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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

MICHAEL A. OFSTEDAHL, ROBERT D.
RUTNER, and WILLIAM K. KUNCZ,

Defendants.

Civil Action No.

C-02-3685 JW

~~[PROPOSED]~~ FINAL JUDGMENT OF
PERMANENT INJUNCTION AND LEGAL
AND OTHER EQUITABLE RELIEF
AGAINST ROBERT D. RUTNER

Plaintiff Securities and Exchange Commission ("Commission") has filed its Complaint for Permanent Injunction and Legal and Other Equitable Relief ("Complaint") in this action. Defendant Robert D. Rutner ("Rutner"), who was represented by his counsel, has submitted a Consent to the Entry of Permanent Injunction and Legal and Other Equitable Relief ("Consent"), which was filed simultaneously with this Final Judgment of Permanent Injunction and Legal and Other Equitable Relief ("Final Judgment") and incorporated herein by reference. In the Consent, Rutner waived service of the Summons and Complaint, admitted the jurisdiction of this Court over him and over the subject matter of this action, admitted that he was fully advised and

~~[PROPOSED]~~ FINAL JUDGMENT AGAINST ROBERT D. RUTNER
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2 informed of the right to a judicial determination of this matter, waived findings of fact and
3 conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure, consented to
4 the entry of this Final Judgment, without admitting or denying any of the allegations in the
5 Complaint except as set forth in the Consent, and waived notice of hearing upon the entry of this
6 Final Judgment. Good cause appearing, the court orders as follows:

7
8 I.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Rutner, his agents,
10 servants, employees, attorneys, and all persons acting in concert or participation with him, who
11 receive actual notice of this Final Judgment, by personal service or otherwise, and each of them,
12 are permanently enjoined and restrained from, directly or indirectly, violating Section 17(a) of
13 the Securities Act of 1933 [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities and Exchange
14 Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §
240.10b-5] by:

- 15 A. employing any device, scheme, or artifice to defraud;
16 B. making any untrue statement of material fact or omitting to state a material fact
17 necessary in order to make the statements made, in the light of the circumstances under which
18 they were made, not misleading; or
19 C. engaging in any transaction, practice, or course of business which operates or
20 would operate as a fraud or deceit upon any person, in connection with the purchase or sale of the
21 securities of any issuer, by the use of any means or instrumentality of interstate commerce, or of
22 the mails, or of any facility of any national securities exchange.

23
24 II.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Rutner
26 disgorge profits from his securities purchase that is the subject of this action in the amount of
27 \$648,956.53, plus prejudgment interest in the amount of \$31,522.74.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Rutner pay a civil penalty pursuant to Section 21A(a)(1)(A) of the Exchange Act [15 U.S.C. § 78u-1(a)(1)(A)] in the amount of \$401,043.47.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that payment of the disgorgement, prejudgment interest, penalty, and postjudgment interest of \$12,851.48 (representing interest over the course of the monthly installment plan) shall be made in equal installments of \$91,197.83 each month, beginning thirty (30) days after the entry of the Final Judgment. Such payments shall continue until the full disgorgement, penalty, and interest are completely paid. All payments shall be made by cashier's check, certified check or postal money order, payable to the United States Treasury. Such payments shall be sent by certified mail to: Comptroller, Securities Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312-0003, under cover of a letter which identifies the defendant, the caption and civil action number of this matter, this Court, and the Commission's internal case number (SF-1006-A). Copies of each of the cover letters shall be simultaneously transmitted to the attention of the District Administrator at the Commission's San Francisco District Office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Rutner is hereby prohibited from serving as an officer or director of any issuer of a security registered pursuant to Section 12 or Section 15(d) of the Exchange Act for a period of five (5) years.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent of Rutner, filed concurrently with this Final Judgment, is incorporated herein with the

same force and effect as if fully set forth herein and that Rutner shall fully comply with all of the undertakings and agreements incorporated in both documents.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

There being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

Dated: DEC. 04, 2002

/s/ JAMES WARE

United States District Court Judge

APPROVED AS TO FORM:

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