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

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DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GEORGE BADGER, et al.

Defendants.

BY: _____
DEPUTY CLERK
Case No. 2:97-CV-0963K
Judge Dale A. Kimball

**FINAL CONSENT JUDGMENT
OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO
DEFENDANT ANDREW SEARS**

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 Andrew Sears ("Sears") alleging that he violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], and 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]; defendant Sears, having executed and annexed Consent of Defendant Andrew Sears dated July 9, 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 Andrew Sears ("Final Judgment"):

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Sears be and hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, in

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the offer or sale of any security, by the use of any means or instrument of transportation or communication in interstate commerce, or of the mails:

- (A) employing any device, scheme, or artifice to defraud;
- (B) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; and
- (C) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser,

in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Sears 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].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Sears shall disgorge to the United States Treasury the amount of \$[28,018], representing the sum of the \$17,818 that he received as a result of the conduct alleged in the Complaint and prejudgment interest thereon of \$[10,200]. Payment of this total amount shall be made in the following manner:

- (A) Defendant Sears shall pay \$[9,300] within ten business days of the entry of this Final Judgment.
- (B) Beginning ninety days from the entry of this Final Judgment, defendant Sears shall pay the remaining \$[18,718] plus post-judgment interest, calculated in accordance with 28 U.S.C. § 1961, in six 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; the fourth quarterly payment shall be made 360 days from the entry of this Final Judgment; the fifth quarterly payment shall be made 450 days from the entry of this Final Judgment; and the sixth quarterly payment shall be made 540 days from the entry of this Final Judgment.
- (C) Defendant Sears 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 Sears as payor and stating that the payment is disgorgement. 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 based on defendant Sears' sworn representations in his Statement of Financial Condition dated April 21, 2002, and other documents submitted to the Commission, the Court is not ordering him to pay a civil penalty. The determination not to impose a civil penalty is contingent upon the accuracy and completeness

of his Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that defendant Sears' representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to defendant Sears, petition the Court for an order requiring defendant Sears to pay the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by defendant Sears was fraudulent, misleading, inaccurate, or incomplete in any material 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 Sears to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant Sears may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of a civil penalty should not be ordered; (4) contest the imposition of the maximum civil penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

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.

VI.

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 Sears 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.

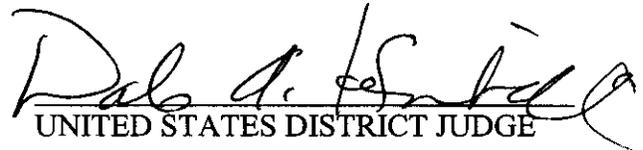
VII.

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.

VIII.

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 ANDREW SEARS

1. Defendant Andrew Sears (“Sears”), 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 Andrew Sears (“Final Judgment”), 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 Sears agrees that this Consent Of Defendant Andrew Sears (“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.

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

4. Defendant Sears acknowledges that, with the exception of the Commission’s acceptance of defendant Sears’ offer to consent to entry of an administrative order pursuant to Rule 240 of the Commission’s Rules of Practice, this Consent and the annexed Final Judgment embody the entire understanding of the parties.

5. Defendant Sears 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 Sears to enter into this Consent.

6. Defendant Sears 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 Sears 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 Sears 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 Sears 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 Sears, 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 Sears or anyone else. Among other things, defendant Sears 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 Sears acknowledges that the Court is not imposing a civil penalty based on defendant Sears' sworn representations in his Statement of Financial

Condition dated April 21, 2002, and other documents submitted to the Commission. Defendant Sears further consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that defendant Sears' representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to defendant Sears, petition the Court for an order requiring defendant Sears to pay the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by defendant Sears was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering defendant Sears to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment. The Commission may also request additional discovery. Defendant Sears may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of a civil penalty should not be ordered; (4) contest the imposition of the maximum civil penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

11. Defendant Sears 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 Sears 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 Sears hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Sears 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 Sears’: (i) testimonial obligations; or (ii) right to take legal positions in litigation in which the Commission is not a party.

12. Defendant Sears 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 Sears to defend against this action. For these purposes, defendant Sears agrees that defendant Sears is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant Sears consents that this Court shall retain jurisdiction of this action for all purposes.

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United States District Court
for the
District of Utah
December 3, 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:

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