

- (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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act of 1934, as amended ("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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] by knowingly providing substantial assistance to an issuer that:

(a) fails to file with the Commission:

(1) such information and documents as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], and

(2) such annual and quarterly reports as prescribed by Commission Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13]; or

(b) fails to add to any statement or report filed pursuant to Section 12 of the Exchange Act such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading as described in Rule 12b-20 [17 C.F.R. § 240.12b-20].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13b(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)] by knowingly providing substantial assistance to an issuer that fails to:

(a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets;

(b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(1) transactions are executed in accordance with management's general or specific authorization;

(2) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(3) access to assets is permitted only in accordance with management's general or specific authorization; and

(4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

V.

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

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$269,395, representing profits the Commission alleges were gained as a result of the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$132,197, for a total of \$401,592. Based on Defendant's sworn representations in his Statement of Financial Condition dated March 14, 2006, and other documents and information submitted to the Commission by Defendant, however, the Court is not ordering Defendant to pay a civil penalty. The determination not to impose a civil penalty is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Judgment the Commission obtains information indicating that

Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were materially and knowingly fraudulent, misleading, inaccurate, or incomplete in any material and misleading respect as of the time such representations were made, the Commission may, at its sole discretion, petition the Court for an order requiring Defendant to pay a civil penalty up to the maximum penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was materially and knowingly fraudulent, misleading, inaccurate, or incomplete in any material and misleading respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets of Defendant, or sanctions against Defendant for contempt of this Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Judgment; (2) contest the allegations against Defendant in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty against Defendant should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest against Defendant; (5) contest the imposition of a civil penalty against Defendant up to the maximum allowable under the law; or (6) assert any defense to liability or remedy against Defendant, including, but not limited to, any statute of limitations defense. Defendant may, however, contest any allegations that the financial information he provided to the Commission was knowingly and materially fraudulent, misleading, inaccurate, or incomplete in any material and

misleading respect. Defendant may also assert inability to pay as a defense to the extent such defense is otherwise allowed, in whole or in part, under the applicable law.

Defendant shall pay the monies ordered herein within sixty (60) days of the entry of this Judgment. Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying Richard S. Berger as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Judgment. Defendant shall simultaneously transmit photocopies of each such payment and letter to the Commission's counsel in this action. Defendant relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, is prohibited for five years following the date of entry of this Judgment, from

acting as a director or officer of any issuer having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Consent filed herein is incorporated in this Judgment with the same force and effect as if fully set forth herein.

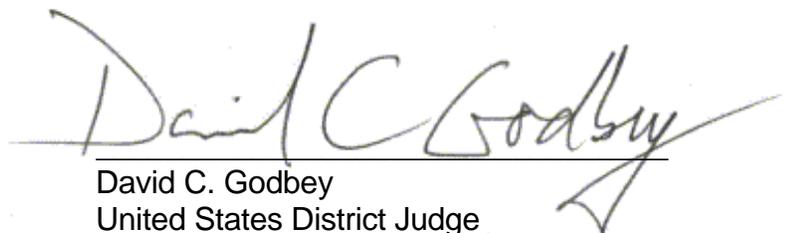
IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to the relief requested by the Commission in its Complaint in this action.

X.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment may be served upon Defendant, through Defendant's counsel of record in this action, in person or by mail either, by the Clerk of the Court or by any member of the staff of the Commission.

Signed March 23, 2007.


David C. Godbey
United States District Judge

APPROVED AS TO FORM:

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