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CENTRAL DISTRICT OF CALIFORNIA  
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## UNITED STATES DISTRICT COURT

## CENTRAL DISTRICT OF CALIFORNIA

CV05 2396

*WJP (CWX)*SECURITIES AND EXCHANGE  
COMMISSION,

: Civil Action No.

Plaintiff,

: FINAL JUDGMENT AND ORDER  
: OF PERMANENT INJUNCTION AS  
: TO DEFENDANT  
: JEFFREY MORTON MESSINGER

TAMARAK, INC., ET AL.

: THIS CONSTITUTES NOTICE OF ENTRY  
: AS REQUIRED BY FRCP, RULE 77(d).

Defendants.

This matter came before this Court on the application of Plaintiff Securities and Exchange Commission (“Commission”) by consent of Defendant Jeffrey Morton Messinger (“Messinger”) for issuance of this Final Judgment and Order of Permanent Injunction as to Defendant Jeffrey Morton Messinger (“Final Judgment”), providing the relief set out herein.

*10*

Messinger has provided this Court with a Consent in which, *inter alia*, he (1) acknowledges and admits the *in personam* jurisdiction of this Court over him and the subject matter jurisdiction of this Court over the claims by the Commission herein; (2) waives entry of findings of fact and conclusions of law under Fed. R. Civ. P. Rule 52, with respect to the entry of this Final Judgment; and (3) consents, for purposes of this action only, to the entry of this Final Judgment, without admitting or denying any of the allegations of the Commission's Complaint, except as to jurisdiction, and without admitting or denying any violation of the federal securities laws, as set forth herein.

The Court finds that it has *in personam* jurisdiction over Messinger and subject matter jurisdiction over the claims by the Commission; that no further notice or hearing is required prior to entry of this Final Judgment and there is no just reason for delay; and that the Court has been fully advised of the premises for entry of this Final Judgment.

**IT IS THEREFORE ORDERED:**

I.

Messinger, his agents, servants, employees, attorneys-in-fact, and all other persons in active concert or participation with him who receive actual notice of this Final Judgment, by personal service or otherwise, are hereby permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) as amended [15 U.S.C. § 78j], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, by directly or indirectly, in connection with the purchase or sale of any security, making use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the

1 circumstances under which they were made, not misleading; or

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

4 II.

5 Messinger, his agents, servants, employees, attorneys-in-fact, and all  
6 other persons in active concert or participation with him who receive actual  
7 notice of this Final Judgment, by personal service or otherwise, are hereby  
8 permanently restrained and enjoined from violating Section 17(a) of the  
9 Securities Act of 1933 ("Securities Act") as amended [15 U.S.C. § 77q(a)], by,  
10 in the offer or sale of any security, making use of any means or instruments of  
11 transportation or communication in interstate commerce, or of the mails,  
12 directly or indirectly:

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

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

18 (c) to engage in any transaction, practice, or course of business which  
19 operates or would operate as a fraud or deceit upon any purchaser.

20 III.

21 Messinger, his agents, servants, employees, attorneys, and all other  
22 persons in active concert or participation with him who receive actual notice of  
23 this Final Judgment, by personal service or otherwise, are permanently  
24 restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities  
25 Act [15 U.S.C. § 77e(a), (c)], directly or indirectly, by:

26 (a) making use of any means or instruments of transportation or  
27 communication in interstate commerce or of the mails to sell a security through  
28 the use or medium of a prospectus or otherwise, unless a registration statement

1 is in effect as to such security; or

2 (b) carrying or causing to be carried through the mails or in interstate  
3 commerce, by any means or instruments of transportation, any such security for  
4 the purpose of sale or for delivery after sale, unless a registration statement is in  
5 effect as to such security; or

6 (c) making use of any means or instruments of transportation or  
7 communication in interstate commerce or of the mails to offer to sell or offer to  
8 buy through the use or medium of any prospectus or otherwise any security,  
9 unless a registration statement has been filed with the Commission as to such  
10 security, or while the registration statement is the subject of a refusal order or  
11 stop order or (prior to the effective date of the registration statement) any public  
12 proceeding of examination under Section 8 of the Securities Act, 15 U.S.C. §  
13 77h.

14 IV.

15 Messinger is permanently barred from participating in an offering of  
16 penny stock, including engaging in activities with a broker, dealer, or issuer for  
17 purposes of issuing, trading, or inducing or attempting to induce the purchase  
18 or sale of any penny stock. A penny stock is any equity security that has a price  
19 of less than five dollars, except as provided in Rule 3a51-1 under the Exchange  
20 Act [17 C.F.R. § 240.3a51-1].

21 V.

22 Messinger is liable for disgorgement of \$50,000.00 representing profits  
23 gained as a result of the conduct alleged in the Complaint, together with  
24 prejudgment interest thereon in the amount of \$3,650.00 and a civil penalty in  
25 the amount of \$50,000.00 pursuant to §20(d) of the Securities Act (15 U.S.C. §  
26 77t(d)) and § 21(d)(3) of the Exchange Act (15 U.S.C. § 78u(d)(3)). Messinger  
27 shall satisfy this obligation by paying \$103,650.00 within sixty (60) days after  
28 the entry of this Final Judgment to the Clerk of this Court, together with a cover

1 letter identifying Jeffrey Morton Messinger as a Defendant in this action;  
2 setting forth the title and civil action number of this action and the name of this  
3 Court; and specifying that payment is made pursuant to this Final Judgment.  
4 Messinger shall simultaneously transmit photocopies of such payment and  
5 letter to the Commission's counsel in this action. By making this payment,  
6 Messinger relinquishes all legal and equitable right, title, and interest in such  
7 funds, and no part of the funds shall be returned to Messinger. The Clerk shall  
8 deposit the funds into an interest bearing account in accordance with Fed. R.  
9 Civ. P. 67 and Local Rule 67-2. The Clerk is authorized and directed to deduct  
10 from the income earned on the investment a registry fee not to exceed the  
11 amount prescribed by the Judicial Conference of the United States. These  
12 funds, together with any interest earned thereon less the registry fee  
13 ("collectively, the "Fund"), shall be held in the Court's registry until further  
14 order of the Court.

15 VI.

16 The Commission may by motion propose a plan to distribute the Fund  
17 subject to the Court's approval. Such a plan may provide that Fund shall be  
18 distributed pursuant to the Fair Fund provisions of Section 308(a) of the  
19 Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund  
20 distribution is made, amounts ordered to be paid as civil penalties pursuant to  
21 this Judgment shall be treated as penalties paid to the government for all  
22 purposes, including all tax purposes. To preserve the deterrent effect of the  
23 civil penalty, Messinger shall not, in any Related Investor Action, benefit from  
24 any offset or reduction of any investor's claim by the amount of any Fair Fund  
25 distribution to such investor in this action that is proportionately attributable to  
26 the civil penalty paid by Messinger ("Penalty Offset"). If the court in any  
27 Related Investor Action grants such an offset or reduction, Messinger shall,  
28 within 30 days after entry of a final order granting the offset or reduction,

1 notify the Commission's counsel in this action and pay the amount of the  
2 Penalty Offset to the United States Treasury or to a Fair Fund, as the  
3 Commission directs. Such a payment shall not be deemed an additional civil  
4 penalty and shall not be deemed to change the amount of the civil penalty  
5 imposed in this Judgment. For purposes of this paragraph, a "Related Investor  
6 Action" means a private damages action brought against Messinger by or on  
7 behalf of one or more investors based on substantially the same facts as alleged  
8 in the Complaint in this action.

9  
VII.

10 The Consent filed herein is hereby incorporated in this Final Judgment  
11 with the same force and effect as if fully set forth herein.

12  
VIII.

13 This Court shall retain jurisdiction over this action and over Messinger  
14 for all purposes, including for purposes of enforcing the terms of this Final  
15 Judgment.

16  
IX.

17 This Final Judgment may be served upon Messinger in person or by mail  
18 either by the United States Marshal, by the Clerk of the Court, or by any  
19 member of the staff of the Commission.

20  
X.

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

24  
25  
26 Dated: 4-18-05

  
27  
28  
UNITED STATES DISTRICT JUDGE