

over Whitehurst and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Whitehurst, his agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Commission Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5], by directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

- a. Employing any device, scheme, or artifice to defraud;
- b. Making any untrue statement of a material fact or omitting 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. Engaging 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Whitehurst his agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, be and hereby are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act and Commission Rule 14e-3 [15 U.S.C. § 78n(e) and 17 C.F.R. § 240.14e-3], directly or indirectly, by:

- (1) making any untrue statement of a material fact or omitting 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 engaging in any fraudulent, deceptive or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation;
- (2) if any person has taken a substantial step or steps to commence, or has commenced, a tender offer (the "offering person"), purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer or securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities, while in possession of material

information relating to such tender offer which they know or have reason to know is nonpublic and which they know or have reason to know was acquired directly or indirectly from:

- (a) the offering person,
- (b) the issuer of the securities sought or to be sought by such tender offer, or
- (c) any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer,

unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed; or they purchase any such security while acting in the capacity of a broker or agent on behalf of the offering person; or they sell any such security to the offering person; or

- (3) communicating material, nonpublic information relating to a tender offer, which information they know or have reason to know was acquired directly or indirectly from:

- (a) the offering person,
- (b) the issuer of the securities sought or to be sought in the tender offer, or
- (c) any person acting on behalf of the offering person or such issuer,

to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in Paragraph II(2), above, of this Final Judgment, provided however, that this paragraph shall not apply to a communication made in good faith to:

- (a) the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
- (b) the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons, involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (c) any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Whitehurst disgorge the sum of \$4,240.62 which represents the proceeds of certain transactions in the securities of Purolator Products Company by Whitehurst as alleged in the Commission's Complaint,

plus prejudgment interest thereon of \$940.16, calculated at the rate established quarterly by the Internal Revenue Service for tax underpayments, compounded quarterly. Within ten (10) business days from the date of the entry of this Final Judgment, Whitehurst shall pay into the Registry of this Court by cashier's check, certified check, or postal money order payable to "Clerk, United States District Court" (1) the full amount of disgorgement and (2) prejudgment interest thereon. Such payment shall thereafter be distributed pursuant to a plan for distribution of disgorgement funds, to be filed by the Commission with the Court. In no event shall any of the funds paid into the Registry of the Court be returned to Whitehurst. Copies of the cover letter and the instrument by which payment is made shall be transmitted simultaneously to Ann H. Sulzberg, Senior Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 8-1, Washington, D.C. 20549.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1], Whitehurst shall pay a civil money penalty in the amount of \$19,826.56 by cashier's check, certified check, or postal money order, payable to the U.S. TREASURY and bearing on its face the caption "SEC v. David A. Schmidt and Willard A. Whitehurst, File No. HO-2996." Within ten (10) business days of the date of the entry of the Final Judgment, Whitehurst shall send the payment of the civil penalty to the Comptroller, Securities and Exchange

Commission, 450 Fifth Street, N.W., Mail Stop 0-3, Washington, DC 20549, under cover of a letter that identifies the defendant, the name and civil action number of this litigation and the Court in which it was brought. Copies of the cover letter and the instrument by which the payment is made shall be transmitted simultaneously to Ann H. Sulzberg, Senior Counsel, Division of Enforcement, 450 Fifth Street, N.W., Mail Stop 8-1, Washington, D.C. 20549.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Consent be, and the same hereby is, incorporated by reference herein with the same force and effect as if fully set forth herein.

VI.

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


UNITED STATES DISTRICT JUDGE

DATED: April 30, 1997