

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SAFETY-KLEEN CORP.,
KENNETH W. WINGER,
PAUL R. HUMPHREYS,
WILLIAM D. RIDINGS, and
THOMAS W. RITTER,

02 Civ. 9791 (CSH)

Defendants.

SM ~~PROPOSED~~ FINAL JUDGMENT AS TO DEFENDANTS
KENNETH W. WINGER AND PAUL R. HUMPHREYS

Plaintiff, United States Securities and Exchange Commission ("Commission"), having commenced this action on December 12, 2002 by filing its Complaint for injunctive and other equitable relief charging Defendant Kenneth W. Winger ("Winger") with violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rules 10b-5 and 13b2-2 thereunder [17 C.F.R. 240. §§10b-5 and 13b2-2]; and charging Defendant Paul R. Humphreys ("Humphreys") with violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and Section 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 thereunder [17 C.F.R. 240. §§10b-5, 13b2-1 and 13b2-2]; and the Commission having effected timely service of the Summons and Complaint on Winger on March 7, 2003, and on Humphreys on March 24, 2003; and the Defendants having failed to file an Answer to the Commission's Complaint, or to take any other action allowed by law to

defend this action, within the time allowed by the Federal Rules of Civil Procedure; and the Commission having filed and served upon Defendants a Notice of Motion For Entry of Final Judgment by Default against Defendants Kenneth W. Winger and Paul R. Humphreys, Plaintiff's Motion, Plaintiff's Memorandum of Law In Support, and Declaration of John H. Loesch In Support; and the Court having found that, pursuant to Federal Rule of Civil Procedure 55, Defendants have failed properly to file an Answer or otherwise defend the Commission's action; and the Court having further found that this Court has jurisdiction over the Defendants and over the subject matter of his action and the jurisdiction to grant the relief requested by the Commission, and the Court being full advised in the premises;

THE COURT HEREBY FINDS AS FOLLOWS:

A. FACTS ESTABLISHING LIABILITY

1. On December 12, 2002, the Commission filed a complaint against Safety-Kleen and several of its executives, including Humphreys and Winger, for their activities in connection with fraudulently overstating the company's earnings and revenues in its press releases and filings with the Commission. The Complaint alleged that Humphreys violated Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 and 13b2-2 [17 C.F.R. 240. §§10b-5 and 13b2-2] thereunder; and that Winger violated Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 and 13b2-2 [17 C.F.R. 240. §§10b-5 and 13b2-2] thereunder. (Complaint ¶ 3).

1. Humphreys

2. Humphreys, age 43, was the company's Senior Vice President and Chief Financial

Officer. He resigned from Safety-Kleen in May 2000, is a Canadian citizen, resides in Canada, and is a chartered accountant. (Complaint ¶ 9).

3. Subsequent to an April 1998 merger between Safety-Kleen and another company, Humphreys and Winger told financial analysts that, due to anticipated synergies resulting from the merger, they expected the company to achieve annual savings toward the top end of a \$100 - \$165 million range during fiscal 1999. However, when it became apparent the savings were not going to be realized, Humphreys devised a scheme to materially overstate Safety-Kleen's revenue and earnings by making inappropriate quarterly accounting adjustments for the purpose of meeting Wall Street pro-forma earnings expectations. (Complaint ¶ 13).

4. At the close of each quarter, Humphreys met with Defendants William D. Ridings ("Ridings") and Thomas W. Ritter ("Ritter"), and told them what the targeted earnings amounts were, then they discussed potential accounting adjustments to achieve the target. Beginning in fiscal 1999, as the discrepancy between the company's projected results increased, they made several improper adjustments each quarter to reach the earnings targets. From the first fiscal quarter 1999 to the first fiscal quarter 2000, they overstated SafetyKleen's earnings by 40.3% - 157.6%. (Complaint ¶ 14).

5. The adjustments were made to multiple accounts via: (1) improper revenue recognition; (ii) improper capitalization and deferral of operating expenses; and (iii) improper treatment of reserves and accruals. The defendants also fraudulently recorded approximately \$38 million of cash that was generated by entering into speculative derivatives transactions, further distorting the company's true financial picture. (Complaint ¶ 1).

a. Improper Revenue Recognition

i. Contingent Contract Claims

6. During the first quarter of fiscal 1999, Humphreys directed Ridings and Ritter to record a total of \$17 million of revenue with respect to certain contracts that the company had with the U.S. Army Corps of Engineers. The revenue purportedly related to claims that the company had for cost overruns that it had experienced in connection with the contracts. However, at the time the revenue was booked, no claims had been filed with the Corps of Engineers. (Complaint ¶ 18). During the second quarter of fiscal 1999, the Controller recorded an additional \$10 million of revenue relating to the contracts. However, by this time, the company had submitted only \$19.1 million of claims, substantially less than the total \$27 million that the company recorded by its second fiscal quarter 1999. In addition, the amount was not discounted to allow for the probability that it might not be collected in full, and the company failed to disclose the contingent nature of this revenue. (Complaint ¶¶19-20). Later, even though the Army Corps of Engineers denied all of Safety-Kleen's claims, the company kept the entire \$27 million on the company's year-end financial statements as a receivable. (Complaint ¶ 21). The Complaint alleges that this recognition of revenue by Safety-Kleen was not consistent with GAAP. (Complaint ¶ 23).

ii. Property Sales

7. During the first quarter of fiscal 1999, Humphreys, along with Ridings and Ritter, recorded \$1 million of revenue for two properties that had been offered for sale, but had not yet been sold or even placed under contract. This recognition of revenue was not consistent with GAAP. (Complaint ¶ 24).

iii. Contingent Revenue

8. During the second quarter of fiscal 1999, Humphreys directed Ridings and Ritter to record an \$8 million adjusting entry to reflect that a contingency in a contract had been met. In fact, the contingency had not been met and the adjustment was therefore inconsistent with GAAP. (Complaint ¶ 25).

b. Improper Capitalization of Operating Expenses

9. Humphreys directed Ridings and Ritter to record several adjusting entries to capitalize certain operating expenses, thereby causing the company to materially overstate both its assets and its earnings. For example, at the end of the third quarter of fiscal 1999, they improperly capitalized approximately \$4.6 million of payroll expenses. (Complaint ¶ 26). At the close of the fourth quarter, they improperly capitalized \$1.8 million of salaries and wages. (Complaint ¶ 27). Also during the fourth quarter, Humphreys directed Ridings and Ritter to record \$7.3 million of fraudulent adjustments to capitalize the tires on the company's trucks and the fuel in the truck's tanks, and a \$7.2 million adjustment to capitalize costs associated with the placement of machines at customer sites. Humphreys had no documentation or analysis to support these adjustments. All of these capitalization adjustments violated Safety-Kleen's internal accounting policies. (Complaint ¶ 28).

c. Improper Deferral of Operating Expenses

10. Humphreys fraudulently increased Safety-Kleen's third quarter fiscal 1999 earnings per share from \$.27 to \$.30, by directing Safety-Kleen's senior financial manager to record a \$5.2 million adjusting entry to defer expenses that had been incurred during the third quarter. Humphreys did this in response to Winger's concerns that a \$.27 earnings per share

would be disappointing to the markets. As a result of these fraudulent accounting adjustments, the company's financial results were materially overstated. (Complaint ¶¶ 29-30).

d. Improper Treatment of Reserves and Accruals

11. Throughout fiscal 1999, and into the first quarter of fiscal 2000, Humphreys, along with Ridings and Ritter, created fictitious income by reducing several environmental reserve accounts. These adjustments failed to comply with GAAP because they were made arbitrarily and with no analysis to support them. (Complaint ¶32). Also, during the fourth quarter of fiscal 1999, Humphreys created additional fictitious income by directing Ridings and Ritter to eliminate a \$7.6 million accrual that had been established to provide for management bonuses, thereby falsely suggesting that the bonuses would not be paid that year. In fact, the bonuses were paid as scheduled. During the fourth quarter, Humphreys also directed a total of \$6.3 million in revenue adjustments to be recorded to account for services that had been rendered, but not yet billed. In fact, an accrual already existed to capture this revenue. (Complaint ¶33). Similarly, during the first quarter of fiscal 2000, Humphreys and Ridings directed another employee to record a similar \$13.8 million revenue adjustment, despite their knowledge that this revenue had already been booked. (Complaint ¶34).

e. Improper Recording of Derivatives Transactions

12. Due in part to the quarterly earnings shortfalls described above, Safety-Kleen began experiencing severe cash flow problems during fiscal 1999. To help raise cash for the company, Humphreys directed the company's treasury department to begin engaging in speculative derivatives transactions. (Complaint ¶ 36). During the first quarter of fiscal 1999, Safety-Kleen entered into three interest rate swaps that contained embedded options and received

\$3.15 million of cash as a result of the transactions. At Humphreys' direction, the cash was used to reduce interest expense. (Complaint ¶ 37).

13. On June 1, 1998, Safety-Kleen sold \$325 million of high-yield, ten-year notes. Under the terms of the notes, the company had the option of calling the notes after five years. After the notes were issued, interest rates moved in a favorable direction for Safety-Kleen and the value of the call option increased significantly. (Complaint ¶ 38). Several large banks were aware that the company was looking to raise cash, and they proposed that Safety-Kleen "monetize" the value of the call option by giving up the right to exercise the call option in return for the current value of the option in cash. During the second quarter of fiscal 1999, Humphreys agreed to do it and approved four related derivatives transactions that generated a total of \$20.21 million of cash for the company. At Humphreys' direction, approximately \$5 million of this amount was used to reduce interest expense during that quarter and the remainder was hidden in various balance sheet accounts. (Complaint ¶ 39).

14. During the third quarter of fiscal 1999, Safety-Kleen's operating results were substantially lower than expectations, and the amount remaining from the call monetization transactions (\$15.29 million) was used to reduce operating expenses. To accomplish this, Humphreys directed Ritter to work with a lower-level employee to reverse the earlier balance sheet entries and decrease various operating expense accounts. The adjustments were spread across different lines of business and in different accounts to make it more difficult to detect what they were doing. These fraudulent adjustments made it appear that the company was performing better than it actually was. (Complaint ¶ 40).

15. To generate additional cash, the company continued to enter into speculative

derivatives transactions during the third and fourth quarters of fiscal 1999 and the first quarter of fiscal 2000. Approximately \$14.8 million of cash was received during that time. At Humphreys' direction, the cash was used to reduce interest expense, increase interest income, and reduce operating expenses. (Complaint ¶ 41). During the relevant time, the periodic reports that Safety-Kleen filed with the Commission failed to disclose that the company was entering into speculative derivatives transactions. Humphreys, as well as Ridings and Ritter, failed to comply with GAAP when it recorded these transactions. In addition, the periodic reports that Safety-Kleen filed with the Commission were materially false and misleading because they failed to disclose that the company was entering into these transactions. (Complaint ¶ 42).

f. False Management Representation Letter

16. In connection with a fiscal 1999 audit, Humphreys, along with Winger, and Ridings provided its independent auditor with a management representation letter that they knew or were reckless in not knowing was materially false and misleading, because it represented that: (i) Safety-Kleen's consolidated financial statements were fairly presented in conformity with GAAP; (ii) there were no material transactions, agreements or accounts that were not properly recorded; (iii) receivables recorded in the consolidated financial statements represented bona fide claims; and (iv) there had been no fraud involving management or employees who had significant roles in the company's internal controls. (Complaint ¶ 43).

g. False Public Filings

17. As part of Humphreys' fraudulent scheme, he caused Safety-Kleen to file materially false and misleading periodic reports and a materially false and misleading registration statement with the Commission. Humphreys, along with Winger, signed these filings when he

knew, or was reckless in not knowing, that they were materially false and misleading as a result of the accounting practices described above. (Complaint ¶ 44). Humphreys, along with Winger, signed: (i) quarterly reports on Form 10-Q with the Commission, which were filed with the Commission on January 15, 1999, April 14, 1999, July 15, 1999 and January 14, 2000; (ii) an annual report on Form 10-K for the 1999 fiscal year filed with the Commission on October 29, 1999; and (iii) a Form S-4 registration statement filed with the Commission on July 12, 1999. Among other deficiencies, these filings contained financial statements that materially misstated the company's revenue, net income, and earnings per share. (Complaint ¶ 44-47).

h. False Press Releases

18. As a result of Humphreys' fraudulent scheme, Safety-Kleen issued materially false and misleading press releases, including the earnings press releases that were issued by the company each quarter. Because he was responsible for fraudulently inflating the company's revenues, he knew, or was reckless in not knowing, that the press releases were materially false and misleading as a result of the accounting practices described above. (Complaint ¶ 48-50). These press releases included those issued by the company announcing its earnings prior to filing its quarterly reports on Forms 10Q, filed on January 15, April 14, and July 15, 1999, and its annual report on Form 10-K filed on October 29, 1999.

2. Winger

19. Winger, age 64, was the company's President and Chief Executive Officer and a member of its Board of Directors. He resigned from Safety-Kleen in May 2000, is a Canadian citizen, resides in Canada, and is a chartered accountant. (Complaint ¶8).

a. Improper Deferral of Operating Expenses

20. Prior to a July 6, 1999 Board meeting, Winger and the rest of the Board was informed that earnings per share for the third quarter of fiscal 1999 would be \$.27. Winger expressed concern that this earnings per share figure would be a disappointment to the markets. Winger, Humphreys, and the Chairman of Safety-Kleen's Board, discussed a fraudulent accounting adjustment, whereby Safety-Kleen's third quarter earnings per share would be increased by deferring expenses that had been incurred during the third quarter. (Complaint ¶ 29). Soon thereafter, Humphreys fraudulently increased Safety-Kleen's third quarter fiscal 1999 earnings per share from \$.27 to \$.30, by directing Safety-Kleen's senior financial manager to record a \$5.2 million adjusting entry to defer expenses that had been incurred during the third quarter. (Complaint ¶ 30).

b. False Management Representation Letter

21. In connection with a fiscal 1999 audit, Winger, along with Humphreys and Ridings, provided Safety-Kleen's independent auditor with a management representation letter that he knew, or was reckless in not knowing, was materially false and misleading, because it represented that: (i) Safety-Kleen's consolidated financial statements were fairly presented in conformity with GAAP; (ii) there were no material transactions, agreements or accounts that were not properly recorded; (iii) receivables recorded in the consolidated financial statements represented bona fide claims; and (iv) there had been no fraud involving management or employees who had significant roles in the company's internal controls. (Complaint ¶ 43).

c. False Public Filings

22. Winger caused Safety-Kleen to file materially false and misleading periodic

reports and a materially false and misleading registration statement with the Commission because he, along with Humphreys, signed the following filings when he knew or was reckless in not knowing that they were materially false and misleading as a result of the accounting practices described above: (i) the quarterly report on Form 10-Q with the Commission, filed with the Commission on July 15, 1999; (ii) an annual report on Form 10-K for the 1999 fiscal year, filed with the Commission on October 29, 1999; and (iii) a Form S-4 registration statement, filed with the Commission on July 12, 1999. Among other deficiencies, these filings contained financial statements that materially misstated the company's revenue, net income, and earnings per share. (Complaint ¶ 44-47).

d. False Press Releases

23. Because Winger was responsible for fraudulently inflating the company's revenues during its third and fourth quarters, he knew, or was reckless in not knowing, that the press releases were materially false and misleading as a result of the accounting practices described above. (Complaint ¶ 48-50). These press releases included those issued by the company announcing its earnings prior to filing its quarterly reports on Forms 10-Q, filed on July 15, 1999, and its annual report on Form 10-K filed on October 29, 1999. In addition, he made false statements that were quoted in a press release dated October 5, 1999. At that time he said, "The aggressive goals that we set for the Company in fiscal 1999 were met. Dramatic cost savings were achieved." In fact, this was not true, and Winger knew that the company's financial results were being fraudulently inflated. (Complaint ¶ 49).

B. FACTS ESTABLISHING JURISDICTION

24. The Commission filed the Complaint in this action on December 12, 2002, and

effected timely service of the Summons and Complaint on Winger on March 7, 2003, and on Humphreys on March 24, 2003. A private process server served Humphreys personally and served Winger by leaving a copy of the summons and Complaint with Winger's wife. (See Attachments A and B to Loesch Declaration). This method of service was pursuant to Rule 4(f)(2)(A) and (C)(i) of the Federal Rules of Civil Procedure, and established personal jurisdiction pursuant to Rule 4(k)(2).

25. Over six months have passed from the time that Humphreys and Winger were served. Since then, neither has filed an answer or pleading in defense of this action, and the time has passed for them to have done so. (Clerk's Certificate of Default entered on June 30, 2003; Declaration of Scott W. Friegstad, dated June 27, 2003; and Declaration of John H. Loesch, ¶¶ 4, 5, and 9, dated September 16, 2003 ("Loesch Declaration"). Accordingly, pursuant to the Commission's request, the Clerk of the Court issued a Certificate of Default on June 30, 2003.

CONCLUSIONS OF LAW

BY REASON OF THE FOREGOING, this Court has subject matter jurisdiction of this action and personal jurisdiction of Defendants Humphreys and Winger;

BY REASON OF THE FOREGOING, Defendants Winger and Humphreys, violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], directly or indirectly, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or to omit to state a material fact

necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in connection with the purchase or sale of any security

II.

BY REASON OF THE FOREGOING, Defendants Winger and Humphreys, violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], directly or indirectly, by:

(a) employing any device, scheme, or artifice to defraud;

(b) obtaining money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in the offer or sale of any security using any means or instruments of transportation or communication in interstate commerce or by use of the mails.

III.

BY REASON OF THE FOREGOING, Defendant Humphreys violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account; or directly or indirectly,

falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

IV.

BY REASON OF THE FOREGOING, defendants Winger and Humphreys, violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] by, directly or indirectly:

- (1) making or causing to be made a materially false or misleading statement, or
- (2) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with (a) any audit or examination of the financial statements of an issuer required to be made pursuant to the rules and regulations under the Exchange Act [17 C.F.R. §§ 240.0-1 et seq.], or (b) the preparation or filing of any document or report required to be filed with the Commission.

THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Winger and Humphreys, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of

interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Winger and Humphreys, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or

would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Humphreys, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account; or directly or indirectly, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants Winger and Humphreys, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] by, directly or indirectly:

- (1) making or causing to be made a materially false or misleading statement, or
- (2) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with (a) any audit or examination of the financial statements of an issuer required to

be made pursuant to the rules and regulations under the Exchange Act [17 C.F.R. §§ 240.0-1 et seq.], or (b) the preparation or filing of any document or report required to be filed with the Commission.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)], Winger and Humphreys are hereby prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Winger is liable for disgorgement of \$190,471.58, representing Winger's unjust enrichment as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$58,851.97, for a total of \$249,323.55. Winger shall satisfy this obligation by paying \$249,323.55 within ten business days after entry of this Final Judgment via United States postal money order, certified check, bank cashier's check, or bank money order made payable to "United States Securities and Exchange Commission." The payment shall be hand-delivered or mailed to the Office of Financial Management, United States Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria Virginia 22312, and shall be accompanied by a letter that identifies Winger as the defendant on whose behalf the payment is being made, the caption and case number of this action, and the name of

this Court. Copies of such check or money order and accompanying cover letter shall be simultaneously transmitted to Scott W. Friestad, Assistant Director, United States Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549-0708.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Humphreys is liable for disgorgement of \$65,572.00, representing Humphreys' unjust enrichment as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$20,260.46, for a total of \$85,832.46. Humphreys shall satisfy this obligation by paying \$85,832.46 within ten business days after entry of this Final Judgment via United States postal money order, certified check, bank cashier's check, or bank money order made payable to "United States Securities and Exchange Commission." The payment shall be hand-delivered or mailed to the Office of Financial Management, United States Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria Virginia 22312, and shall be accompanied by a letter that identifies Humphreys as the defendant on whose behalf the payment is being made, the caption and case number of this action, and the name of this Court. Copies of such check or money order and accompanying cover letter shall be simultaneously transmitted to Scott W. Friestad, Assistant Director, United States Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549-0708.

VIII.

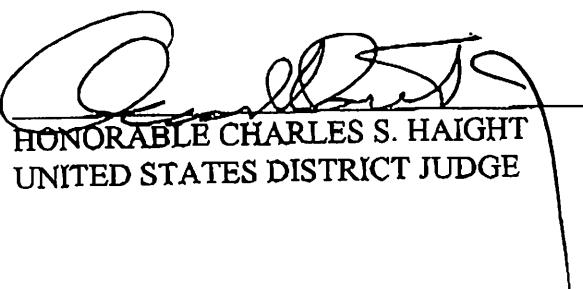
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Winger and Humphreys shall pay a civil penalty in the amount of \$190,471.58, and \$65,572.00, Off, respectively, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section

21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Each defendant shall pay the civil penalty within ten (10) business days after entry of this Final Judgment via United States postal money order, certified check, bank cashier's check, or bank money order made payable to "United States Securities and Exchange Commission." The payment shall be hand-delivered or mailed to the Office of Financial Management, United States Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria Virginia 22312, and shall be accompanied by a letter that identifies Humphreys as the defendant on whose behalf the payment is being made, the caption and case number of this action, and the name of this Court. Copies of such check or money order and accompanying cover letter shall be simultaneously transmitted to Scott W. Friestad, Assistant Director, United States Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549-0708.

IX.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: New York, New York
November 18, 2003



HONORABLE CHARLES S. HAIGHT
UNITED STATES DISTRICT JUDGE