.

24. Shankar, in turn, passed the Hilton tip that he received from Hardin to his colleagues at Schottenfeld who also traded profitably in Hilton based on the inside information. One such colleague generated profits of approximately $329,000 trading on the inside information, and also paid Hardin and Shankar $10,000 that was to be provided to the Hilton source in return for the tip. The money, however, was ultimately used to pay for a different insider tip, which is discussed below. All together, on July 3, 2007, a total of 81,100 Hilton shares and 773 Hilton call options were purchased in various Schottenfeld accounts generating total cumulative profits from the Hilton insider tip of over $1.2 million.

B. Insider Trading in Google Securities

25. Within a week of the Hilton tip, Khan obtained from another source (the "Google Source") material nonpublic information concerning Google's second quarter 2007 ("Q2 2007") results, which were scheduled to be announced after the close of the markets on July 19, 2007. The Google Source worked at Market Street Partners, a consulting firm that did investor relations work on behalf of various companies, including Google. As a result, the Google Source had access to material nonpublic information concerning Google's earnings announcements.

26. On or about July 10, 2007, the Google Source told Khan that Google's earnings per share ("EPS") would be down about 25 cents, which was in sharp contrast to the market's expectation that Google's EPS would be strong. After receiving the Google tip from the Google source, Khan traded profitably in Google shares based on the material nonpublic information she had been provided.

27. After the markets closed on July 19, 2007, Google announced its Q2 2007 earnings results, disclosing, among other things, that its EPS was 25 cents lower than for Q1 2007. Google's share price fell from over $548 per share to almost $520 per share.

28. On or about July 12, 2007, Khan passed to Hardin the material nonpublic information about Google's Q2 2007 results that Khan received from the Google Source . Khan told Hardin that Google would miss its quarter, and that the information came from the Google Source, who worked at Google's investor relations firm.

29. Hardin caused Lanexa to sell short 5,900 Google shares based on the material nonpublic information about Google that he received from Khan, generating trading profits of approximately $150,000. Hardin also paid Khan $15,000 for the Google tip ($10,000 of which was the money Hardin and Shankar had received for the Hilton tip from Shankar's colleague, and $5,000 of which came directly from Shankar, as described below). Khan had intended to give the $15,000 from Hardin, plus $15,000 of Khan's own money, to the Google Source, but the Google Source subsequently refused to take Khan's calls. As a result, Khan kept the $15,000 provided by Hardin.

30. On or before July 18, 2007, Hardin passed the material nonpublic information Hardin received from Khan about Google's Q2 2007 results to Shankar, telling Shankar that the information came from a source at Google's investor relations firm. Based on this information, before the announcement on July 19, 2007, Shankar sold short Google shares and purchased Google put option contracts, generating profits of more than $50,000. Hardin also told Shankar that Hardin needed to pay the source for the Google information and Shankar gave Hardin $5,000 for that purpose.

C. Insider Trading in Kronos Securities

31. Khan also received inside information, which Khan traded on and passed on to others, concerning the acquisition of software company Kronos by private equity firm Hellman in March 2007 (the "Kronos Transaction").

32. On March 23, 2007, Kronos announced, at market open, that it would be taken private by Hellman.

33. Earlier, during mid-March 2007, Shah learned from a friend (the "Kronos Source") that Kronos was on the auction block and was about to be acquired. The Kronos Source and Shah communicated several times on March 14, 2007, and the Kronos Source relayed specific information concerning a bid to acquire Kronos. Shah and Khan also communicated several times on March 14, and Shah provided Khan with material nonpublic information concerning the Kronos Transaction. Khan, in turn, tipped Hardin to this information.

34. Following the March 23, 2007 announcement that Kronos was being acquired for $55 per share, Kronos's stock price increased nearly 14%, from $46.63 per share on March 22 to $53.11 per share at the market close on March 23.

35. Khan traded profitably in Kronos based on the material nonpublic information she received from Shah.

36. Shah asked Khan to pay him $10,000 for the Kronos tip, and Khan, in turn, arranged for her tippee, Hardin, to make the payment to Shah.

37. On or about March 15, 2007, Khan told Hardin that Kronos would be acquired in about a week for a substantial premium, and also told Hardin about the source of the tip, and that the source wanted to be paid $10,000 for the tip. Hardin caused

Lanexa to trade in Kronos on the basis of the material nonpublic information that he received from Khan, generating profits of approximately $547,000. Hardin also personally paid Shah $10,000 in cash for the Kronos tip.

38. Hardin also passed the Kronos tip, including information about the source, to Shankar, and asked Shankar whether he could get a Schottenfeld colleague to provide the $10,000 that had been requested for the tip. Shankar tipped his Schottenfeld colleague to the Kronos Transaction and the colleague paid the $10,000 for the tip. Both Shankar and his colleague traded profitably in Kronos based on the material nonpublic information they received, generating profits of $78,000 and $200,000, respectively.

39. Shankar also passed the Kronos tip to another Schottenfeld colleague who also traded profitably in Kronos based on the material nonpublic information, generating profits of approximately $90,000.

40. Shankar and/or his Schottenfeld colleagues passed the material nonpublic information they received about Kronos to others at Schottenfeld. All told, 14 Schottenfeld accounts purchased Kronos shares ahead of the March 23 announcement, realizing total cumulative profits of over $800,000.

CLAIMS FOR RELIEF

CLAIM I
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

41. The Commission realleges and incorporates by reference paragraphs 1 through 40, as though fully set forth herein.

42. The information concerning (i) the Hilton Transaction, (ii) the Google July 19, 2007 earnings announcement, and (iii) the Kronos Transaction, respectively, was, in each case, material and nonpublic. In addition, the information was in each case

considered confidential by the companies that were the ultimate source of the information, and each of these companies had policies protecting confidential information.

43. Each of Shah, the Google Source, and the Kronos Source learned during the course of his/her employment the material nonpublic information each conveyed, and each knew, recklessly disregarded, or should have known, that each, directly, indirectly or derivatively, owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

44. Each of Shah, the Google Source, and the Kronos Source tipped material, nonpublic information to their respective tippee(s) with the expectation of receiving a benefit.

45. In connection with the purchase or sale of securities, each of Khan and Hardin knew, recklessly disregarded, or should have known, that the material non-public information each received from their respective tippers was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

46. Each of Shah, Khan, and Hardin, as tippees themselves, tipped their respective tippees material non-public information, with the expectation of a benefit therefrom, and each knew, recklessly disregarded, or should have known, that the information was conveyed in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence.

47. Hardin is liable for the trading occurring in the funds advised – directly or indirectly – by him because he effectuated the trades on behalf of the funds, controlled the funds and/or unlawfully tipped the inside information to the funds.

48. By virtue of the foregoing, defendant Hardin, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

49. By virtue of the foregoing, defendant Hardin directly or indirectly, violated, and unless enjoined, will again 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].

CLAIM II
Violations of Section 17(a) of the Securities Act

50. The Commission realleges and incorporates by reference paragraphs 1 through 40, as though fully set forth herein.

51. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, defendant Hardin: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

52. By reason of the conduct described above, Hardin, directly or indirectly, violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining defendant Hardin, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating 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];

II.

Permanently restraining and enjoining defendant Hardin, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)];

III.

Ordering defendant Hardin to disgorge, with prejudgment interest, all illicit trading profits, other ill-gotten gains received, and/or losses avoided as a result of the conduct alleged in this Complaint, including, his own illicit trading profits, other ill-gotten gains, and/or losses avoided, and the illicit trading profits, other ill-gotten gains, and/or losses avoided of his direct and downstream tippees;

IV.

Ordering defendant Hardin to pay civil monetary penalties pursuant to Section 21(d)(3) and/or Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1], and Section 20(d) of the Securities Act [5 U.S.C. § 77t(d)]; and

V.

Granting such other and further relief as this Court may deem just and proper.

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