

**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

FILED  
COURT

26 NOV 02 PM 4:31

DISTRICT OF UTAH

BY: DEPUTY CLERK

**Case No. 2:97-CV-0963K  
Judge Dale A. Kimball**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

**GEORGE BADGER, et al.**

**Defendants.**

**FINAL CONSENT JUDGMENT  
OF PERMANENT INJUNCTION  
AND OTHER RELIEF AS TO  
DEFENDANT DUANE MARCHANT**

Plaintiff Securities and Exchange Commission ("Commission") having commenced this action by filing a complaint for injunctive and other relief on December 18, 1997 ("Complaint") against, among others, defendant Duane Marchant ("Marchant") alleging that he violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], and Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13; defendant Marchant, having executed and annexed Consent of Defendant Duane Marchant dated May 2, 2002 ("Consent"), having entered a general appearance, having admitted to the jurisdiction of this Court over him and over the subject matter of this action, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and having consented, without admitting or denying the allegations contained in the Complaint (except as to jurisdiction), to the entry without further notice of this Final Consent Judgment of Permanent Injunction And Other Relief As To Defendant Duane Marchant ("Final Judgment"):

313

**I.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Marchant be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by 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 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 violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**II.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Marchant, while he directly or indirectly controls any issuer within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], be and hereby is permanently enjoined and restrained from acting or omitting to act if such act or omission would result or results in such issuer:

- (A) failing to file with the Commission any report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and the rules and regulations promulgated thereunder; or
- (B) filing with the Commission a report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and the rules and regulations promulgated thereunder that (1) contains an untrue statement of material fact; (2) fails to include, in addition to the information required to be

stated in such report, such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading; or (3) fails to disclose any information required to be disclosed therein,

in violation of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] or Rules 12b-20, 13a-1 or 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1 or 240.13a-13], unless defendant Marchant acted in good faith and did not directly or indirectly induce the act or omission constituting such violation(s) within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. §78t(a)].

### III.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant Marchant shall pay a civil penalty to the United States Treasury pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] in the amount of \$25,000. Payment of this total amount shall be made in the following manner:

- (A) Defendant Marchant shall pay \$5,000 within ten business days of the entry of this Final Judgment.
- (B) Beginning ninety days from the entry of this Final Judgment, defendant Marchant shall pay the remaining \$20,000 plus post-judgment interest, calculated in accordance with 28 U.S.C. § 1961, in four equal quarterly installments. The first quarterly payment shall be made 90 days from the entry of this Final Judgment; the second quarterly payment shall be made 180 days from the entry of this Final Judgment; the third quarterly payment shall be made 270 days from the entry of this Final Judgment; and the fourth quarterly payment shall be made 360 days from the entry of this Final Judgment.
- (C) Defendant Marchant may prepay the balance outstanding at any time.
- (D) All payments required by this paragraph shall be made by postal money order, certified check, bank cashier's check or bank money order, payable to the order of

the United States Securities and Exchange Commission. Such payments shall be transmitted to the Comptroller, United States Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549, under cover of a letter identifying this Court, the title and civil action number of this litigation and defendant Marchant as payor and stating that the payment is a civil penalty. Complete copies of the cover letter and check or money order shall be simultaneously transmitted to Robert Knuts, Securities and Exchange Commission, 233 Broadway, New York, New York 10279.

**IV.**

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

**V.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment and every paragraph herein is binding on defendant Marchant and his agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of this Final Judgment.

**VII.**

The Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. 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.

SO ORDERED:

  
UNITED STATES DISTRICT JUDGE

Date: November 26, 2002  
Salt Lake City, Utah

**CONSENT OF DEFENDANT DUANE MARCHANT**

1. Defendant Duane Marchant ("Marchant"), upon the advice of counsel and being fully apprised of his rights, having read and understood the terms of the annexed Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Duane Marchant ("Final Judgment"), waives service of the summons and complaint upon him and submission of an answer thereto, appears and admits to the jurisdiction of this Court over him and over the subject matter of this action, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure and, without admitting or denying the allegations, except as to jurisdiction, of the complaint filed herein by plaintiff United States Securities and Exchange Commission ("Commission"), hereby consents to the entry, without further notice, of the annexed Final Judgment.

2. Defendant Marchant agrees that this Consent Of Defendant Duane Marchant ("Consent") shall be incorporated by reference in and made part of the annexed Final Judgment to be presented to the Court for signature, filing, and entry contemporaneously herewith.

3. Defendant Marchant waives any right he may have to appeal from the annexed Final Judgment.

4. Defendant Marchant acknowledges that this Consent and the annexed Final Judgment embody the entire understanding of the parties.

5. Defendant Marchant enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind whatsoever has been

made by the Commission or any of its members, officers, agents, attorneys or representatives to induce defendant Marchant to enter into this Consent.

6. Defendant Marchant acknowledges that any violation of any of the terms or provisions of the annexed Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

7. Defendant Marchant acknowledges that he has been informed and understands that plaintiff Commission, at its sole and exclusive discretion, may refer this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate civil, administrative or criminal jurisdiction.

8. Defendant Marchant acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability arising from the facts underlying this action; or (2) immunity from any such criminal liability.

9. Defendant Marchant acknowledges and agrees that this proceeding, and his consent to the entry of the Final Judgment, are for the sole purpose of resolving this civil proceeding against defendant Marchant, in conformity with the provisions of 17 C.F.R. § 202.5(f), and do not resolve, affect or preclude any other proceeding which may be brought against defendant Marchant or anyone else. Among other things, defendant Marchant waives any right he may have to assert that under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the relief to which he consented in this civil action bars any criminal action, or that any criminal action bars the relief to which he consented in this civil action.

10. Defendant Marchant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings" (17 C.F.R. § 202.5(e)). In compliance with this policy, defendant Marchant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; and (ii) that upon the filing of this Consent, defendant Marchant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Marchant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this case to its active docket. Nothing in this provision affects defendant Marchant's: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

11. Defendant Marchant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by defendant Marchant to defend against this action. For these purposes, defendant Marchant agrees that defendant Marchant is not the prevailing party in this action since the parties have reached a good faith settlement.

12. Defendant Marchant consents that this Court shall retain jurisdiction of this action for all purposes.

13. Defendant Marchant hereby consents and agrees that the annexed Final Judgment may be presented by the Commission to the Court for signature and entry without further notice or delay.

Dated: 2 May, 2002  
Salt Lake City, Utah

Duane Marchant  
Duane Marchant

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.:

On this 2<sup>nd</sup> day of May, 2002, Duane Marchant, being known to me and who executed the foregoing Consent Of Defendant Duane Marchant personally appeared before me and did duly acknowledge to me that he executed the same.

Amy Wardle  
NOTARY PUBLIC



alt

United States District Court  
for the  
District of Utah  
December 2, 2002

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:97-cv-00963

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Andrew Sears  
175 STATE RD E  
WESTMINSTER PLACE  
WESTMINSTER, MA 01473

William Slone  
520 SQUIRE HILL RD  
CHESHIRE, CT 06410

Douglas E. Griffith, Esq.  
KESLER & RUST  
36 S STATE STE 2000  
SALT LAKE CITY, UT 84111-1405  
EMAIL

Marvin Susemihl  
C/O JAN VIERLING  
3020 E MAIN ST SP A19  
MESA, AZ 85213

Irving M. Einhorn, Esq.  
LAW OFFICES OF INRVING M EINHORN  
11900 OLYMPIC BLVD STE 510  
LOS ANGELES, CA 90064

Mr. Arlan O Headman Jr., Esq.  
COHNE RAPPAPORT & SEGAL  
PO BOX 11008  
525 E FIRST S FIFTH FL  
SALT LAKE CITY, UT 84147  
JFAX 9,3551813

Bradley M. Strassberg, Esq.  
VAN COTT BAGLEY CORNWALL & MCCARTHY  
50 S MAIN STE 1600  
PO BOX 45340  
SALT LAKE CITY, UT 84145  
JFAX 9,5340058

Mr. Dennis K Poole, Esq.

POOLE SULLIVAN & ADAMS LC  
4543 S 700 E STE 200  
SALT LAKE CITY, UT 84107  
JFAX 9,2631010

Mark A. Goodman, Esq.  
DAVID GOODMAN & MADOLE PC  
5420 LBJ FREEWAY STE 1200  
DALLAS, TX 75240

Marion Sherrill  
410 STOCK GAP ROAD  
MONROE, GA 30656

Mr. Douglas J Parry, Esq.  
PARRY ANDERSON & MANSFIELD  
60 E SOUTH TEMPLE STE 1270  
SALT LAKE CITY, UT 84111  
JFAX 9,5213484

Mr. Wallace T. Boyack, Esq.  
BOYACK ASHTON & JENKINS  
350 S 400 E STE 105  
SALT LAKE CITY, UT 84111  
JFAX 9,5380200

Mr. Ronald C. Barker, Esq.  
2870 S STATE  
SALT LAKE CITY, UT 84115-3692  
JFAX 9,4865754

Mr. Thomas M Melton, Esq.  
SECURITIES AND EXCHANGE COMMISSION  
50 S MAIN STE 500  
500 KEY BANK BLDG  
SALT LAKE CITY, UT 84144-0402  
JFAX 9,5243558

Robert Knuts, Esq.  
SEC  
233 BROADWAY 13TH FL  
NEW YORK, NY 10279

A. Robert Thorup, Esq.  
RAY QUINNEY & NEBEKER  
36 S STATE ST STE 1400  
PO BOX 45385  
SALT LAKE CITY, UT 84145-0385  
JFAX 9,5327543