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7
8 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

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11 SECURITIES AND EXCHANGE COMMISSION,
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Plaintiff,
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v.
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Case No. C02-01467-PVT

15 DALE PETERSON,
RUSSELL KINSCH,
JAMES WALSH,
16 RICHARD NABOZNY,
MICHAEL SMITH,
17 CHARLES BALENTINE and
WAYNE ARMSTRONG,
18

FINAL JUDGMENT OF
PERMANENT INJUNCTION,
OFFICER AND DIRECTOR
BAR, CIVIL MONETARY
PENALTY AND OTHER
EQUITABLE RELIEF
AGAINST DEFENDANT
DALE PETERSON

Defendants.)
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21 Plaintiff Securities and Exchange Commission ("Commission"), having duly
22 commenced this action by filing its Complaint ("Complaint"), and Defendant Dale Peterson
23 ("Peterson"), having entered a general appearance in this action; having, in the annexed Consent
24 of Defendant Dale Peterson ("Consent"), admitted to the jurisdiction of this Court over him and
25 over the subject matter of this action; having waived the entry of findings of fact and
26 conclusions of law pursuant to [Fed. R. Civ. P. 5.2](#); having, without admitting or denying the
27 allegations of the Complaint, except as to jurisdiction, which he admits, consented to the entry
28 of this Final Judgment of Permanent Injunction, Officer and Director Bar, Civil Monetary

Peterson Final Judgment
(C02-01467-PVT)

1 Penalty and Other Equitable Relief Against Defendant Dale Peterson ("Final Judgment")
 2 permanently restraining and enjoining Defendant Peterson from, directly or indirectly, violating
 3 Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Securities Exchange Act of
 4 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and
 5 78m(b)(5)] and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1 and 13b2-2 [17
 6 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1 and 240.13b2-2],
 7 permanently barring Defendant Peterson, pursuant to Section 21(d)(2) of the Exchange Act [15
 8 U.S.C. §78u(d)(2)], from serving as an officer or director of any issuer required to file reports
 9 with the Commission pursuant to Sections 12(b), 12(g) or 15(d) of the Exchange Act [15 U.S.C.
 10 §§781(b), 781(g) and 78o(d)]; and ordering Defendant Peterson to pay civil monetary penalties
 11 of \$100,000; having waived the filing of an Answer to the Complaint; having waived his right
 12 to appeal from this Final Judgment; having waived any rights under the Equal Access to Justice
 13 Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision
 14 of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by
 15 Defendant Peterson to defend against this action and having agreed, for these purposes, that he
 16 is not the prevailing party in this action since the parties have reached a good faith settlement;
 17 and it further appearing that this Court has jurisdiction over Defendant Peterson and the subject
 18 matter hereof, and the Court being fully advised in the premises.

19 **I.**

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant
 21 Peterson, his agents, servants, employees, attorneys, successors and assigns and all persons in
 22 active concert or participation with them who receive actual notice of this Final Judgment by
 23 personal service or otherwise, and each of them, be and hereby are permanently restrained and
 24 enjoined from violating Section 10(b) of the Exchange Act [15 U. S.C. § 78j(b)] and Rule 10b-5
 25 [17 C.F.R. § 240.10b-5] thereunder by, directly or indirectly, using any means or
 26 instrumentality of interstate commerce, or the mails, or any facility of any national securities
 27 exchange:

28 (a) to employ any device, scheme or artifice to defraud,

1 (b) to make any untrue statement of a material factor to omit to state a material fact
2 necessary in order to make the statements made, in the light of the circumstances
3 under which they were made, not misleading, or

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

6 in connection with the purchase or sale of any security.

7 II.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
9 Peterson, his agents, servants, employees, attorneys, successors and assigns and all persons
10 in active concert or participation with them who receive actual notice of this Final Judgment
11 by personal service or otherwise, and each of them, be and hereby are permanently
12 restrained and enjoined from, directly or indirectly, aiding and abetting violations of Section
13 13 (a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1, 13a-13 and 12b-20
14 thereunder [17 C.F.R. §§ 240.13a-1, 240.13a-13 and 240.12b-20], whereby an issuer of
15 securities registered under Section 12 of the Exchange Act [15 U.S.C. § 781] fails to file, in
16 accordance with such rules and regulations as the Commission prescribes as necessary or
17 appropriate, such information and documents as the Commission requires to keep
18 reasonably current the information and documents required to be included in or filed with an
19 application or registration statement filed pursuant to Section 12 of the Exchange Act, or
20 such annual and quarterly reports as the Commission prescribes, including, but not limited
21 to, annual reports on Form 10-K as prescribed by Rule 13a-1 [17 C.F.R. § 240.13 a-1] and
22 quarterly reports on Form 10-Q as prescribed by Rule 13a-13 [17 C.F.R. § 240.13a-13], and
23 by failing to include, in addition to the information expressly required to be included in any
24 statement or report filed pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]
25 such further material information, if any, as may be necessary to make the required
26 statements, in light of the circumstances under which they are made, not misleading.

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28 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
Peterson Final Judgment
(C02-01467-PVT)

1 Peterson, his agents, servants, employees, attorneys, successors and assigns and all persons in
2 active concert or participation with them who receive actual notice of this Final Judgment by
3 personal service or otherwise, and each of them, be and hereby are permanently restrained and
4 enjoined from, directly or indirectly, aiding and abetting violations of Section 13(b)(2)(A) of
5 the Exchange Act [15 U. S.C. § 78m(b)(2)(A)], whereby an issuer which has a class of securities
6 registered with the Commission pursuant to Section 12 of the Exchange Act [15 U. S.C. § 781]
7 or which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C.
8 §78o(d)] fails to make and keep books, records, and accounts, which, in reasonable detail,
9 accurately and fairly reflect the transactions and dispositions of the issuer.

10 IV.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant
12 Peterson, his agents, servants, employees, attorneys, successors and assigns and all persons in
13 active concert or participation with them who receive actual notice of this Final Judgment by
14 personal service or otherwise, and each of them, be and hereby are permanently restrained and
15 enjoined from, directly or indirectly, aiding and abetting violations of Section 13(b)(2)(B) of
16 the Exchange Act [15 U.S.C. §78m(b)(2)(B)], whereby an issuer which has a class of securities
17 registered with the Commission pursuant to Section 12 of the Exchange Act [15 U. S.C. § 781]
18 or which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C.
19 §78o(d)] fails to devise and maintain a system of internal accounting controls sufficient to
20 provide reasonable assurances that an issuer's transactions are recorded as necessary to permit
21 preparation of financial statements in conformity with generally accepted accounting principles.

22 V.

23 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant
24 Peterson, his agents, servants, employees, attorneys, successors and assigns and all persons in
25 active concert or participation with them who receive actual notice of this Final Judgment by
26 personal service or otherwise, and each of them, be and hereby are permanently restrained and
27 enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by
28 knowingly circumventing or failing to implement a system of internal accounting controls or

1 knowingly falsifying any book, record or account or by, directly or indirectly, falsifying or
2 causing to be falsified any book, record or account of an issuer which has a class of securities
3 registered with the Commission or which is required to file reports with the Commission.

4 VI.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
6 Peterson, his agents, servants, employees, attorneys, successors and assigns and all persons in
7 active concert or participation with them who receive actual notice of this Final Judgment by
8 personal service or otherwise, and each of them, be and hereby are permanently restrained and
9 enjoined from violating Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by, directly or
10 indirectly, falsifying or causing to be falsified any book, record or account subject to Section
11 13(b)(2)(A) of the Exchange Act.

12 VII.

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that
14 Peterson and his agents, servants, employees, attorneys, successors or assigns, and those
15 persons in active concert or participation with them who receive actual notice of this Final
16 Judgment by personal service or otherwise, and each of them, be and hereby are permanently
17 restrained and enjoined from violating Exchange Act Rule 13b2-2 [17 C.F.R. §240.13b2-2] by
18 directly or indirectly, making or causing to be made a materially false or misleading statement,
19 or omitting to state, or causing another person to omit to state, a material fact necessary in order
20 to make statements made, in light of the circumstances underwhich such statements were made,
21 not misleading, to an accountant in connection with (i) an audit or examination of the financial
22 statements of an issuer required to be made or (ii) the preparation or filing of a document or
23 report required to be filed with the Commission.

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25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
26 Peterson shall be barred permanently, pursuant to Section 21(d)(2) of the Exchange Act [15
27 U. S.C. §78u(d)(2)], from serving as an officer or director of any issuer required to file reports
28 with the Commission pursuant to Sections 12(b), 12(g) or 15(d) of the Exchange Act [15 U. S.C.

1 §§781(b), 781(g) and 78o(d)].

2 IX.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
4 Peterson shall pay civil monetary penalties in the amount of \$100,000 pursuant to section
5 21(d)(3) of the Exchange Act. Defendant Peterson's payment of \$100,000 shall be as follows:
6 (1) the \$100,000 shall be paid in two payments; the first payment of \$25,000 is to be made
7 within 30 days of the entry of this Final Judgment, and the second payment of \$75,000 is to be
8 made within 90 days of the first payment; (1) made within thirty days of the entry of this Final
9 Judgment; (2) made by bank cashier's check, bank money order, certified check or United States
10 postal money order; (3) made payable to the Securities and Exchange Commission; (4) mailed
11 or hand-delivered to the Office of Financial Management, Securities and Exchange
12 Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia,
13 22312; and (5) submitted under cover of a letter that identifies Dale Peterson as the Defendant
14 in this action, the name and number of this action and name of this Court, with a copy to Frank
15 C. Huntington, at the Commission's Boston District Office located at Suite 600, 73 Tremont
16 Street, Boston, Massachusetts 02108.

17 X.

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
19 Peterson shall, at the Commission's request, provide discovery and testify at any deposition and
20 at any judicial or administrative proceeding brought by the Commission related to the
21 Complaint or any allegations therein and any continuing litigation or proceeding based thereon.

22 XI.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the annexed
24 CONSENT OF DEFENDANT Dale Peterson be, and hereby is, incorporated by reference
25 herein with the same force and effect as if fully set forth herein.

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XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Defendant Peterson as a party to this matter for the purpose of implementing and enforcing the terms and conditions of this Final Judgment.

XIII.

There being no just reason for delay, the Clerk of the Court is directed, pursuant to Fed. R. Civ. P. 54(b), to enter this Final Judgment forthwith.

DONE AND ORDERED at *San Jose, CA* this *20th* day
of *June*, ³~~2002~~.

/s/ Patricia V. Trumbull
Honorable Patricia V. Trumbull
United States Magistrate Judge